REVISTA

CADERNOS DE FINANÇAS PÚBLICAS

01| 2023

FISCAL RESPONSIBILITY AND PUBLIC FINANCE: an analysis of the limits of State spending in the face of extraordinary expenses caused by a public calamity

Lucas Felipe Silveira Landim

ABSTRACT

This monograph aims to analyze budgetary rules and seek to understand if they can be a barrier for the State to increase urgent public spending during periods of public calamity and its consequent economic crisis. It has been observed that in recent decades, there has been a movement that led several countries to adopt fiscal austerity measures to contain the increase in the public deficit, resulting from years of substantial spending. However, these austere budgetary rules, during periods of calamities and crises, can end up having the opposite effect of what is intended. It was also sought to demonstrate that increased spending during calamitous periods requires closer attention so that the resulting debt does not become an obstacle to the country's sustainable growth in the post-crisis period and does not transmit institutional insecurity to investors.

Keywords: Public Budget; Public Debt; Covid-19; Public calamity; Fiscal Responsibility.

JEL Classification: E12; E62; K00.

SUMMARY

1. INTRODUCTION 5
2. STATE PARTICIPATION IN THE ECONOMY 7
2.1 Economic Thought Before The Great Depression 7
2.1.1 *Early Economic Theories* 7
2.1.2 *The Classical School and Liberal Thought* 9
2.1.3 *The Great Depression of 1929/1930* 11
2.2 The Economic Thought Following The Great Depression 13
2.2.1 *The Keynesian Thought and the Need for State Intervention* 13
2.2.2 *The Need for Increased Public Spending* 15
2.2.3 *The problem of high spending and budget deficit* 17
2.2.4 *The theory of necessary indebtedness and budget deficit in Brazil* 19
3. FINANCIAL LAW AND ITS INFLUENCE ON THE STATE'S ECONOMY 20
3.1 Financial Law And The Role Of The State 20
3.1.1 *The financial activity of the state and the definition of financial law* 22
3.1.2 *Principles of Financial Law* 24
3.1.3 *The main revenues that comprise the public budget* 28
3.1.4 *Taxes* 28
3.1.5 *Credit operations as a source of revenue for the public budget* 30
3.1.6 *The "Golden Rule" and legal restrictions on credit operations* 32
3.2 Public Spending Limits In The Legal System 34
3.2.1 *Limits On Public Debt* 34
3.2.2 *Public Indebtedness In The Fiscal Responsibility Law* 36
3.2.3 *Fiscal Responsibility Sanctions* 40
4. STATE BUDGET AND PUBLIC EMERGENCY 41
4.1 Budgetary Barriers And The Need For Expenditures 41
4.1.1 *Brief context of the crisis caused by Covid-19* 43
4.1.2 *The situation faced by Brazil* 45
4.2. Solutions Adopted For The Indebtedness And Policies Used By The State 47
4.2.1 *Initial Measures Adopted* 48
4.2.2 *Precautionary Measure In Direct Action Of Unconstitutionality (ADI) 6.357* 52
4.2.3 *War Budget Amendment* 54

4.2.4 *Measures Adopted By The Government After The Exceptions Opened In Budgetary Laws* 57
4.2.5 *Debt Incurrence And Its Effects On The Brazilian Public Debt* 60
5. FINAL CONSIDERATION 63
BIBLIOGRAPHIC REFERENCES 66

1. INTRODUCTION

Before the Great Depression of 1929/1930, Western countries were dominated by the economic thought of the liberal economic school, with Adam Smith being its main influencer. After the Great Depression, coupled with the devastating occurrence of World War II, most Western countries entered a downward spiral, where crisis, hunger, and poverty became part of everyday life. Prior to these global events, led by liberalist ideas, countries sought to intervene as little as possible in the economy. There was only state involvement in strictly essential matters to maintain the functioning of public services and basic essential services for the population.

After countries went into crisis and with the advent of Keynesian economics, the state began to incur debt to increase public spending. The support for this indebtedness was based on Keynes' thinking, which stated that to save a depressed economy, government borrowing, particularly in the area of investments, was necessary to address supply and demand issues and restore the welfare state for the population.

Over the years, there has been a certain deviation in the management of public spending by most Western countries. Indebtedness for spending was no longer aimed at pulling a country out of a crisis but rather for the discretion of public officials, whose end goal was not strictly for the benefit of the country or society. This led to a movement in most countries towards rationalizing public spending to promote fiscal balance. To achieve this goal, various rigid legal mechanisms were created to limit the discretionary power in allocating public funds.

Brazil followed the same path as many nations and began to approach public budgeting with greater responsibility. The country has a considerable set of rules on the subject. The first and most important is undoubtedly the Federal Constitution, which has a whole chapter dedicated to public finances. However, the first financial law that emerged in the legal system is Law 4,320/1964, which established general rules on the subject. In terms of specific public spending management, there is the Budget Guidelines Law (LDO), which establishes, for example, primary result targets for the public sector and the budget deficit forecast, among other provisions. There is also the Annual Budget Law (LOA), which estimates revenue and establishes expenditure for a given period. Finally, the Fiscal Responsibility Law, created in 2000, was a milestone in the country as it revolutionized the relationship between public spending and budgetary balance with the presence of strict rules.

However, the rigid budgetary and fiscal responsibility rules created in the country as a means to combat irresponsible public spending faced a significant challenge in 2020. These

rules were designed for periods of normality, and no one could have imagined that the world would experience a pandemic in 2020, which continued into 2021. With the advent of the health and economic crisis, urgent measures involving public finances were extremely necessary to mitigate the problem. Hence, the question arose: How would the state incur the necessary debt to carry out the largest public spending in recent years without violating budgetary laws and the Fiscal Responsibility Law?

Based on this question, this study analyzes the legal and judicial measures used by the Government and the National Congress to resolve this impasse. These measures had to be taken urgently since the problems brought about by the pandemic were already at the country's doorstep, and there could be no legal uncertainty regarding the state's actions and debt management.

In the first chapter, historical data on the economic theories that influenced the state from the beginnings of the recent era until World War II were collected. The approach to the economic theories of Adam Smith and Keynes was necessary for the overall objective of the work, considering that the dilemma regarding the current need for public indebtedness only arises due to the theoretical and historical contributions of the schools influenced by these economists. Furthermore, the field of Financial Law, as well as Tax Law, is strongly linked to issues studied by various economic theories. Financial Law, with its respective set of rules, is the means through which state activity must necessarily pass to carry out the necessary public policies within the framework of the Rule of Law.

In the second chapter, the participation of Financial Law in achieving the goals of the state was addressed, especially when it comes to the Rule of Law, where state power must promote the majority of the population's needs and promote the Welfare State. Therefore, the aim was to show how the financial activity of the state occurs, passing through the norms of Financial Law to achieve its purpose.

Finally, in the third chapter, the need for public indebtedness to finance the expenses related to the pandemic is specifically analyzed. It was observed that the same dilemma that occurred in 1930, when Keynes proposed that, to save the country from a crisis or depression, there must necessarily be an increase in public spending through state indebtedness, has resurfaced. Several contemporary authors in Financial Law mention this dilemma and emphasize that there would be no other way to solve the problem of the health and economic crisis than through indebtedness. Furthermore, it was observed through a technical study analysis that continuous and increasing indebtedness in the country, in the current context, could be detrimental, potentially leading to future crises and investor uncertainty.

2. STATE PARTICIPATION IN THE ECONOMY

2.1 Economic Thought Before The Great Depression

History reveals that the world has always gone through historical moments that are primarily marked by major crises, completely changing human thinking. Law and economics are intrinsically part of this history, as human relationships, power, and politics are based on economic thinking, which influences the way the state relates to society.

It is important to note that this work intends to analyze the rules of financial law that govern the state's economy. Among these rules, we have, for example, the Fiscal Responsibility Law, the Budget Guidelines Law, the Annual Budget Law, and Constitutional Amendment 95/2016, which established the Spending Ceiling. These are, ultimately, relevant legal mechanisms for the financial health of the state.

When addressing financial law, it is crucial to analyze the evolution of economic thinking, as it clarifies certain legal aspects of state budgets. Furthermore, when examining a historical moment marked by calamity, such as the pandemic caused by the novel coronavirus (Covid-19), a significant controversy arises from the economic theories that have shaped world history: Adam Smith's liberalism and Keynesian state intervention in the economy. For this reason, before discussing the strictly legal aspects of budget laws and how they can determine state participation in the economy, it is relevant and necessary to analyze economic thinking before and after the 1929/1930 crisis, also known as the Great Depression, which affected the entire global economy.

2.1.1 *Early Economic Theories*

To understand the dominant economic thinking before 1929, it is necessary to briefly review the evolution of economic theories throughout history. We begin by mentioning one of the earliest economic currents that emerged in the mid-16th century, mercantilism, which was the first economic school of the recent era.

The main concern of this current was the accumulation of wealth by a nation. To achieve this, it had some important principles, such as promoting foreign trade and hoarding wealth. Additionally, during this time, the accumulation of metals by a particular nation assumed significant importance, and it is during this period that the first more elaborate accounts of money appear.

At that time, as explained by Vasconcellos and Garcia (2014), it was believed that the government of a country would be stronger and more powerful the larger its stock of precious metals. For this reason, mercantilist policy ended up encouraging wars and maintained the powerful presence of the state in economic affairs, being considered one of the first doctrines advocating state intervention in the economy.

Gastaldi (2005) explains that in mercantilist doctrine, the primary purpose of the state should be to find the means necessary for the respective country to acquire the greatest possible amount of gold and silver. To achieve this, dozens of regulations were issued to regulate industry and trade, minimizing imports and favoring exports.

The author points out that one of the main aspects of mercantilist doctrine was a more interventionist government, and this thinking dominated various countries in Europe. For example, in Spanish mercantilism, the export of gold ingots was prohibited in order to boost the domestic economy. In English mercantilism, the government incentivized exports through import contracts that required the selling country to purchase certain volumes of English goods. In French mercantilism, the government sought to stimulate domestic industry through state monopolies.

Gastaldi (2005) mentions that Colonial Brazil was influenced by mercantilism when it mandated that colonial trade be conducted exclusively through the metropolis. With the arrival of D. João VI in Brazil, this restrictive practice was eliminated, allowing the establishment of domestic industries and trade with other countries worldwide.

Vasconcellos and Garcia (2014) explain that in the 18th century, another significant economic school emerged in history, the physiocrats. They advocated that land was the only source of wealth and that there was a natural order governed by absolute, immutable, universal laws desired by God for human happiness. In this school, the most notable work was carried out by François Quesnay, author of "*Tableau Économique*". He was the first to divide the economy into sectors to show the relationship between them.

According to Vasconcellos and Garcia (2014), the physiocrats believed that in a world constantly threatened by food scarcity and excessive regulation and government intervention, an economy with significant commercial and financial development did not meet the needs of economic expansion, as only land had the ability to multiply wealth. At this point in history, we can see a glimpse of a thought that advocated non-state intervention in the economy, as it could disrupt the natural functioning of things.

Gastaldi (2005) points out that the physiocrats claimed that there was a natural order that regulated economic phenomena, as this providential order automatically organized and

reorganized economic life. The physiocratic school made the first contribution to the beginnings of non-interventionism by the state in the economy, which later transformed into the famous motto of classical thinkers: laissez-faire, laissez-passer.

2.1.2 *The Classical School and Liberal Thought*

When discussing the liberal school, Vasconcellos and Garcia (2014) explain that it is necessary to keep in mind the precursor and main influencer of this current: Adam Smith, also known as the father of economic liberalism, who was already a renowned professor when he published his work "The Wealth of Nations" in 1776. This book is a comprehensive treatise on economic issues ranging from market laws and monetary aspects to the distribution of land income, concluding with a set of political recommendations.

As Marco Antônio Sandoval de Vasconcellos (2014) explains, in Adam Smith's harmonious view of the real world, he believed that the operation of free competition, without any interference, would lead society to economic growth, as if guided by an invisible hand.

According to Vasconcellos and Garcia (2014), Adam Smith advocated the idea that all agents, in their pursuit of maximum profit, ultimately promote the well-being of the entire community. It is as if an invisible hand guided all economic decisions, without the need for state intervention. The defense of the market as the regulator of a nation's economic decisions would bring many benefits to society, regardless of state action. From this moment, the principle of liberalism was born, profoundly influencing the state and its relationship with society.

The arguments that stimulated the emerging principle of liberalism were based on free initiative, known at the time as laissez-faire. Laissez-faire and laissez-passer are terms associated with the order of economic liberalism, which proclaims the absolute freedom of production and trade of goods.

According to Sandroni (1999), the motto was coined by the French physiocrats in the 18th century, but the policy of laissez-faire was practiced and fiercely advocated by England, which was at the forefront of industrial production and needed strong mercantile support to trade its products. This policy stood in direct opposition to corporatist and mercantilist practices that hindered large-scale production and safeguarded colonial domains. With the development of capitalist production, laissez-faire evolved into economic liberalism, which condemned any form of state intervention in the economy.

According to Vasconcellos and Garcia (2014), this liberal thinking considered that the cause of a nation's wealth was human labor, also known as the labor theory of value, and that one of the decisive factors in increasing production was the division of labor, where workers should specialize in specific tasks. For the father of economic liberalism, the role of the state in the economy should be limited to protecting society against potential threats and creating and maintaining necessary works and institutions, but not intervening in market laws and, consequently, in economic practice.

According to Hunt (2013), in the context of Adam Smith's theory, capitalism represented the highest stage of civilization and would reach its pinnacle when the government adopted the aforementioned laissez-faire policy, allowing the forces of competition and the free play of supply and demand to regulate the economy, which would be almost completely free from government restrictions or interventions. In Smith's book "The Wealth of Nations," the entire written structure reveals his conclusions about the benefits of laissez-faire for society as a whole.

Furthermore, according to Adam Smith's theory, as mentioned by Hunt (2013), government interventions, regulations, monopoly grants, and special subsidies tend to misallocate capital and decrease its contribution to economic well-being. The idea behind this thinking was clear: the government should never intervene in the functioning of the market, as it would jeopardize the well-being of the population. Mark Lautzenheizer Hunt (2013), explaining the pinnacle of liberal thought, pointed out that the idea of this movement was practically based on the premise that any government attempting to direct people on how they should employ their capital would become excessively burdened and perform an unnecessary task.

In summary, according to Hunt (2013), for Adam Smith, the government should only have three functions: (i) to protect society from violence and invasion by other independent societies; (ii) to protect, as much as possible, every member of society from injustice and oppression by any of its members or to provide a perfect administration of justice; (iii) to undertake and preserve certain public works, as well as to create and maintain certain public institutions, the creation and maintenance of which would never arouse the interest of any individual or group of individuals, since the profit would never cover the expenses they would have, although such expenses could often benefit and reimburse society.

According to Vasconcellos and Garcia (2014), when recalling the classical school and liberal thought, one cannot forget the synthesizer of this entire theory: the economist John Stuart Mill. His work was the main text used for teaching Economics in the late classical period and

the beginning of the neoclassical period. His work consolidates what was exposed by his predecessors and advances by incorporating more institutional elements and defining better the constraints, advantages, and functioning of a market economy.

Stuart Mill (1848) harshly criticized the interventionist government system, including criticisms of the state's taxation model and the problem of complex laws and the slowness of justice that somehow benefits certain classes of society. In addressing the interventionist government, the thinker discussed the problem of excessive regulation of loan contracts between individuals, arguing that the best person capable of regulating this process is the parties involved in the contract. Stuart Mill cites the case of attempts to reduce the price of food through intervention. For him, the objective pursued by the State may be plausible, but the average price of food and other market products depends on the cost of production.

According to Mill (1848), the time for attempting, even in the least developed country in Europe, applications of the nature of the "Paternal Government" principle has passed. For him, all objections that militate against governmental interference in the economy and society are valid to the highest degree. Stuart Mill emphasizes that the economic thought of the classical school reveals aversion to a more interventionist state in the economy. It is clear that for liberals, the influence of the state in economic relations has a highly detrimental effect on the population itself, as it would be at the mercy of a paternalistic state and would not develop its full capacity, which commonly occurs through practical activity.

When observing the doctrines and thinkers of this school, it is easy to understand the synthesis of this perspective, where laissez-faire is fundamental for the functioning of the market, as natural laws dictate an "invisible hand" that governs economic relations. The presence of the government in this mechanism would break the natural laws that make the economy function. This economic thought had been gaining great influence in history. However, with the 1929 crisis, known as the "Great Depression," and its consequences, liberal thinking began to be questioned and challenged by some economists.

2.1.3 *The Great Depression of 1929/1930*

To better understand Keynesian theory and state intervention in the economy, it is necessary to provide a brief account of the historical moment that changed the course of global economic thought. In the years 1929 and 1930, state actions were influenced by the theory of laissez-faire. As explained by Professor Matias Pereira (2003), until 1930, the world was under

the dominance of liberal precepts, greatly influenced by Adam Smith's theory of the "invisible hand" and the essence of that thought, laissez-faire.

The Great Depression of 1929 put an end to the application of liberal economic thought. According to economist Paulo Sandroni (1999), it was the period of the greatest global economic crisis that first and most deeply affected the American economy, subsequently spreading to Europe, Africa, Asia, and Latin America.

Before 1929, optimism prevailed in American thinking. Various statements from Presidents and economists conveyed an idea that instilled increasing confidence in the market. With this mindset, aided by the expansionist policies of the time, the New York Stock Exchange began a process of growth without a genuine corresponding increase in the profits of the listed companies. With this scenario, the bubble in the stock market became apparent, and at some point, it would burst.

Sandroni (1999) points out that at that moment, there was significant speculation in the market, and the American economy was in full prosperity. Adding to this surge of optimism, suddenly 70 million securities were introduced into the market without finding any effective demand counterpart. This event began to generate market distrust, which led to the inevitable bursting of the bubble in the American stock market. After this financial collapse, distrust spread across various sectors of economic activity, eventually impacting production.

The decline in income led to a contraction in demand, an increase in inventories, and a fall in prices. As a consequence, many activities came to a halt, and like a snowball effect, business bankruptcies followed, leaving millions of workers unemployed. Sandroni (1999) also recalls that between 1929 and 1933, there were about 15 million unemployed, 5,000 banks ceased operations, 85,000 companies went bankrupt, and industrial and agricultural productions were cut in half.

Sandroni (1999) also emphasizes that when the economic crisis reached its international proportions, world trade was reduced to one-third, and the number of unemployed reached about 30 million. The first countries affected in Europe were England, Germany, and Austria. The author argues that the Great Depression had profound consequences on the structure of society, particularly in the relations between the State and the production process. In all major capitalist economies, it was up to the State to establish mechanisms to control the crisis and revive production, leading to a true abandonment of the principles of economic liberalism.

In the same explanatory line, Bernard Gazier (2013) notes that the scope of this economic catastrophe, starting in 1931, began to take extraordinary negative proportions. From then on, the first aid measures for the unemployed were put into practice, including subsidies

to regional provinces, announcements of large-scale state actions, emergency loan networks, and purchases of agricultural products, among others.

2.2 The Economic Thought Following The Great Depression

2.2.1 *The Keynesian Thought and the Need for State Intervention*

As analyzed in the previous paragraphs, there was a rise of liberal economic thought until 1930. The theory based on the laissez-faire motto was growing and dominating almost all Western countries. Optimism in the mechanisms based on Adam Smith's theory of the invisible hand was prevalent.

As Vasconcellos and Garcia (2014) emphasize, before the 1930 crisis, unemployment was not a major concern for most economists, at least in capitalist countries, as the prevailing liberal thought believed that markets, without state interference, would lead the economy to full employment of its resources or its potential output. In other words, thousands of individuals and companies, guided by the invisible hand doctrine of the liberal school, determined prices and equilibrium production.

With the advent of the 1929/1930 crisis and its rapid devastation in all countries except closed economies, it became evident that the state should act quickly to mitigate these effects.

There are reports that in the United States, the epicenter of this economic disaster, the population resorted to seeking food in discarded waste from garbage trucks. The highest degree of misery that a population could endure was reached. These effects rapidly spread to the rest of the world. The urgent need for state intervention was imminent, not only in North America but also in other countries around the globe.

In this context of a global crisis, the need for a solution emerged. As various authors point out, it came, in part, from economist John Maynard Keynes. In fact, Keynes inaugurated a new era in economic thought, which began with the publication of "The General Theory of Employment, Interest, and Money." From Keynes's achievements, and especially with the publication of his work, the so-called Keynesian school era began.

According to Vasconcellos and Garcia (2014), many authors described Keynes's contribution as the Keynesian revolution, given the impact of his work on social and economic relations. Various authors report that the economist was highly respected by his peers. Furthermore, a strong characteristic of his thinking reflected his concerns with the practical implications of economic theory.

To understand the impact of Keynes's work and thinking, Vasconcellos and Garcia (2014) mention that it is necessary to consider that, at the time (around the 1930s), the global economy was going through an unprecedented crisis. With the arrival of these conjunctural problems, the main liberal theses were being questioned, and Keynes observed that the economic policies being used to combat the crisis were not working in this new global context. He then pointed out solutions that could lift the world out of recession.

Vasconcellos and Garcia (2014) establish that Keynes's theory would be one of the main factors responsible for the level of employment and national production in an economy, which is determined by aggregate or effective demand. For Keynes, in a recessionary economy, there are no self-adjusting forces, which is why state intervention through public spending becomes necessary. This theoretical position meant the end of belief in laissez-faire as the regulator of the economy.

Sandroni (1999) explains that Keynes's thinking irreversibly shook the classical innovations of economic liberalism, revealing the non-existence of that automatic principle of the liberal economy.

According to Keynesian theory, the level of employment in an economy depends on effective demand, which is the proportion of income spent on consumption and investment. In a certain economy, there may be an advantage in hoarding or saving a monetary amount, which is also called hoarding. Keynes explains that when this happens, the population's effective demand for goods or services decreases, and as a consequence, the number of commercial activities also decreases, leading to a generalized reduction in income.

It was precisely this phenomenon that occurred in the 1930 crisis, as well as it could occur in any other crisis. Currency or money is based on a relationship of trust and is known to be unstable in the current world. Any rumor that interferes with this trust relationship generates profound instability in the monetary system. Due to this instability, people need liquidity and tend to hoard as much money as possible to protect themselves or to be able to invest in a scenario of falling prices.

Paulo Sandroni (1999) supports this analysis by explaining that when Keynes analyzed variations in production and employment, he concluded that the factor responsible for changes in the volume of employment was the demand for labor, not its supply as liberals believed. Thus, Keynes concluded that unemployment is the result of insufficient demand for goods and services in the economy, which can only be solved through government investments. According to his theory, economic crises were attributed to variations in propensities to invest and consume, as well as an increase in the preference for liquidity and hoarding of money.

In this context, Sandroni (1999) asserts that for this policy to be consolidated and implemented, Keynes argued that it was necessary to equip the State with economic policy tools that would allow it to regulate interest rates, increase consumption through the expansion of public spending, and expand investment through public loans capable of absorbing idle resources.

2.2.2 *The Need for Increased Public Spending*

Vasconcellos and Garcia (2014) explain that as a consequence of the constant search for a solution to the crisis, the theory of spending multiplier or expenses multiplier by Keynes emerged. According to this theory, if an economy has unemployed resources, a forced production of demand would result in a consequent increase in national income. This would occur because in an economy with a crisis and unemployment, any injection of expenses, whether through consumer spending, investments, or especially increased government spending, would have a multiplier effect in various sectors of the economy.

Sandoval de Vasconcellos (2014) further explains that this theory aimed at the idea that an increase in income in one sector, such as workers and entrepreneurs, would lead them to spend that income in other sectors, which in turn would allocate the resources to other goods and services. The author provides an example of this theory with a hypothetical case of a government investing 100 million reais in roads, hospitals, and schools. With this investment, the government would hire construction companies, which would increase production in the construction sector and, based on the acquired value, hire more workers. This value would turn into income, and the majority of that income would be spent on consumer goods and services, generating a mechanism of income multiplication and consequent job creation.

Vasconcellos and Garcia (2014) also state that according to the Keynesian theory of spending multiplier, the higher the value of this multiplier, the more effective fiscal policy will be. Thus, with the expansion of public spending or state investments, as well as a reduction in the tax burden, the impact on the level of employment can be more powerful.

Francisco Cepeda (1986) supports this explanation by stating that, according to Keynes, whenever there are unused or idle resources in a country, public works expenditure will increase national income by a multiple of the initial expenditure by the government. The author emphasizes that, according to Keynes, behind every depressive phase, there was always a deficiency of investment. For this interventionist theory, during a crisis, there should be

maximum liquidity in the economy, contrary to classical thinking, in which saving and hoarding of capital would contribute to the solution of depressions.

Cepeda (1986) cites the example of the Budget and Economy Act, where the British Parliament, faced with a persistent economic contraction in the late 1931, adopted measures that would lead to a balanced state budget, guided by the dogma of safer financial management.

To achieve this, the government proposed a reduction in wages, social benefits, and a significant restriction of public spending, particularly in housing and road construction. Keynes then opposed these measures, characterizing them as undesirable and detrimental to the British economy, stating that the hidden theory behind these actions would lead to an even greater recession in the economy of England. According to Keynesian theory, only the sustained maintenance of a high level of investment would keep an economy in constant expansion.

According to Francisco Cepeda (1986), entrepreneurs cannot constantly maintain a high pace of investment since when a project reaches its final phase, there would be a decline due to market satisfaction with that undertaking. Consequently, for the interventionist school, the ailment of a crisis or its deepening is the lack of constant investment by the State, and the remedy is public spending.

Cepeda (1986) mentions that during the period of the Great Recession, Keynes traveled to Washington to show President Roosevelt that private investment in the United States was at an extremely low level during the Great Depression. Keynes proposed to the president that the government should launch a program of public investments in different sectors that would be capable of reviving the country's economic machinery.

Cepeda (1986) indicates that Keynes' theory proposes three types of fiscal policies to combat the crisis. Firstly, it advocates for increased government expenses in order to stimulate investment. Secondly, there is a need for a drastic reduction in taxes, as this would increase private consumption propensity since a larger amount of capital would remain in the hands of the population. In this way, the budget deficit generated by these measures reveals itself as a true creator of income. Finally, Keynes' last fiscal policy advice suggests that the increase in government expenses should be entirely financed by taxation in order to achieve a kind of budget balance.

Based on Cepeda's study (1986), this last piece of advice from Keynes aimed at the idea that as the population is obliged to pay a certain amount of taxes, they would save less money, bringing more capital into circulation in a given country. According to Keynes, this type of policy was recommended to be applied in a situation where a government had very high expenses.

However, as Cepeda (1986) points out, these recommendations faced harsh criticism at the time, as most European countries sought to overcome the crisis through financial austerity measures and strict budget balance. Nevertheless, Keynes did not agree with this criticism, as he believed that this policy would encourage both public and private consumption while discouraging saving.

2.2.3 *The problem of high spending and budget deficit*

Keynesian theory suggests that to overcome a crisis, the government must necessarily engage in high public spending as a way to promote increased consumption and pull the economy out of the vicious cycle. For Keynes, government investment will constantly increase the aggregate demand for goods and services, driving the entire economic machinery. However, with the increasing government spending, the deficit generated by these measures can make the public accounts unsustainable in the long term.

According to Sandoval de Vasconcellos (2014), when the government faces a deficit situation, in addition to traditional fiscal policy measures, there arises the problem of how it should finance this deficit. The financing of the deficit, as proposed by Keynes, may lead to an increase in public debt, resulting in further public indebtedness.

Nevertheless, in the view of Tormin (2008), Keynesians are not against cyclical deficits, understood as those necessary to address a crisis, as they are economic policy instruments to prevent unemployment and inflation. In this sense, the government can increase its autonomous spending or reduce taxes, generating a budget deficit, but this will have a multiplier effect on the country's economy.

Regarding the dilemma of public spending and the budget, José Roberto Afonso (2018) asserts that despite Keynes' groundbreaking work revolutionizing modern economic thought, public finance was not the central focus of his work. Social spending and the public budget were not explicitly addressed in the classic work "The General Theory of Employment, Interest, and Money." However, according to the author, it is necessary to consider the entirety of Keynes' works and, above all, his activity on the eve of World War II and the years that followed, where a particular attention he gave to the budget theme is observed.

According to Afonso (2018), when Keynes wrote the "General Theory," he did not specifically address the proper worker protection network, including unemployment insurance. It was only later that the so-called "Welfare State" was created and consolidated, which included automatic stabilizers with mechanisms to mitigate the social effects of crises. Keynes actively

participated in the discussions of the so-called Beveridge Report in 1942, which initiated the establishment of social protection in England.

Afonso (2018) further states that in this context of social protection and with the global crisis still high, Keynes argued that general services, especially healthcare, and any deficits in the system should be covered by the state through general taxpayers and tax resources.

The author also mentions that in the face of the need to finance the necessary deficit of the state, Keynes preliminarily designed an alternative tax reform where contributions to social security would be levied on all wages without exception or incentives. Additionally, he proposed the creation of a tax on corporate profits, allowing for a deduction of a portion that could be reinvested in the business; a tax on property, deducted at the source on interest; and a tax on all incomes, progressive and with deductions only for dependents.

Regarding the problem of public spending to finance the crisis, Francisco Ferreira (2019) reveals a change in thinking at the core of the state. In his view, prior to the 1930 crisis, there was unregulated freedom of private capital. Moreover, the crisis brought about enormous social inequality, which led to the exhaustion of liberal ideas and the consequent renewal of the state due to the inevitability of increased intervention. In fact, in the author's view, the doctrine of the Welfare State based on the laws of nature from a liberal perspective came to an end. On the contrary, the state began to expand public provisions, with a focus on fiscal incentives, subsidies, and public investments. The core of this new thinking led the government to assume a role as a social provider with a necessary increase in its financial activity in search of new sources of revenue.

Francisco Ferreira (2019) states that in this context, deeply influenced by the Keynesian school, the state began to accept deficit budgets to finance social rights and combat the effects of the 1929/1930 crisis. A true income redistribution policy took place. In this path, a deficit budget or so-called countercyclical budget was accepted to finance social rights and combat the so-called "crises of capitalism." Income redistribution policies increasingly became the norm and progressively led to excessive public debt, potential increases in spending, and a high tax burden.

The author goes on to say that due to the high public spending associated with financing the so-called "Welfare State" advocated by the Keynesian school, an unsustainable lack of control over public finances occurred, which later led to the collapse of the Welfare State. With high public spending, increased taxes, and a deficit-ridden public sector, there was a reassessment of the role of the state in the face of significant challenges to this system, leading

to a restraint on Keynesian theory and a subsequent pursuit of a balance in public accounts and greater moderation of spending.

2.2.4 *The theory of necessary indebtedness and budget deficit in Brazil*

Francisco Ferreira (2019) observes that Brazil also followed the global trend of expanding state intervention, particularly with accelerated growth in public expenditures following the end of World War II. However, in the mid-1980s, there was a tendency to limit spending and pursue control over public debt, which was not different from most Western nations in the second half of the last century.

The public debt in Brazil dates back to the early colonial period, with governors of the Colony constantly taking out loans. It can be said that the country began its history immersed in debt. In the national context, the greatest dilemma regarding indebtedness and the need to impose limits came in relatively recent times, when public debt reached high levels in the late 1980s.

According to Ferreira (2019), this occurred due to the growing need for investments, especially in public spending on infrastructure. On the other hand, there was insufficient public revenue to finance the increasing expenditure, which led the country to resort to public credit, particularly external credit with international institutions such as the International Monetary Fund (IMF).

In Pardini's view (1998), the flexibility of financing limits to cover the state's deficits, both through domestic and external borrowing or the issuance of government bonds, made it difficult to control the state's indebtedness.

Pardini (1998) points out that the historical and structural process of the Brazilian budget deficit can be perceived in two stages. The first stage was characterized by sporadic budget imbalances, varying according to the alternation of power domination in the state, especially during the monarchy and the republic. The second stage is characterized by a financial realization of the deficit, resulting from an uncontrollable influx of external resources to finance public investments. This budget deficit increased with the oil crisis of the 1970s and the rise in interest rates, which affected not only Brazil but the entire global market.

Daniel Marinho da Silveira (1979) explains that the origin of an unsustainable public debt is due to the limitations that states face in generating budgetary revenue. Typically, the main revenue that finances state expenditures comes from taxes, but depending on a country's

situation or the method of revenue collection by a state, they are not always sufficient to finance public expenses.

Marcus Abraham (2015) states that as an alternative form of state financing, public credit or credit operations emerge. In this case, the state becomes a debtor in a loan contract with individuals who provide resources in exchange for the remuneration of money over time, commonly known as interest. The author emphasizes that credit operations have significant economic effects for the state. However, in his view, these economic impacts need to be carefully analyzed in conjunction with the economic policy of each era, such as Keynesian doctrine advocating public debt, or opposing doctrines that defend austerity and budgetary equilibrium.

Daniel Marinho da Silveira (1979) also elucidates the ways in which the government can finance its expenditures. He highlights currency issuance, fee collection, imposition or increase of taxes, and finally, the execution of credit operations by incurring debt. By the mid-1970s, the author notes that the increasing development of those years would lead to a higher demand for public services, and the provision of capital for infrastructure investments would exceed the availability derived from tax revenues.

As a historical contribution, Kiyoshi Harada (2020) points out that public loans to finance state indebtedness have existed since the Middle Ages as a means of financing wars. Moving from ancient to modern times, where the monarch's assets were already separated from the state treasury, public loans took on a financial character of the state, effectively administered by representatives elected by the people. In more recent times, public loans to finance the obligations assumed by the state have become of great importance in the financial life of governments, constituting a regular source of obtaining resources for financing public expenditures.

3. FINANCIAL LAW AND ITS INFLUENCE ON THE STATE'S ECONOMY

3.1 Financial Law And The Role Of The State

From the moment humans decide to live in society, under self-instituted rules through their representatives and under the governance of a mandate, as known in the classic works of Rousseau, Thomas Hobbes, and John Locke as the social contract, the duty of the State arises to promote social welfare and meet the needs of that society.

In introducing this understanding, Marcus Abraham (2014) points out that the Rule of Law, an institution created by modern man, has its purpose and is organized to offer society the necessary conditions for the realization of the common good and social order. To achieve this goal, the State relies on financial resources that can come from its own assets or from the assets of the citizens who are part of that State.

Harada (2020) states that when envisioning a collective entity within the Rule of Law, one must consider that this State aims to provide the common good for the society that resides there. To achieve this well-being, the State engages in numerous activities, each with the objective of protecting and safeguarding specific public needs, some of which are essential in nature, requiring the State to act directly and exclusively to maintain its functioning.

Harada (2020) exemplifies that such activities can be related to health, education, public safety, and the provision of justice. They can also be enumerated and highlighted as being of primary interest to the State, as they are non-delegable due to the unavailability of the public interest. Previously, state activities aimed at promoting the common good of the community were carried out through requisitioning goods and services from subjects of a government or by seizing the property of defeated enemies in war.

To demonstrate the beginning of the relationship between the community and the provision of the common good by the State, Abraham (2014) imagines a community whose survivors live based on solidarity and mutual aid, where each person contributes in their own way and according to their abilities for the harmonious existence of this group. This group relies primarily on the products offered by nature or produced by themselves. In this community, there are no hospitals, roads, or even schools, as education is transmitted from the older generation to the younger. In terms of health, diseases are treated based on natural products, and property is collective and available to all.

Abraham (2014) refers to this described situation as something that, despite bordering on romanticism, includes a series of difficulties for individuals who are part of this community. In this place, where coexistence is based on solidarity and mutual aid, if either of these elements is lacking, selfishness and individualism would prevail, giving rise to numerous conflicts. Once conflicts arise, each person starts to defend themselves as they can and with the means at their disposal, where those with more strength and power prevail.

When humans encountered all these common problems inherent in collective living, they sought a solution and found it through the creation of the State. Abraham (2014) explains that from that moment on, the State began to be understood as a form of collective association capable of providing the necessary means for the dignified and satisfactory subsistence of

human beings. The author points out that the State has various forms and characteristics and that the ideal form today is the Rule of Law, established by the will of its members through the social contract, subject to a legal system. However, it must be remembered that all this structure to meet individual and collective needs comes at a cost. Thus, to fulfill its assigned task, the State carries it out through its financial activity.

3.1.1 *The financial activity of the state and the definition of financial law*

As explained, in order to achieve the common good and the sought-after state of social welfare, the participation of the State in the collection, management, and proper expenditure of public funds is essential. The contemporary Rule of Law must be structured and organized in accordance with a legal system to provide the community with the necessary conditions for the realization of the common good, peace, and social order.

Marcus Abraham (2014) states that the needs of the community can be divided into two fronts: private needs related to food and housing; collective needs related to public security, health, education, and the judicial system; and transindividual needs that relate to maintaining internal order, national defense, fostering industry, agriculture, and protecting the environment. To finance these activities, the State depends on resources that come from either its own assets or the assets of its citizens.

Finally, Abraham (2014) affirms that when looking at the entire structure formed between the community and the Rule of Law State, it must be kept in mind that the resources managed by the State are scarce, just like all resources on the planet. Therefore, given the scarcity of resources, especially financial resources, good management must be present in this process.

In fact, it can be said that good management is essential for the sustainability of the system. For this reason, to meet all these needs and fulfill its primary function, the State must comply with certain policies and guidelines imposed on it to carry out public expenditure. Hence the emergence of financial law, in order to regulate this relationship between the State, the financial means at its disposal, and the citizen.

Harada (2020) explains that with the growth of the modern State, the satisfaction of collective needs also increases, including the construction of public buildings, cemeteries, stadiums, hospitals, bridges, squares, provision of justice, social assistance, social security, education, health, culture, etc. With such a wide range of provisions, it is up to the political

power to choose the collective needs, transforming them into public needs and incorporating them into the legal system.

Abraham (2014) states that the 1988 Federal Constitution brought with it a range of fundamental rights and guarantees that are realized precisely through the State's provision and necessarily involve financial activity. However, the author asserts that financial law is not considered an end in itself, but rather a means used by the State to organize its finances and provide for the public needs established by the 1988 Federal Constitution.

According to Harada (2020), given the constitutional and legal norms that assign to the State the task of materializing fundamental rights and guarantees, the greater the range of public services to be provided, the greater the intensity of its financial activity. The scholar explains that during the historical phase of the "minimal State," which coincided with the liberal economic thought of the 18th and 19th centuries, the State's activity was limited to the exclusive realm of the public power. On the opposite end, after the end of World War II, the phenomenon of the enlargement of the State began, and it became more interventionist in an attempt to recover the economy together with the defeated countries.

In line with this, Harada (2020) states that with the phenomenon of the State's growth, seen as the protector, paternal figure, and ultimate provider of the economy, public finances reached astronomical dimensions, leading to the emergence of the legal discipline of this subject in the 1960s.

For Tathiane Piscitelli (2018), public finances are at the center of the debate concerning the maintenance of the State. The author points out that since the time of the empire, there has been a certain dispute regarding the ownership of public revenues within all spheres of government, with a special focus on taxes, as they contribute the most to the public administration's treasury.

Piscitelli (2018) states that there is no doubt that taxes are the main source of revenue for the State in fulfilling its primary activity in relation to the community. On the other side of tax collection is the realization of the corresponding expenses, where the State effectively achieves its purpose, as legitimized to do so, while maintaining constitutional institutions and enabling fundamental rights and guarantees.

In an objective manner, the author explains that the process of obtaining and spending resources is precisely what constitutes the financial activity of the State. The author defines this activity as the "set of actions that the State performs aiming to obtain resources for its sustenance and the corresponding expenditure for the execution of public needs."

When defining Financial Law, Eduardo Jardim (2018) emphasizes that this branch is composed of a set of rules that regulate only a portion of the State's financial activity. This is because another part of the financial activity is regulated by Tax Law, and another part by Economic Law. However, in the grand scheme, Financial Law regulates the fields of expenditure, revenue, and public budget, including public revenue derived from taxes.

Furthermore, according to Abraham (2014), Financial Law has rules with their own recipients, namely, public administrators, who must manage the property belonging to the population with probity. On the other hand, Tax Law governs a legal relationship between the citizen and the State, here understood as the Public Treasury (or the Tax Authority), limiting the power to tax in favor of the fundamental rights of the taxpayer.

3.1.2 *Principles of Financial Law*

According to Piscitelli (2018), the principles of financial law are not well defined in the 1988 Constitution, which makes their identification difficult, unlike tax law, where guiding principles were well defined in the constitutional text. For this reason, when the author addresses the principles of this branch of law, she prefers to divide the study into two parts.

Initially, she selects the principles that relate to the financial activity of the State from a general perspective, and then the specific principles related to the preparation of the public budget. From a general perspective, the author addresses the principles of legality, economic efficiency, transparency, publicity, and fiscal responsibility.

On the other hand, Marcos Abraham (2015), as well as other authors of Financial Law, prefer to gather the study of principles in a topic related to the preparation of the public budget. The author lists several principles, such as legality, annuality, unity, universality, exclusivity, programming, non-earmarking, limitation, publicity, technicality, transparency, and fiscal balance.

Piscitelli (2018) states that the first principle to be highlighted is legality, which is considered a corollary in a democratic rule of law. In general, it is commonly known that this principle dictates that the State can only demand actions from citizens upon the approval of laws, in a broad sense. In the specific field of Financial Law, this principle must be observed both in terms of incurring public expenses and in the perspective of budget approval.

Tathiane Piscitelli (2018) points out that, with regard to the realization of public expenses, the principle of legality guides and establishes that it can only be carried out with prior authorization from the Legislative Branch. This legislative authorization refers broadly to

the various means in which public money is spent, such as in the approval of the budget law, authorization for opening special credits, or through the realization of credit operations.

According to Abraham (2015), under the principle of legality, the public administration can only carry out its financial activities based on the provisions of budget laws. In this sense, the 1988 Constitution provides, in Article 165, that the Executive Branch is responsible for initiating the budget laws, but this action must be based on revenue forecasts and authorization from the National Congress for the respective expenditure.

However, according to the author, a stricter adherence to the principle of legality is observed in the execution of expenses. Thus, the executive can only incur expenses if they are provided for and authorized in the budget, under penalty of committing a crime under Article 315 of the Penal Code, which condemns the act of "diverting public funds from their intended purpose." This control is even more relevant under Article 167, Section II, of the 1988 Constitution, which prohibits "incurring expenses or assuming direct obligations that exceed the budget credits or additional credits."

Piscitelli (2018) affirms that there are rare exceptions to the principle of legality as recognized by legal doctrine. This refers to the extreme case of the need to open extraordinary additional credits via provisional measures in cases of war, internal turmoil, or public calamity, as provided for in Article 167, §3 of the 1988 Constitution.

The author also states that the principle of economic efficiency, in Financial Law, which is closely related to the principle of efficiency, dictates that the Executive Branch should achieve the maximum satisfaction of public needs with the minimum possible resources.

She goes on to explain that recently, it was possible to observe the adoption of this important principle in public administration when the Presidency of the Republic switched to electronic publication of the Official Gazette. She also gives the example of the Executive Branch of the city of São Paulo, which adopted the same procedure, resulting in savings of approximately one and a half million reais for public coffers.

Further exemplifying the principle of economic efficiency, Piscitelli (2018) recalls that in the city of São Paulo in 2017, a decree was issued to determine that transportation for municipal personnel be done through ride-sharing apps instead of official vehicles, resulting in a budgetary saving of around 120 million reais annually, combined with the auctions of the vehicles.

As for the principle of transparency, also of utmost importance, it can be exemplified in Article 165 §6 of the 1988 Constitution, which establishes that the budget law must be accompanied by regionalized statements of the impact of exemptions, amnesties, remissions,

subsidies, and financial, tax, and credit-related benefits. Ana Carolina Squizzato (2013) explains that, by the principle of transparency or publicity, the Executive Branch must publish until thirty days after the end of each bimester the summary report of the budget execution. The author reminds about the provision contained in Article 48 of the LRF, which establishes the need for transparency in the management of budget laws, through the rendering of accounts and the respective prior opinion, through the summary report, the budget execution and the fiscal management report, along with simplified versions of these documents.

Gilmar Mendes and Celso de Barros (2013) state that fiscal transparency is strictly connected to the foundations of the Democratic Rule of Law. According to the authors, transparent fiscal management is a direct requirement of republican principles, as it guides public administration towards the interests of the people and allows for the scrutiny and control of governmental activities. Furthermore, having comprehensive and clear knowledge of the factual situations regarding public budgets is a condition that empowers citizens to exercise broad control over expenditures and participate in the political decision-making process related to the subject.

The principle of fiscal balance or fiscal responsibility is one of the most important and gravely significant principles that permeate the core of Financial Law. According to Tathiane Piscitelli (2018), this principle "aims to ensure that public spending is carried out within certain limits and according to strict rules, violations of which result in sanctions for public entities." Additionally, Piscitelli emphasizes that the Fiscal Responsibility Law (LRF) establishes planned and transparent action as a condition for this responsibility, focusing on risk prevention and correction of deviations that may affect the balance of public accounts.

From another perspective on fiscal responsibility, Harada (2020) points out that this principle "requires the institution, forecast, and effective collection of all taxes granted to political entities by the Federal Constitution." In order to achieve effective collection, it presupposes not only the efficiency of administrative apparatus in accurately estimating revenues but also the prohibition of tax waivers that jeopardize the public budget, except for the granting of tax incentives aimed at reducing economic inequalities in different regions of the country.

According to Abraham (2014), from the standpoint of the fiscal balance principle, it is recommended that every expense be accompanied by revenue to finance it, in order to avoid the emergence of growing or uncontrolled budget deficits that could harm current and future public accounts. The author emphasizes that the principle of fiscal balance should not be seen

merely as a numerical equation seeking equality between revenue and expenditure. Rather, it represents true financial stability and is one of the pillars of state growth.

The principle of fiscal balance finds support in Article 1, Paragraph 1 of the Fiscal Responsibility Law, which rigidly establishes that the actions of administrators of public resources must be planned and transparent to prevent risks and correct possible deviations that could affect the balance of public accounts.

Financial Law also encompasses other principles that are specifically applicable to the preparation of the public budget, which, even briefly, are worth mentioning here. As explained by Squizzato (2013), the principle of universality, for example, instructs those responsible for budgetary legislation to ensure that all revenues and expenditures are provided for in the budget law. Additionally, Article 165, Paragraph 5 of the Federal Constitution stipulates that the annual budget law must include the elaboration of the fiscal, social security, and investment budgets. Similarly, Law 4,320/1964 (the first law dealing with public budget matters) in Article 3 establishes that the "budget law must include all revenues, including those from authorized credit operations."

On the other hand, Harada (2020) states that the principle of programming can be considered a determination of governmental strategy or plan. Therefore, the government must establish that each budgetary unit or department within the structure of the three powers organize and set goals or plans for expenses, without which the budget will not be released without prior expense programming by these units. This principle also aims to establish fiscal balance by preventing possible surprises in the budget to be executed.

Squizzato (2013) asserts that a very important and well-known principle is the principle of non-allocation or non-earmarking. In this case, the allocation of tax revenue to a specific agency, fund, or expenditure is prohibited, as provided for in Article 167, IV of the Federal Constitution of 1988. It should be noted that this principle does not prohibit the earmarking of fees, improvement contributions, compulsory loans, and social security contributions. This difference arises because taxes, by their nature, are non-earmarked taxes that have a tax trigger independent of any specific governmental activity. There are only rare exceptions to this principle, such as the allocation of resources for healthcare, education, and the performance of tax administration activities.

Finally, Abraham (2015) states that the budgetary principle of limitation conditions the execution of expenses and the use of credits to the amount previously provided for in the budget. This principled provision becomes evident when observing Article 167 of the Federal Constitution, which prohibits the initiation of programs and projects that are not included in the

annual budget law, the execution of credit operations that exceed the amount of capital expenditures, the opening of supplementary or special credits without prior legislative authorization, or the reallocation of resources from one category to another.

Abraham (2015) also highlights the provision of the limitation principle in Paragraph 1 of Article 1 of the Fiscal Responsibility Law, which mandates compliance with limits and conditions related to revenue waivers, personnel expenses, social security, credit operations, guarantees, among others.

3.1.3 *The main revenues that comprise the public budget*

When analyzing the context of a Rule of Law that must maintain Social Welfare, one necessarily thinks about how it provides for it. As seen in the previous pages, public administration needs to have the means to meet the aspirations and fundamental rights of the collective, which has decided to associate itself and entrust it with this responsibility.

According to the teachings of Marcus Abraham (2015), public revenues can originate from three sources: (i) through the state's assets, including the exploitation of economic activities carried out by it, such as the exploitation of natural and mineral resources (royalties); (ii) through private assets, through taxation, fines, etc.; (iii) through intergovernmental transfers, understood as the sharing of tax revenues transferred directly from one entity to another or through investment or participation funds; and (iv) through temporary inflows, including credit operations, where the state enters into a loan agreement or issues a public debt instrument to finance its expenses.

3.1.4 *Taxes*

For the purpose of this study, it is important to know that in the context of the Rule of Law, the main source of funding for public expenses is taxes, which in turn are part of derived public revenues. In this case, as taught by Oswaldo Filho (2013), the state uses its power of sovereignty to extract the necessary resources from the citizens for the accomplishment of its purpose, hence the designation of derived revenue, precisely because it is not part of the state's original assets.

According to Oswaldo Filho (2013), these derived revenues are divided into taxes (including taxes, fees, improvement contributions, special or parafiscal contributions), pecuniary penalties, confiscations, and war indemnities.

Regarding taxes, Law 4.320/1964, in its Article 9, defines them as "derived revenue established by public entities, comprising taxes, fees, and contributions in accordance with the Constitution and the laws in force on financial matters, with their proceeds earmarked for the financing of general or specific activities carried out by these entities."

However, the National Tax Code (CTN) provides a more relevant definition by establishing in its Article 3 that "tax is any compulsory pecuniary payment, in currency or whose value can be expressed in it, that does not constitute a penalty for an illicit act, established by law and collected through fully binding administrative activity."

Oswaldo Filho (2013) states that the generic power to establish taxes is expressed in Article 145 of the Federal Constitution of 1988, which provides that both the Union and the States and Municipalities can institute taxes, fees, and improvement contributions resulting from public works.

These taxes are called fiscal because the resources from their collection are allocated to the public coffers of the entities in order to fulfill their functions. They are also called common since all federative entities can institute them and legislate on them, within the scope of their specific competence.

The idea is not to delve into the types of taxes, as it is not the central theme of the work, but it is important to know what these types of taxes are that finance public expenditure in order to have an understanding of the implications that the lack of tax revenue brings to the public coffers.

According to Article 153 of the Federal Constitution of 1988, the Federal Union is competent to institute and legislate on: import tax on foreign products (II); export tax on national or nationalized products (IE); income tax on income and earnings of any nature (IR); tax on industrialized products (IPI); tax on credit operations (IOF); rural property tax (ITR); and tax on large fortunes (IGF), in accordance with complementary law.

Oswaldo Filho (2013) states that, in addition to these taxes, the Federal Union has the competence to institute, exclusively, under the terms of Article 154, I of the Federal Constitution of 1988, and through a complementary law, taxes not listed in Article 153 of the Federal Constitution of 1988, which are non-cumulative and do not have a specific triggering event or calculation basis as those described in the Constitution. Furthermore, under Article 154, II of the Federal Constitution of 1988, the Federal Union has the competence to institute extraordinary taxes in the event of an imminent or external war, which may or may not fall within its tax competence.

The states of the federation also have relevant tax competence. According to Article 155, caput, of the Federal Constitution of 1988, it is the responsibility of this federative entity to institute, collect, and legislate on: tax on *causa mortis* and donations, of any property or rights (ITCD); tax on operations relating to the circulation of goods and the provision of interstate and intermunicipal transportation and communication services (ICMS); and tax on ownership of motor vehicles (IPVA).

Finally, municipalities have competence over: tax on urban real estate property and land (IPTU); tax on transfers of real estate, by "*Inter Vivos*" transaction, for consideration, or on the transfer of rights to real estate, except for those related to guarantees (ITBI); and tax on any kind of service (ISS), excluding those listed in Article 155, II of the Federal Constitution of 1988, which are under the competence of the states.

3.1.5 *Credit operations as a source of revenue for the public budget*

Although taxes are the main source of revenue for the public budget, they are not always sufficient to cover the financial needs of the state, especially during times of economic crises when tax revenues are not enough to fill the public coffers. The public entity then resorts to other means to finance its activities and fulfill its state purpose. As seen in the first chapter, the option of borrowing by the public entity is linked to Keynesian theory, which proposes public indebtedness of the state to overcome a situation of crisis or economic depression.

Initially, Abraham (2015) explains that public credit operations are realized through loan contracts. This contract can be carried out in two specific ways. One is through direct borrowing between the creditor and the debtor, and the other occurs through the widespread issuance of government securities.

Regarding the legal nature of public credit, the author states that there are three currents in Brazilian doctrine on the subject, but the majority considers public borrowing as a contract of public law or even administrative law since, despite resembling the characteristics of private law contracts, the state does not hold an equal position with the capital lender. Furthermore, the state does not have the same freedom as individuals and companies have in private contracts, as it requires legislative authorization, budgetary provision, and is subject to the control of the National Congress.

Public borrowing finds deep protection in the Federal Constitution of 1988. Initially, Article 163, II states that a complementary law must address external and internal public debt.

Article 48 of the Federal Constitution of 1988, in its second clause, grants the National Congress the competence to regulate credit operations and public debt.

Furthermore, Article 52 of the constitutional text states, in clause V, that it is the exclusive responsibility of the Federal Senate to authorize external financial operations of interest to the Federal Union, states, the Federal District, and municipalities. Clause VI of the same article provides that the Federal Senate also has the competence to establish, through a proposal from the President of the Republic, the overall limits for the amount of the consolidated public debt of the Federal Union and the other federative entities. Lastly, the competence of the Federal Senate is established to establish the overall limits and conditions for external and internal credit operations of the Federal Union and the other entities, as well as the autonomous agencies and other entities controlled by the federal public power.

Salomão Leite (2013) explains that, given the constitutional financial regime applicable to public loans, it can be concluded that three conditions are necessary for such an operation to take place. The first refers to the need for budgetary provision. The second condition relates to the requirement of a specific law by the federative entity regarding the loan. Finally, the last condition concerns the indispensability of authorization and control by the Federal Senate, where the law needs to be subjected to the opinions of this legislative house, which plays the role of controller of the public debt.

Regarding external borrowing, Ricardo Lobo Torres (2011) explains that external public credit occurs when a country incurs debt with foreign states, financial institutions maintained by the UN and other international organizations, such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD). It can also occur with various foreign banks or through public securities placed in the international capital market.

In the domestic sphere, credit operations mainly occur through the issuance of government debt securities. In this case, the state issues securities representing fractions of the loan contract that are released into the financial market to raise funds. As Marcus Abraham (2015) explains, these securities can be registered or bearer; domestic or foreign; in national or foreign currency; short-term, medium-term, or long-term; and post-fixed or pre-fixed, depending on the type of indexing used.

Eduardo Fortuna (2020) states that the issuance of securities is part of the administration of the domestic debt of the Federal Union, where the National Treasury Secretariat (STN), as the government's cash office, raises funds in the financial market through the primary issuance of securities. Currently, these securities can be enumerated as National Treasury Bills (LTN),

National Treasury Financial Bills (LFT), and National Treasury Notes (NTN). The author points out that there is an endless series of acronyms for these securities, but in essence, they fulfill the basic mission of rolling over the domestic public debt through the National Treasury.

Finally, regarding the issuance and redemption of government debt securities, Abraham (2015) emphasizes that they are subject to the principle of legality since Article 163, IV, of the Federal Constitution of 1988 provides that a complementary law must regulate the matter. Moreover, these operations must be authorized by law or included in the Union's budget, as provided in Article 165, §8 of the constitutional text. Furthermore, the operations must undergo scrutiny by the Federal Senate, which will establish, through a proposal from the executive branch, the overall limits of the consolidated debt of the Union and the other entities, as well as establish the limits and conditions for credit operations, in accordance with Article 22, VI and IX, of the Federal Constitution of 1988.

3.1.6 *The "Golden Rule" and legal restrictions on credit operations*

With the aim of imposing a balance between debt creation and its repayment capacity, the Federal Constitution of 1988 (CF/88) provides, in Article 167, III, for the so-called "Golden Rule." As Abraham (2015) points out, this rule "prohibits the realization of credit operations that exceed the amount of capital expenses[1], except those authorized through supplementary or special credits for specific purposes, approved by the Legislative Power."

The author further explains that the objective of this rule is to "prevent the payment of current expenses with resources derived from the issuance or contracting of new debt." These current expenses include salaries, pensions, water and electricity bills, and other expenses for the maintenance of the public machinery.

Squizzato (2013) notes that, first and foremost, it should be remembered that for the realization of a credit operation, the provisions of Article 32 of the Fiscal Responsibility Law (LRF) must be observed. It establishes that the Ministry of Economy must ensure compliance with the limits and conditions related to credit operations by all federative entities, including

[1] According to the technical manual of the National Treasury, capital expenses are those that contribute to the production or generation of new goods or services that will become part of the public assets, meaning they directly contribute to the formation or acquisition of a capital asset. Capital expenses include investments and financial reversals, public debt amortization, and contingency reserves defined in the Budget Guidelines Law. Under the "investments" category, we can consider planning and executing construction projects, acquiring real estate, expenses related to new equipment and permanent materials for public administration. Financial reversals consist of acquiring existing real estate or capital assets and purchasing equity securities of established companies. Public debt amortization refers to refinancing the principal amount and adjusting it for inflation or exchange rate changes for both internal and external debt, whether contractual or related to real estate.

companies controlled by them. The interested entity must formalize its request, substantiating it with opinions from its technical and legal departments to demonstrate the cost-benefit relationship, the economic and social interest of the operation, and compliance with conditions.

Furthermore, the same Article 32 of the LRF establishes some conditions for credit operations by public entities. Firstly, it establishes the need for prior and express authorization for contracting in the budget law, in requests for additional credits, or in specific laws. Secondly, it requires the inclusion of the resources from the operation in the budget or additional credits, except in the case of operations for anticipated revenue. The third condition refers to compliance with the limits and conditions set by the Federal Senate. The fourth condition stipulates that specific authorization from the Federal Senate is required for external credit.

Article 32, § 5 of the LRF also states that, in external credit operations, the inclusion of a clause that implies automatic offsetting of debits and credits is prohibited. Article 33, § 1 of the same legal statute provides that an operation that violates the rules set forth in the LRF shall be considered null, leading to cancellation through the refund of the principal, and the payment of interest and financial charges to the lending financial institution is prohibited.

In fact, this article imposes on private financial institutions the duty to verify whether the borrowing entity meets all the requirements set forth in the LRF. If the institution fails to do so, both the entity will have to return the loan, and the institution itself will be penalized by not receiving interest and financial charges.

The Fiscal Responsibility Law also prohibits credit operations between one entity and another. This prohibition extends even to operations through funds, autarkies, foundations, dependent state-owned enterprises, and entities of the indirect administration of the entities. Article 35, § 2 still allows credit operations between a state financial institution and another federative entity, provided that the operation is not intended to directly or indirectly finance current expenses or refinance debts not contracted with the financial institution granting the public credit.

Article 37 of the same law equates the credit operation and prohibits the raising of funds through the anticipation of revenue from a tax or contribution whose taxable event has not yet occurred, with the exception of the case of tax collection provided for in Article 150, § 7 of the CF/88, where the party responsible for paying the tax obligation pays the amount of the levy before the occurrence of the taxable event.

3.2 Public Spending Limits In The Legal System

3.2.1 *Limits On Public Debt*

As seen in the previous sections, when the State faces a cash deficiency to fulfill its obligations, it needs to adopt mechanisms that provide it with new financial resources. This is the case with entering into public loan contracts, which, as observed, can be done internally or externally, with the most common form of borrowing being the issuance of public debt securities.

The consequence of credit operations is undoubtedly public indebtedness. The State needs that amount to cover a shortfall, but it is aware that it is incurring debt. This debt can become unsustainable over time, especially when it comes to paying the debt interest.

As explained by Marcus Abraham (2015), public debt represents the sum of the State's obligations to its creditors regarding public loans contracted in the domestic or foreign market. These loans can be made through direct contracts with financial institutions or other creditors or by issuing public securities. According to the author, this debt arises from the need to finance public expenses that are not covered by ordinary revenues, especially tax revenues.

The definition of public debt is also expressed in the Fiscal Responsibility Law, specifically in Article 29. According to Piscitelli (2018), in that article, two distinct qualifications for indebtedness can be found. The first refers to the consolidated or funded public debt, and the second refers to the marketable public debt. Thus, according to Article 29, I, of the Fiscal Responsibility Law:

> "Consolidated or funded public debt is the total amount, calculated without duplication, of the financial obligations of the federative entity assumed due to laws, contracts, agreements, or treaties and the realization of credit operations for amortization exceeding twelve months."

Tatiane Piscitelli (2018) explains that the consolidated or funded public debt encompasses (i) medium and long-term obligations, (ii) short-term operations if the revenues from them are budgeted, (iii) budgeted but unpaid court orders in that fiscal year, and (iv) government securities that are still under the responsibility of the Central Bank.

There is also the marketable public debt. According to Article 29, II, of the Fiscal Responsibility Law, this term refers to the bonds issued by the Federal Government. In this case, the indebtedness is carried out through a specific instrument: the issuance of public debt securities.

Thus, Article 29, V, of the Fiscal Responsibility Law emphasizes that the marketable debt will also include the refinancing of the debt, which is done through the issuance of securities to pay the principal amount plus interest. In other words, in this case, the State will incur even more debt to pay part of the same debt that has increased due to interest, for example.

Beyond the concepts brought by legislation, Félix Mendonça (2005) explains that every public debt starts with an imbalance in the real side of the economy. In simple terms, the government has spent more than it has collected, and this situation leads to a deficit flow, feeding the stock of debt. This situation can worsen when, already indebted, the government cannot pay all the interest it owes, which becomes the principal, and the government issues new securities.

An uncontrolled situation of high government debt is undoubtedly harmful to everyone. It is important to note that the problem does not lie in mere indebtedness or public spending itself but rather when these procedures are not sustained by revenues that the government effectively estimates will be part of its cash flow.

In recent history, the concern for budget sustainability has been one of the main agendas of more developed economies. In order to achieve this, countries seek to create a system of laws that limit public debt.

Edilberto Lima (2005) points out that the concern to limit public indebtedness through a norm has been present worldwide. The author cites the example of the Maastricht Treaty of 1991, which established as a requirement for entry into the European Union that the public debt of each country does not exceed 60% of GDP. In this case, the main concern was that excessive indebtedness of a member country would represent a negative externality for the others.

In the case of Brazil, it can be observed that in recent years there has been a strong movement to establish limits on public indebtedness, aiming for a balanced and responsible budgetary environment. For this purpose, the foundations of this endeavor were laid down by the Federal Constitution of 1988 and later by the Fiscal Responsibility Law.

According to Piscitelli (2018), the consolidated public debt of the Union and the other federative entities has a limit. Initially, the rules for this limit can be extracted from Article 30, I, of the Fiscal Responsibility Law in conjunction with Article 52, VI, of the Federal Constitution of 1988.

Thus, at the initiative of the President of the Republic, the Federal Senate must establish the overall limits for the amount of consolidated public debt of all federative entities. Regarding the limit of the federal public debt, represented by the issuance of federal securities, the President of the Republic must send a bill to the National Congress regarding the applicable

limits, in accordance with Article 30, II, of the Fiscal Responsibility Law in combination with Article 48, XIV, of the Federal Constitution of 1988. Currently, there is no specific law imposing these limits on the Union.

3.2.2 *Public Indebtedness In The Fiscal Responsibility Law*

The Fiscal Responsibility Law is a legal instrument that was created in response to a historical context that demanded its existence. The world had been influenced by an economic school of thought that advocated public indebtedness, and according to the principles of this theoretical current, such state action was indeed necessary to recover countries from severe economic crises and depressions.

Misabel Derzi (2013) emphasizes that the guiding objectives of the Fiscal Responsibility Law aim to define a fiscal management responsibility based on planning and transparency. To achieve this, the law establishes the fulfillment of fiscal targets and results between revenues and expenditures. The objectives pursued by the norm are based on the limitation of personnel expenses, prohibition of tax waivers, limits on social security expenses, limits on domestic and external public debt, credit operations, and strict rules on guarantee concessions. One could say that the cornerstone of the Fiscal Responsibility Law is based on budgetary balance. In other words, the aim is to combat the systematic deficits experienced by the State in the decades preceding its creation.

Derzi (2013) also points out that the strict rules of fiscal responsibility came into direct conflict with the principles of Keynesian state intervention, which advocated for a "human budget" focused on maximizing possible expenditures to lift countries out of poverty. Therefore, with the advent of these budgetary rules, especially in Europe, countries were heavily compelled to comply with such regulations, as non-compliance would result in severe penalties. Moreover, in opposition to the so-called "human budget" of the Keynesian school, the Fiscal Responsibility Law allowed for a reduction in personnel expenses. The author refers to this historical moment as the "break with the humanistic fiscal ideology."

Abraham (2015) points out that the Fiscal Responsibility Law (LRF) aims to promote fiscal management responsibility and, to achieve this goal, it encompasses several guiding principles, such as planning, transparency, risk prevention and deviation correction, balance of public accounts, result targets, and the establishment of limits and conditions for revenue waivers and expenditure generation.

Among this array of principles, it is necessary to highlight those related to the balance of public accounts and the establishment of limits and conditions for revenue waivers and expenditure generation. As stated by Abraham (2015), the balance of public accounts is considered the golden rule of the LRF. This rule represents a formula that obliges the State to spend the available money to fulfill its constitutional purpose without sacrificing the stability of public accounts and credibility in the international financial market. The author also emphasizes that based on this parameter, the State starts viewing the budget as a planning instrument rather than a collection of unfeasible promises.

Regarding the establishment of limits and conditions for revenue waivers and expenditure generation, although it also aims at budgetary balance, it imposes limits on public administrators. They can no longer grant unrestricted fiscal incentives without any control or spend the available funds limitlessly on public expenses. As Abraham (2015) explains, "the LRF imposes limits and conditions on personnel and social security expenses, debt contracts, fiscal waivers, and also restricts certain expenses during the end of a term."

Several articles of the LRF address these issues. Firstly, there is Article 11, which establishes, as a general commandment, that the institution, forecasting, and effective collection of taxes for each entity constitute essential requirements for fiscal management responsibility. Moreover, the sole paragraph of this article imposes restrictions on the receipt of voluntary transfers for entities that do not comply with this provision.

This restriction was subject to questioning in the Brazilian Federal Supreme Court (STF) through Direct Action of Unconstitutionality (ADI) 2,238, where some political parties argued that it violated the principle of tax distribution and revenue sharing. However, the STF decided that this provision does not violate the Federal Constitution of 1988 as it does not affect mandatory transfers. According to Justice Alexandre de Moraes, the rapporteur of the case, the law aimed only to prevent fiscal imbalances among entities.

Regarding revenue waivers, Section II of the LRF establishes important parameters for their compliance. Specifically, Article 14 states that for the granting or expansion of tax incentives or benefits resulting in revenue waivers, an estimate of the budgetary and financial impact must accompany it for the fiscal year in which its validity begins and the two subsequent years. The fiscal benefit or revenue waiver must also comply with the provisions of the budget guidelines law and at least one of the conditions provided for in items I and II of Article 14.

Article 14, item I of the LRF establishes the proponent's duty to demonstrate that the waiver or benefit was considered in the revenue estimate of the budget law and will not affect the fiscal result targets established in the budget guidelines law. Item II stipulates that the

proposal for a waiver or benefit must be accompanied by measures to compensate for the period in which its validity begins and the two subsequent years.

This compensation must occur through increased revenues, either by raising tax rates and expanding the tax base or by increasing or creating taxes. This provision was also questioned in the STF, in ADI 2,238. However, in the view of Justice Alexandre de Moraes, followed by the other justices, this provision of the LRF establishes the need for planned action, responsibility, and transparency to prevent excessive public indebtedness.

Still within the scope of the Fiscal Responsibility Law (LRF), Piscitelli (2018) asserts that other fronts of limits on indebtedness can be found, which specifically consist of measures to restrict public spending. It is worth noting that for any public expenditure, the Executive Branch requires approval from the Legislative Branch, whether through budget laws or through the opening of additional or supplementary credits. However, besides this prerequisite, other limitations can be found, as provided for in Articles 15 to 24 of the LRF.

Article 15 imposes a regular condition for the realization of any public expenditure, requiring compliance with Articles 16 and 17 of the LRF. Thus, Article 16 stipulates that the creation, expansion, or improvement of government action that results in an increase in expenditure must be accompanied by (i) an estimate of the budgetary impact in the year it is set to take effect and in the following two years, and (ii) a declaration from the authority ordering the expenditure stating that its increase is in accordance with the annual budget law, the multi-year plan, and the budget guidelines law.

It is relevant to observe Piscitelli's (2018) point that "government action is the set of behaviors resulting from the activities of the Public Power aimed at meeting public needs." Article 16 of the LRF deals with the limit on the "creation, expansion, or improvement" of this government action that involves the needs of the community. The author also emphasizes that the term "estimate of the financial impact" aims to ensure that irresponsible expenditure does not harm the budget in a way that makes it impossible to meet other public needs. The author notes that the LRF requires compliance with this requirement and adherence to budget laws "as a precondition for commitment and bidding for services, supply of goods, execution of works, as well as for the payment of compensation for expropriation of urban property."

Article 17 of the LRF imposes stricter rules and is specifically applicable as a condition for the realization and increase of mandatory expenses of a continuing nature. The opening paragraph of the article itself defines what constitutes the continuing nature of the expenditure, stating that it is the "current expenditure derived from a law, provisional measure, or

administrative act that establishes the legal obligation for its execution by the entity for a period exceeding two fiscal years."

This provision sets out several conditions for the realization of continuing expenditure. Firstly, it establishes that acts creating or increasing this type of expenditure must be accompanied by an estimate of the budgetary and financial impact. For the purpose of this obligation, paragraph 2 states that the act must be accompanied by evidence that it will not affect the fiscal target set out in the budget guidelines law. The said paragraph also establishes that the financial effects of this permanent increase in expenditure must be offset by a corresponding permanent increase in revenue or a permanent reduction in some other expense.

An important point regarding the impositions of Article 17, as explained by Piscitelli (2018), is that the measure to increase revenue or permanently reduce expenditure is mandatory, without which the public administrator cannot carry out the continuing expenditure. In fact, paragraph 5 of Article 17 explicitly states that such expenditure may not be executed before the implementation of the conditions referred to in the aforementioned paragraph 2, which must be part of the instrument creating or increasing the expenditure.

From Articles 18 to 23, the LRF also includes relevant provisions that limit the State's deficit related to personnel expenses. It is not necessary to delve into this topic in this work, mainly because the LRF provides extensive detail on this matter.

It should be emphasized that Article 18 defines "personnel expenses" in an extremely broad manner, encompassing active employees, including commissioned positions, elected positions, as well as inactive employees and pensioners. The provision covers this range of "personnel," including their salaries, bonuses, benefits, retirements and pensions, overtime pay, among others.

To enforce these limits, Article 19 of the Fiscal Responsibility Law (LRF) states that personnel expenses cannot exceed certain percentages of the net current revenue, which are: 50% for the federal government; 60% for states; and 60% for municipalities.

Article 21 states that any act that causes an increase in personnel expenses in violation of the limiting provisions is null and void. It is important to highlight the limits that the LRF imposes regarding expenses related to social security.

Finally, another limitation is contained in Article 24. According to the provision, no benefit or social security service can be created or increased without indicating the respective funding source. The article also establishes compliance with Article 17 of the LRF, which, as explained above, requires the compensation of continued expenses with the respective increase in revenue or permanent expense reduction. Lastly, paragraph 2 of Article 24 explicitly states

that the mentioned requirements apply to any health, social security, or social assistance benefit or service.

3.2.3 *Fiscal Responsibility Sanctions*

As seen so far, both in the 1988 Constitution and in the LRF, public money administrators have various limits to better utilize this common good. The limits for public indebtedness include the amount of credit operations, waivers of tax revenue, overall public expenditure, personnel expenses, social security expenses, and so on. As it is known, merely predicting these limits in the law is not enough for effective compliance. Therefore, the LRF also provides some sanctions for both the entity and the public administrator.

Marcus Abraham (2015) divides these sanctions into personal and institutional. Institutional sanctions affect the federative entity itself, agency, or power that fails to comply with the imposed rule. These punishments consist of the suspension of voluntary transfers (except for health, social assistance, and education), contracting of credit operations, and obtaining guarantees. Regarding personal sanctions, the author points out that they aim to punish the public official who caused the violation of the provisions of the LRF. These sanctions can be of a political nature, resulting in the suspension of political rights and the loss of elective office; of an administrative nature, prohibiting contracting with the government; of a civil nature, involving the duty to reimburse the treasury and the payment of fines; and finally, of a criminal nature, which may include imprisonment.

The author mentions that Article 73 of the LFR is actually the general provision that clarifies other legislation in the legal system that may establish the liability of the public budget administrator. Thus, the article clarifies that violations of the LRF will be punished based on the Penal Code, the Law on Crimes of Responsibility of Federal and State Authorities, Decree-Law 8,429/92, which deals with the responsibility of mayors and councilors, Law 8,429/92, which provides for sanctions in cases of administrative misconduct, and especially Law 10,028/2000, which introduced crimes against public finances into the Penal Code.

As institutional sanctions have already been specified in previous paragraphs precisely because they are outlined in the Fiscal Responsibility Law (LRF). It is important to clarify the accountability crimes related to budgetary laws. As mentioned, these provisions are not included in the LRF itself, but its Article 73 delegates the punishment to other scattered laws. Thus, we have Law 1.079/1950, which defines the accountability crimes of the President of the Republic, ministers of state, Supreme Court justices, and the Attorney General of the Republic.

The trial of these authorities takes place within the scope of the Federal Senate, and the imposed sanction, of a political nature, results in the removal from office and disqualification for up to five years from any public function. It should be noted that this trial and the respective political sanction do not exclude the possibility of punishment for common crimes, which would be judged within the ordinary criminal justice system.

Therefore, Law 1.079/1950, in Chapter VI, Article 10, enumerates a total of twelve acts that may lead to the accountability of the aforementioned authorities, resulting in the loss of mandate and disqualification. The acts include: (i) failure to submit the budget proposal to the National Congress within two months of each legislative session; (ii) exceeding or transferring budget funds without legal authorization; (iii) reversing the allocation of funds; (iv) violating provisions of the budget law; (v) failing to order the reduction of the amount of the consolidated public debt within the deadlines established by law when the amount exceeds the maximum limit set by the Federal Senate; (vi) ordering or authorizing the opening of credit in disagreement with the limits established by the Federal Senate, without foundation in the budget law, among others.

Furthermore, the following actions are also considered accountability crimes: (i) failing to promote or order the cancellation, amortization, or establishment of reserves to nullify the effects of a credit operation carried out in non-compliance with the limits, conditions, or amounts established by law; (ii) failing to promote or order the full liquidation of a credit operation by anticipation of revenue, including the respective interest and charges, until the end of the fiscal year; (iii) ordering or authorizing, in violation of the law, the execution of a credit operation with any other entity, even if in the form of novation, refinancing, or postponement of previously contracted debt; (iv) anticipating revenue from taxes or contributions whose taxable event has not yet occurred; (v) ordering or authorizing the allocation of resources from the issuance of securities for purposes other than those provided for by the authorizing law; and (vi) conducting or receiving voluntary transfers in disagreement with the limits or conditions established by law.

4. STATE BUDGET AND PUBLIC EMERGENCY

4.1 Budgetary Barriers And The Need For Expenditures

Analyzing the past two decades not only in Brazil but worldwide, it is commonly observed that the trend was towards strict control of public finances. As mentioned in the

previous chapter, the European Union even conditioned the entry of countries into its ranks, accepting only nations whose public debt was limited to 60% of GDP (Maastricht Treaty).

In the United States, budgetary rules have also undergone a movement of extreme strictness. In this country, the "Budget and Accounting Act" establishes various rules regarding its budget. To grasp the gravity and seriousness with which public budgeting is taken there, a mechanism called a "shutdown" was created, where if the budget law for the following fiscal year is not approved, the non-essential services of the federal government will be shut down. This is due to the constitutional principle in that country that no funds can be withdrawn from the Treasury except as provided by law.

Brazil has also followed the global trend of establishing stricter rules in budgetary matters. Although Law 4,320/1964 is the first norm on public budgeting in Brazil, the issue of responsibility and fiscal balance was only taken seriously after the 1988 Constitution, particularly with the advent of the Fiscal Responsibility Law (LRF). To fulfill the purpose of budgetary balance, as seen in the previous chapter, both the constitutional text and the LRF have established several rigid mechanisms to achieve the intended goal.

This global movement, which Brazil has also followed, broke with the paradigm that had been adopted in the post-1929/1930 crisis and World War II era. Misabel Derzi (2013) asserts that this movement was a departure from Keynesian theory, where the government should incur debt to save the economy from crises and maintain social welfare. The author states that fiscal austerity rules were, in fact, a departure from the humanistic fiscal ideology.

However, it must be borne in mind that strict fiscal rules were created to combat a situation in which governments of various nations began to use budget availability not only to incur debt in order to overcome crises. In reality, there was a kind of abuse of debt for purposes that went beyond the initial objective envisioned by Keynes. Thus, strict fiscal rules came into existence to guide nations toward economic balance and even to prevent future economic collapse due to budgetary mismanagement.

However, fiscal rules did not foresee, as they could not have foreseen, the future of global events. Two decades ago, no one anticipated that globalization would be so advanced and that a pandemic could claim the lives of thousands of people and plunge the world economy into total disorder. In Brazil, the pandemic demanded a quick response from the government in the face of the health and economic calamity. To achieve this, the solution to be adopted necessarily had to navigate the complexities of budgetary laws since, in order to address these problems, the government needed to incur debt that had never been incurred in its history and was not provided for in the budgetary laws.

4.1.1 *Brief context of the crisis caused by Covid-19*

According to Amitrano, Magalhães, and Mauro Silva (2020), the pandemic triggered by the SARS-CoV-2 virus (Covid-19), when it became a clinical pathology, had a strong and negative impact on economic activities in all countries where community transmission was observed. One might even think that the virus should not be associated with an economic shutdown. However, the specific characteristics of Covid-19 infection dynamics and its aggressiveness in the human population, combined with the absence of a proven effective vaccine and medical treatment, led to its rapid spread, causing thousands of deaths and affecting all economic activities.

The advancement of the pandemic was aggravated by a factor that distinguishes SARS-CoV-2 from other related diseases, such as H1N1. This is because the new coronavirus has a relatively long incubation period, where the average incubation period can reach up to 5 days, and about 97.5% of the infected individuals develop symptoms, on average, within 11 days. As a result, an infected person starts transmitting the virus rapidly while still in the incubation period, and the situation worsens when asymptomatic patients become the main spreaders of the virus (AMITRANO, MAGALHÃES, & SILVA, 2020).

According to Amitrano, Magalhães, and Silva (2020), given this scenario, the only way countries had to curb the virus's spread was through the implementation of social distancing measures until the adoption of lockdown. Thus, in a situation where there was no vaccine or proven effective treatment, the only strategy capable of preventing the increase in deaths was the adoption of social containment measures, which, in turn, greatly affected the economic activity of countries. The authors state that, according to international organizations such as the IMF and the OECD, COVID-19 represents one of the greatest challenges in recent history. The economic impacts of the virus have no parallel in any other globally significant event, not even the Great Depression of 1929/1930.

The authors point out that there are several channels through which the health crisis affects the economy. On the supply side, there is a supply crisis caused by public health measures such as mobility restrictions and business closures. This leads to problems such as reduced labor supply due to workforce reduction and fewer hours worked, decreased labor productivity due to the physical effects of the disease and loss of skills due to prolonged absence from work, and disruptions in supply chains due to the interruption of input flows between sectors, both nationally and internationally. On the demand side, there are several factors that negatively impact it. First, in terms of household consumption, there is a clear income loss,

reduced or restricted mobility, and capital hoarding due to future uncertainty (AMITRANO, MAGALHÃES, & SILVA, 2020).

In an opinion attached to ADI 6.417 at the Brazilian Federal Supreme Court (STF), economist Afonso Celso Pastore highlighted that the effects of the pandemic resemble those of a war. However, he emphasizes a difference. In a war, the enemy bombs and destroys bridges, roads, factories, and energy sources, impacting both human and physical capital. In the war against a virus, although there are no bombing of factories or roads, the sectors suffer similar consequences that jeopardize their survival.

The economist emphasizes that if the current recession were similar to many others, it could be combated with stimuli that increase both demand and supply. However, this is not the case. According to the professor, social isolation hampers both supply and demand, posing a major problem for the state. Therefore, to address the issue of unemployment, governments need to provide income transfers to the population that cannot work. Furthermore, from the perspective of companies, it is essential to prevent their bankruptcies and keep them alive so that they can start recovery after the crisis through various incentives and subsidies.

It is worth noting that, given the depth of the crisis generated by the virus, planning and the development of public policies have become crucial for governments. Furthermore, for the implementation of these policies, it is extremely necessary to investigate the mechanisms of governance and coordination to operationalize the effectiveness of these instruments (AMITRANO, MAGALHÃES, & SILVA, 2020).

As can be observed, without the need for further detail, the pandemic originating from COVID-19 first and foremost affected the lives of thousands of people around the world, with a particular impact on the United States, Brazil, and some European countries. The initial strategic need of governments was to provide resources for the immediate combat of the health issue. In addition to this essential expenditure, countries such as Germany, Spain, the United States, France, the United Kingdom, and other European Union (EU) members developed significant economic aid packages. Each of these countries adopted a different method of economic support, according to their respective policies and specificities.

Amitrano, Magalhães, and Silva (2020) analyzed data provided by the IMF and the OECD and concluded that the allocation of resources in the aforementioned countries and the EU, when combined, revealed that 69.1% of the expenditures were allocated to support businesses, 16.1% were directed towards direct assistance to the population, 7.9% was allocated to healthcare support, and 6.9% was dedicated to central and subnational government support. The authors also draw attention to the actions taken in these countries to guarantee income,

employment, and unemployment benefits, as well as measures such as deferral, reduction, and deduction of taxes, and the granting of subsidies.

4.1.2 *The situation faced by Brazil*

The crisis resulting from COVID-19 arrived in Brazil at a terrible fiscal moment. In fact, the country was trying to recover from previous crises and was still beginning to adapt to the effects of the Spending Cap Amendment (Constitutional Amendment 95/2016).

In an article published in the Fiscal Column of Jota, Professor Marcos Abraham (2019) reminds us that in 2019, the federal public debt (DPF) reached the amount of 4.07 trillion reais, a sum that was necessary to finance the country's budget deficit. In January 2018, this debt was 3.5 trillion reais. The author explains that the DPF is different from the concept of Gross Debt of the General Government (DBGG), which in the same year of 2019 stood at around 5.617 trillion reais (79.8% of GDP). According to the text by the eminent professor, the DBGG "comprises the total liabilities of the Federal Government, state governments, and municipal governments, to the private sector, the financial public sector, and the rest of the world."

According to Marcos Abraham (2019), the symptom of the staggering debt of R$4 trillion (DPF) or R$5.6 trillion (DBGG) in 2019 is evident in the fact that the three levels of government are unable to sustain themselves based on tax revenue or their own financial resources. According to the author, public borrowing should only occur in cases of investment spending and not to sustain current state expenses. Even in 2019, the author emphasizes that expenses of a financial nature (resulting from public debt and the payment of interest) became the largest items in the federal public budget, exposing the complete dependence of the Brazilian state on public credit.

Therefore, it can be observed that this situation was already occurring prior to the pandemic. In other words, even with the mechanisms of the Spending Cap Amendment, the Golden Rule, and the Fiscal Responsibility Law, the situation was already serious. The government's target for reducing public debt was projected for the long term. For example, the purpose of the Spending Cap Amendment is to reduce the ratio between public debt and the country's GDP through various mechanisms by 2026 (Article 108 of Constitutional Amendment 95/2016). It is worth mentioning that the main mechanism of this constitutional amendment was to establish, in Article 107, §1, II, that the amount of primary public expenditure in one year could not be higher than that of the previous year, duly adjusted for inflation (IPCA), with

exceptions for minimum constitutional allocations in health and education. Thus, by 2026, the government intended to significantly decrease the Debt-GDP ratio.

Therefore, at the national level, it was never imagined that all the engineering related to budgetary balance projected for a more stable future would be hindered by the advent of a pandemic.

Keeping this scenario in mind, it is important to highlight that in Brazil, the first confirmed case of the disease by the Ministry of Health occurred on February 26, 2020. Similar to European countries and the USA, measures were taken in response to the situation. According to Mauro Silva (2020), the reference point for the federal government's public policy initiatives began even before the first case. On February 6, the Law 13,979/2020 was enacted, which established measures to address the virus, from health guidelines to provisions regarding the waiver of public procurement processes. On March 16, the federal government also established the Crisis Committee for Supervision and Monitoring of the Impacts of Covid-19 through Decree 10,277/2020.

Mauro Silva (2020) further explains that the speed of contagion combined with the fatality rate, resulting in thousands of deaths, created an atmosphere of panic and uncertainty. As a result, strict social isolation measures were adopted, which, as detailed in the previous paragraphs, had a negative impact on the supply and demand relationship. According to the author, Brazilian households drastically reduced consumption due to several factors, including lack of income, unemployment, and the effect of capital hoarding due to uncertainty about the future. For Brazilian companies, the production chain was blocked due to isolation and restrictions on national and international traffic.

Furthermore, in many locations, companies were suspended from operating under penalty of severe sanctions. Consequently, the entire production chain was affected, from its origin to the final delivery of the product or service to the consumer. Without revenue, companies had no choice but to lay off or suspend employment contracts, suspend activities with no forecast for resumption, or even shut down (MAURO SILVA, 2020).

Given this scenario, there was an urgent need for state intervention to regulate the problem of supply and demand. In other words, there was a need for government action in two areas that were in dire need of assistance. The immediate focus was on the healthcare sector to combat the harmful effects of the virus on the population. This involved the construction of field hospitals, hiring personnel, purchasing medical equipment and medications, and increasing the number of hospital beds, among other measures. The other front concentrated

efforts on providing income support to the needy population, as well as to businesses and subnational entities.

The government found itself facing an unexpected situation, a kind of tsunami that was hitting Brazilian territory and would require a significant increase in spending to curb and combat the negative effects of the virus on health and the economy. However, with a crisis of this magnitude, the government's main source of revenue, taxes, would significantly deteriorate. It should be emphasized that during such a severe crisis, both individuals and companies tend to significantly reduce their contribution or, in some cases, lack the resources to pay the taxes owed.

Regarding the state's indebtedness, Mauro Silva (2020) points out that the behavior of public debt in 2020, for example, was combined with a reduction in revenue due to the economic downturn, coupled with increased public spending to directly combat the pandemic and address the crisis. Consequently, there was an urgent need to expand financing, leading to a consequent increase in public debt. The author highlights that the "Carta de Conjuntura" No. 47 from the Institute of Applied Economic Research (IPEA) estimates that the gross debt of the general government (DBGG) will reach 93.7% of the GDP by the end of the pandemic.

Therefore, the only option left for the government is to engage in substantial borrowing in order to provide the bare minimum for the population and businesses and ensure the stability of the country during this calamity. In this sense, it is possible to observe that the government has certain mechanisms to incur expenditures that were not budgeted as originally planned. It is also worth noting that budgetary laws have flexibility mechanisms for times of calamity. However, due to the scale and high degree of the disaster caused by the virus and the crisis, the government found itself in the need to undertake a higher level of indebtedness than anticipated.

Given this situation, there was a major impasse related to fiscal governance, where the government, in conjunction with the other branches of power, had to promptly resolve budgetary and fiscal governance barriers that could hinder the urgent need for borrowing.

4.2. Solutions Adopted For The Indebtedness And Policies Used By The State

It was never imagined that the world would go through a crisis of the proportions brought about by Covid-19. It is known that there have been various pandemics throughout history, but in their respective times, the world was not as globalized. This factor was the key point for such a severe crisis. A little closer to the current event, one can recall the Great Depression in 1929/1930, as discussed in the first chapter of this work, where a change in the

paradigm of economic thought that guided most Western countries was observed. In other words, from a time when the State could never interfere in the economy, it became a situation where the State necessarily had to intervene.

As seen as well, it was after the Great Depression and World War II that Keynesian ideas emerged, completely breaking away from liberal economic thinking and serving as the basis for governments to start a trend of effective indebtedness to increase public spending in an attempt to save the economy. These measures proposed by Keynes encouraged governments to adopt so-called countercyclical measures in order to normalize the problem of supply and demand and restore the welfare state for the population.

With the advent of the Covid-19 pandemic, it is evident that the same cycle has repeated itself, but with much greater severity due to its global scale. Professor Marcos Abraham (2020) wrote in the fiscal column of Jota that "in times of economic slowdown, countercyclical measures involve a strong state intervention, imposing tax reductions, credit expansion, and increased public spending and investment, so that these measures stimulate the economy to start moving again." The professor emphasizes that, according to Keynesian theory, in these moments, the State takes a more active and interventionist stance in order to increase overall spending, particularly on investments, without worrying about fiscal austerity and budgetary balance.

In an article also published in Jota's fiscal column, Professor Maurício Conti (2020) highlights that, in contrast to the liberal laissez-faire school of thought by Adam Smith, moments of economic slowdown, such as the current one, bring to mind the ideals of the Keynesian school, as it proposes compensatory fiscal policies and an increase in public deficit and spending.

4.2.1 *Initial Measures Adopted*

With the onset of the crisis resulting from Covid-19, the first measure adopted was the publication of Legislative Decree (DL) No. 6, on March 20, 2020. This measure recognized the occurrence of a state of public calamity, with effects until December 31, 2020. This deliberation by the National Congress responded to the request of the Presidency of the Republic expressed in Message No. 93, on March 18, 2020.

It is worth noting that even before DL 6/2020, the federal government had opened extraordinary credit in the Annual Budget Law of 2020 in the amount of R$ 5 billion, with a

view to urgently combating the effects of the pandemic[2]. However, the government could not incur expenses solely through extraordinary credits, as doing so would require mandatory cuts in other budgeted expenses for 2020. Moreover, as pointed out by Professor Marcos Abraham (2020) in an article published in Jota, the government realized that it would need to exceed the limit of the primary deficit target, as stipulated in Article 2 of the Budget Guidelines Law (LDO), which was set at R$ 124 billion.

In Message 93, the Executive Power requested the recognition of a state of public calamity, with effects until December 31, 2020, alleging the occurrence of the Covid-19 pandemic, as declared by the World Health Organization (WHO). The purpose of declaring the state of public calamity was based on Article 65 of the Fiscal Responsibility Law.

Article 65 of the Fiscal Responsibility Law provides that, in the event of a state of public calamity recognized by the National Congress, the following restrictive budgetary impositions are suspended for the duration of the situation: a) the counting of deadlines and provisions established in Articles 23, 31, and 70 of the Fiscal Responsibility Law[3] are suspended; b) compliance with fiscal results and the limitation of commitments provided for in Article 9 of the Fiscal Responsibility Law is waived[4]; c) the limits, conditions, and other restrictions applicable to the Union, States, Federal District, and Municipalities, as well as their verification for contracting and amending credit operations, granting guarantees, contracting between federative entities, and receiving voluntary transfers, are waived; d) the limits, prohibitions, and sanctions provided for in and resulting from Articles 35, 37, and 42 of the Fiscal Responsibility

---

[2] The CF/88 (Brazilian Constitution of 1988) prohibits the opening of supplementary or special credits without prior legislative authorization. However, Article 163, §3º allows for the opening of extraordinary credits through Provisional Measures, provided that they are intended to meet unforeseen and urgent expenses, such as those arising from a public calamity.

[3] Art. 23. If the total expenditure on personnel, by the Power or body referred to in Article 20, exceeds the limits defined in the same article, without prejudice to the measures provided for in Article 22, the excess percentage must be eliminated in the following two four-month periods, with at least one-third in the first period, adopting, among others, the provisions provided for in paragraphs 3 and 4 of Article 169 of the Federal Constitution.
[...]
Art. 31. If the Consolidated Debt of a federative entity exceeds the respective limit at the end of a four-month period, it must be reduced to the limit by the end of the subsequent three four-month periods, with a reduction of at least 25% in the first period.
[...]
Art. 70. The Power or body referred to in Article 20, whose total expenditure on personnel in the year prior to the publication of this Complementary Law exceeds the limits established in Articles 19 and 20, must comply with the respective limit within two fiscal years, gradually eliminating the excess at a rate of at least 50% per year, adopting, among others, the measures provided for in Articles 22 and 23.
Sole Paragraph. Failure to comply with the provisions of the caput, within the fixed deadline, subjects the entity to the penalties provided for in § 3 of Article 23.

[4] Art. 9. If, at the end of a bimonthly period, it is verified that revenue realization may not allow compliance with the primary or nominal result targets established in the Fiscal Targets Annex, the Powers and the Public Prosecution Service shall, by their own act and in the necessary amounts, within the subsequent thirty days, limit commitment and financial movement, according to the criteria established by the budget guidelines law.

Law are waived, and compliance with Article 8 of the Fiscal Responsibility Law is waived, provided that the resources are exclusively allocated to the fight against public calamity[5].

For example, Article 35 prohibits the raising of resources as an anticipation of taxes or contributions whose taxable event has not yet occurred. Article 42 prohibits a public manager, in the last two quarters of their term, from incurring expenses that cannot be fulfilled within the respective term or obligations with outstanding payments whose budget cannot accommodate such expenses. According to an article by Professor Marcus Abraham (2020), Legislative Decree 6/2020 activated exceptional measures provided for in Article 65 of the Fiscal Responsibility Law, as seen in the aforementioned articles of the Fiscal Responsibility Law, which aim to temporarily remove limitations and conditions regarding expenditure increases and indebtedness. Additionally, this exception in Article 65 also waives compliance with targets set in the Budget Guidelines Law (LDO) and suspends the commitment limitation mechanism.

To better understand the waiver of fiscal targets, it is important to clarify how this mechanism works. As known, the LDO is a normative instrument aimed at the operational planning of the government. As Professor Marcus Abraham (2015) explains, "while the Plurianual Plan refers to the long-term strategic plan, the Budget Guidelines Law presents the short-term operational planning for the one-year period." However, the Fiscal Responsibility Law, in Article 4, determined that the preparation of the LDO must be accompanied by the Fiscal Targets Annex. Thus, this annex establishes annual targets in current values related to revenues, expenses, and nominal and primary results[6], as well as the amount of public debt.

The importance of fiscal targets can be seen on the website of the Federal Court of Accounts, which are embedded within the context of fiscal policy and balanced financial management. According to the Federal Court of Accounts, fiscal targets serve as parameters to provide confidence to society that the government will ensure the necessary conditions for economic stability and control of public debt.

---

[5] After the initial stage of the public calamity, the National Congress approved Complementary Law 173/2020, which included, among other provisions, paragraphs II and III to the first paragraph of Article 65. For example, paragraph III excludes the conditions and prohibitions provided for in Articles 14, 16, and 17 of the Fiscal Responsibility Law, provided that the incentive or benefit and the creation or increase in expenditure are intended for combating the public calamity. It is worth noting that this monograph analyzes the context of budget and fiscal responsibility laws in the initial stage of the pandemic, focusing on the first clash that occurred between budgetary rules and the urgent nature of the pandemic. Complementary Law 173 was only approved by the Parliament on May 27, 2020, that is, two months after the recognition of the state of public calamity.

[6] According to the TCU portal, the nominal result represents the difference between total revenues and expenses in the fiscal year. The primary result arises from the comparison of primary revenues and expenses in the fiscal year, excluding the portion related to nominal interest on net debt. Its calculation provides an assessment of the impact of fiscal policy on public accounts. Primary surpluses contribute to the reduction of net debt. On the other hand, primary deficits indicate the portion of the increase in net debt resulting from the financing of primary expenditures (non-financial expenses) that exceed primary revenues (non-financial revenues).

If the initiative to recognize the state of public calamity had not been taken, the government would have faced a significant problem. Article 9 of the Fiscal Responsibility Law establishes that if, at the end of each bimester, the revenue collection does not meet the targets for primary or nominal results, the authorities are obliged to limit commitments and financial transactions according to the criteria of the Budget Guidelines Law (LDO). According to Marcos Abraham (2020), the commitment limitation was already estimated at around R$ 40 billion due to the decrease in federal revenue. The professor explains that whenever there is a decrease in revenue, the trigger of Article 9 of the Fiscal Responsibility Law is activated (commitment limitation).

If Decree Law 6/2020 had not been approved, the federal government would also have been limited to a fiscal deficit of R$ 124 billion, which was the value provided for in the 2020 Budget Guidelines Law (LDO). There were calculations that indicated, in March 2020, that the fiscal deficit would reach R$ 250 billion, both due to increased expenses and a decline in GDP and revenue. In other words, the government had no other choice. Either these budgetary barriers were waived, or there would be expenditures in violation of budgetary rules, with the consequent accountability of the public officials involved.

In Message 93/2020, which was the government's request to the National Congress for the declaration of a state of public calamity, it was emphasized that the world experienced a shock in growth prospects associated with the slowdown of the Chinese economy, as well as the deterioration occurring in Europe. The message highlighted that the necessary measures to protect the population and slow down the virus transmission rate would also result in a slowdown in economic activities. It was also noted that, in addition to public health, the challenge for authorities worldwide was to assist businesses and individuals.

The message emphasized as a focal point that it was undeniable that the measures to address the effects of the pandemic in Brazil would lead to a natural increase in public spending that was not foreseen in the country's reality. It pointed out that even for the initial measures to address the situation, an extraordinary credit of R$ 5 billion was opened, as provided by MP 924/2020, and this measure was far from being the only and sufficient one to cover the adversities brought by the pandemic.

The federal government further highlighted that, in a scenario of such uncertainty and an unmistakable trend of declining revenues and increasing expenses, the intricate set of contingency mechanisms required by the Fiscal Responsibility Law, especially in Article 9, could make essential public policies unfeasible.

4.2.2 *Precautionary Measure In Direct Action Of Unconstitutionality (ADI) 6.357*

On March 27, seven days after the recognition of a state of public calamity, the Presidency of the Republic, represented by the Attorney General's Office (AGU), filed the ADI 6.357, along with a request for a precautionary measure, with the Federal Supreme Court (STF). The objective of the action was not the declaration of unconstitutionality of articles 14, 16, 17, and 24 of the Fiscal Responsibility Law[7] (LRF) and article 114, heading, and §14 of the 2020 Budget Guidelines Law (LDO), but rather to seek an interpretation of these articles in accordance with the Constitution.

In the petition, the AGU emphasized that although Decree-Law 6/2020 had an effect on exempting the reestablishment of the debt limit, compliance with fiscal targets, and the imposition of sanctions for non-compliance with personnel expenditure limits, it was not able to suspend other fiscal requirements. It cited, for example, the rigidity of article 114, heading, and §14 of the 2020 LDO, which obliges the Union to indicate means of compensation in cases of expenditure increases.

First and foremost, it is important to explain that articles 14, 16, 17, and 24 of the LRF, which were the subject of ADI 6.357, establish procedural and compensatory requirements necessary to legitimize the increase in indirect tax expenditures and mandatory continuous expenses. Thus, as explained by the Union, the generation of mandatory continuous expenses, such as social security actions, must comply with certain conditions according to the LRF.

These conditions are: i) mandatory continuous expenses must be accompanied by an estimate of the budgetary and financial impact, both for the fiscal year they begin and for the following two years (articles 14, 16, item I, and article 17, §§1 and 4 of the LRF); ii) the expense must be compatible with the multi-year plan and the budget guidelines law (article 16, item II, and 17, §4 of the LRF); iii) the act instituting the expense must demonstrate the origin of the resources that will cover such obligation, proving that the increase will not affect the expected results targets in the LDO (article 17, §§1 and 2 of the LRF); and iv) the financial effects of the

[7] After the filing of ADI 6,357 with the Brazilian Supreme Court (STF), the Complementary Law 173 was enacted on May 27, 2020. This legislation established the Federative Program for the Confrontation of the Coronavirus and modified certain provisions of the Fiscal Responsibility Law (LRF). Among the amended provisions is Article 65. In this context of alteration brought about by LC 173, Article 65 gained paragraph 1, item III, which waived the conditions and prohibitions set forth in Articles 14, 16, and 17 of the LRF, provided that the incentive, benefit, creation, or increase in expenses is intended for the fight against a public calamity. Therefore, although the provisions have been amended, this topic will analyze the arguments and the precautionary decision of the STF in order to maintain an analytical approach to the measures taken at the beginning of the pandemic to increase government spending.

expense must be offset in subsequent fiscal years through a permanent increase in revenue or a permanent reduction in expenses (article 17, §2 of the LRF).

The federal government stated in its petition that the requirement to demonstrate the estimate of the budgetary and financial impact in 2020 and the following two years presupposes a scenario of political governance within normality, which was not the case in 2020. It pointed out that, even though it was insufficient for the current situation, the LRF at least has the mechanism provided in article 65, which exempts certain requirements regarding the debt limit and compliance with fiscal targets, thus avoiding spending contingencies. Regarding the LDO, it stated that it does not even have any mechanism that would allow for exceptions to its rigidity in a time of calamity.

In this context, the Union understood that in addition to the insufficiency of triggers allowed by the declaration of a state of public calamity, the application of such provisions of the Fiscal Responsibility Law (LRF) in the allocation of expenses intended for combating the pandemic would ultimately violate the constitutional principles of human dignity, guarantee of access to health, social values of human labor, and guarantee of economic order. Therefore, considering the exceptional nature of the actions to be taken to combat the pandemic and the crisis at hand, the Union requested an interpretation in accordance with the Constitution of articles 14, 16, 17, and 24 of the LRF, as well as article 114, §14, of the 2020 Budget Guidelines Law (LDO).

The case was assigned to Minister Alexandre de Moraes. As there was a request for a precautionary measure, on March 29, the minister issued a preliminary decision acknowledging and granting the request of the federal government.

Initially, the minister recalled that in the ruling of ADI 2,238/DF, the majority of the Supreme Federal Court (STF) declared the constitutionality of articles 14, 17, and 24 of the LRF. By granting the injunction, the minister wanted to make it clear that articles 14, 17, and 24 of the LRF, as well as article 114, caput, in fine, and §14 of the 2020 LDO, signify that fiscal responsibility is an indispensable concept to legitimize the expansion of rigid and prolonged expenses under a more transparent, upright, and rigorous legislative process. The rapporteur emphasized that the LRF established an innovative regulatory model for public finances aimed at increasing prudence in fiscal management and synchronizing the decisions made by subnational entities according to the macroeconomic objective established nationally by the Union.

On the other hand, he stated that there are situations in which the emergence of unforeseeable supervening conditions radically affects the execution of the previously planned

budget. Thus, the minister argued in his decision that the emergence of the Covid-19 pandemic represented an absolutely unforeseeable supervening condition with extremely serious consequences that drastically affected the previously planned budget execution. According to the minister, such a situation would require an urgent, lasting, and coordinated action by all authorities in the country to defend life, health, and the economic subsistence of Brazilian society. Therefore, it would be logically and legally impossible to comply with certain legal requirements that are generally adopted in times of normality.

Finally, the minister stated that the temporary suspension of the aforementioned articles of the LRF and the 2020 LDO, during the state of public calamity, for the exclusive purpose of combating this situation, would not conflict with fiscal prudence and the budgetary balance enshrined in the LRF. This is because, according to the minister, these expenses would not be based on undefined legislative proposals characterized by political opportunism and inconsequences, but rather aimed at protecting life, health, and the subsistence of the population.

Therefore, understanding that the Union's argumentation fulfilled the requirements of *fumus boni iuris* and *periculum* in mora, as the danger of irreparable harm and evident social and individual risks were proven, the minister accepted the Union's request, ad referendum of the Plenary[8], to exempt articles 14, 16, 17, and 24 of the LRF, as well as article 114, caput, in fine, and §14 of the 2020 LDO. Thus, the requirement to demonstrate budgetary adequacy and compensation in relation to the creation or expansion of public programs aimed at addressing the calamity caused by Covid-19 was waived.

4.2.3 *War Budget Amendment*

As seen in the previous paragraphs, it was necessary to adopt several legal and judicial measures for the state to proceed with the largest public indebtedness ever seen in recent years. According to Marcos Abraham (2020), these initial measures taken would not be sufficient for effectively combating the effects of the pandemic and the necessary indebtedness. There were still administrative and fiscal constraints, particularly regarding credit operations that exceed

[8] On May 13, by a majority of votes, the Plenary of the Brazilian Supreme Court (STF) ratified the precautionary measure granted by Justice Alexandre de Moraes. However, the same majority deemed the action moot due to the approval of Constitutional Amendment 106/2020 (the "War Budget Amendment"). According to the justices, this constitutional amendment addressed the request made by the federal government, rendering the continuation of the case unnecessary. On the other hand, the justices validated all acts performed since March 20, the date of the declaration of a state of calamity. Justice Edson Fachin was partially dissenting, as he endorsed the precautionary measure but disagreed with the mootness of the action. Justice Marco Aurélio, on the other hand, did not grant the precautionary measure as he believed that its purpose had become moot.

the amount of capital expenditures. According to the author, indebtedness would be the best financial remedy indicated at the moment to finance the new expenses.

As the professor explains, other necessary solutions, such as increasing the tax burden, would affect the financial availability of citizens and businesses and naturally result in reduced consumption and increased unemployment.

According to Marcus Abraham (2020), with public debt being the supposedly appropriate mechanism to finance the new expenses for combating the Covid-19 pandemic, the solution came from the proposal of a constitutional amendment, PEC 10/2020, known as the "War Budget Amendment," which culminated in the promulgation of Constitutional Amendment 106/2020. This provision, by including the new Article 115 in the Transitional Constitutional Provisions (ADCT), created a more flexible budgetary structure.

According to Mauro Santos (2020), the set of these new provisions inserted in the ADCT expanded the degree of freedom and legal certainty for the implementation of economic policy measures developed by the state during the period of the state of calamity.

Article 1 of Constitutional Amendment 106/2020 established and authorized the adoption of an extraordinary fiscal, financial, and contracting regime for the year 2020. However, it clarified that this extraordinary regime could only be adopted for matters that were incompatible with the regular budgetary regime due to urgency.

Article 2 of the amendment outlined the acts that can be adopted under the extraordinary regime. Thus, the federal executive branch was authorized to adopt simplified processes for hiring temporary and emergency personnel and for contracting works, services, and purchases, provided they were exclusively for combating the pandemic. The article also clarified that hiring personnel for a determined period would not need to comply with the requirements of Article 169, §1, of the Federal Constitution of 1988.

On the other hand, Article 3 established an important exceptional measure. As known and addressed in the previous chapters of this work, according to the Fiscal Responsibility Law (LRF) and budgetary laws, there are strict restrictions and requirements for acts and laws that imply an increase in expenses or grant tax incentives or benefits. What Article 3 of Constitutional Amendment 106 did was precisely to exempt these barriers of budgetary responsibility. Thus, during the state of calamity, legislative proposals and executive acts aimed at combating the pandemic and its social and economic consequences were exempt from the mentioned legal limitations.

The point that could be said to be the most important in Constitutional Amendment 106/2020 is contained in Article 4. As explained by Maurício Conti (2020) in an article

published in the Fiscal Column of Jota, many of the provisions contained in the amendment could have been regulated by infraconstitutional norms. However, the severity of the crisis required a constitutionally significant modification, namely, mitigating the effects of the "golden rule" contained in Article 167, III, of the Federal Constitution of 1988[9].

As seen, the "golden rule" prohibits the government from carrying out credit operations (which always generate indebtedness) in amounts greater than capital expenditures, with a few minor exceptions. However, Article 4 of Constitutional Amendment 106/2020 waived compliance with this rule throughout the entire fiscal year in which the state of public calamity is in effect. Article 6 of the amendment also authorized that the resources obtained from credit operations for refinancing the domestic debt can be used to pay their interest or charges.

On the other hand, Article 5 determined that expenses related to tackling the pandemic must be included in specific budgetary programs or have markers indicating them if they are combined with regular budgetary programs. Furthermore, it mandated that the accountability of the President of the Republic must be evaluated separately and disclosed within thirty days after the end of each bimester.

Lastly, but not less important, Article 7 authorized the Central Bank of Brazil to buy and sell public debt securities issued by the National Treasury in the domestic and international secondary markets[10]. It also authorized the purchase and sale of assets in national secondary markets within the scope of financial, capital, and payment markets, provided that at the time of purchase, they have a credit rating equivalent to BB- or higher and a reference price determined by a financial market entity. Article 8 determined that the National Congress could suspend executive acts that violate the provisions of the constitutional amendment. Article 10 validated previously performed acts by the executive branch, as long as they were compatible with the constitutional amendment, and Article 11 established that the validity of Constitutional

[9] Article 169. Expenditures on active and retired personnel of the Union, States, the Federal District, and Municipalities shall not exceed the limits established by a complementary law.
§1. The granting of any benefits or salary increases, the creation of positions, jobs, and functions, or changes in career structure, as well as the hiring or admission of personnel, in any capacity, by direct or indirect administration bodies and entities, including public foundations established and maintained by the government, may only be carried out: I - if there is a sufficient budgetary allocation to meet personnel expense projections and the resulting increases; and II - if there is specific authorization in the budgetary guidelines law, except for public companies and mixed economy companies.

[10] The secondary market is the environment where investors buy and sell securities among themselves. As the name suggests, a security is movable and can easily change ownership through the buying and selling of these securities. Therefore, in this environment, only transfers of ownership and resources between investors take place. As a result, the funds transacted in this market are not directed to the issuer's cash but rather change hands between the buyer and seller of the securities.

Amendment 106/2020 would be automatically revoked on the date of the termination of the state of public calamity declared by the National Congress[11].

4.2.4 *Measures Adopted By The Government After The Exceptions Opened In Budgetary Laws*

As seen above, the federal government, together with the legislative and judicial branches, managed to overcome the budgetary barriers that prevented public indebtedness for combating the pandemic and its effects. As also observed, although there were possibilities for flexibility in budgetary laws through Article 65 of the Fiscal Responsibility Law (LRF), the opening of extraordinary credits, etc., the magnitude of the problem brought by the Covid-19 pandemic required further legislative and judicial actions to overcome these barriers.

Professor Mauro Silva (2020) analyzed some of the public policy measures adopted by the government after successfully exempting compliance with the mentioned budgetary rules. According to him, these measures have significant and direct repercussions on the configuration of fiscal policy, whether by involving increased public spending, establishing tax waivers, or requiring mechanisms of financing through the issuance of public debt.

He explains that fiscal policy measures were divided into three axes: (i) guaranteeing employment and minimum income for workers, (ii) supporting the business sector, and (iii) providing support to federative entities. It is worth noting that in addition to these three fronts, several extraordinary credits were opened in favor of the Ministry of Health, Ministry of Citizenship, etc. The professor explains that despite the government using revenues from the 2019 surplus and the cancellation of allocations from other 2020 expenses, the primary and most relevant source for financing the extraordinary expenses of 2020 occurred through indebtedness.

One of the first programs created by the government was the measures to guarantee employment and minimum income for workers. The Emergency Benefit was directed to workers with formal employment relationships, while the Financial Aid was directed to workers without formal employment relationships. The Emergency Benefit was created to be paid to

---

[11] EC 106/2020 expired in the year 2020. In 2021, the constitutional framework for emergency pandemic spending started to follow the provisions of Constitutional Amendment 109/2021. This constitutional amendment, for example, added clause XXVIII to Article 84 of the Federal Constitution of 1988, stating that it is the exclusive prerogative of the President of the Republic to propose to the National Congress the declaration of a national state of public calamity.

workers with formal employment in cases of proportional reduction of working hours or salaries and suspension of employment contracts (MAURO SILVA, 2020).

The Financial Aid program ensured a minimum income for workers without formal employment, who are often the most vulnerable. This program consists of a direct transfer of income in the amount of R$ 600.00 per month, initially planned to be paid for three months and later extended for an additional two months (in 2020).

In addition to the direct income transfer program, there were also measures to support businesses. This program involved the provision of credit lines and guarantees for credit acquisition.

The support for businesses occurred through three different programs. The first was the Emergency Support Program for Jobs (PESE), which provided credit to small and medium-sized enterprises with annual gross revenue exceeding R$ 360,000 or less than R$ 10 million. There was also the National Support Program for Microenterprises and Small Businesses (PRONAMPE), which provided guarantees for credit acquisition by microenterprises and small businesses with annual gross revenue equal to or less than R$ 4.8 million. Finally, the Emergency Access to Credit Program (PEAC) provided guarantees to small and medium-sized enterprises with annual gross revenue exceeding R$ 360,000 and equal to or less than R$ 300 million.

As explained by Mauro Silva (2020), in order to increase businesses' access to financial policy measures, the government suspended several requirements that would typically be necessary for credit contracting under normal conditions. These measures included the suspension of the requirement to prove the absence of debts with entities enrolled in the Union's active debt; certificate of regularity with the Severance Pay Fund (FGTS) and the National Social Security Institute (INSS); exemption from proving payment of Rural Territorial Tax; and exemption from the requirement of prior consultation with the *Cadastro de Informativo de Créditos não Quitados do Setor Público Federal* (CADIN).

In terms of indirect state spending, several measures were taken in the field of tax policy. In addition to a zero-interest rate on Credit IOF, the rate of the Industrialized Products Tax (IPI) for products destined for combating Covid-19 was reduced to zero. Additionally, the deadlines for payment of Simples Nacional and Employer Social Security Contributions, payable by companies and domestic employers, were extended. Collection and debt renegotiation procedures for Union's active debt were also extended, as well as the deadline for filing annual adjustment statements and payment of Individual Income Tax (IRPF).

The federative entities were profoundly affected by the advent of the pandemic. The crisis affected the balance of the finances of states and municipalities by imposing increased spending on public health policies and social assistance, coupled with the fact that they cannot issue public debt securities to finance their deficits.

Thus, a fiscal federative pact was established with the Union, which consisted of: i) financial support to states, the Federal District, and municipalities through the complementation of the Participation Fund for States (FPE) and the Participation Fund for Municipalities (FPM); ii) temporary suspension of payments for debts contracted between states, the Federal District, and municipalities with the Union, combined with the prohibition of executing guarantees for debts of entities with the Union; iii) temporary suspension of payment for municipalities' debts with the Social Security; iv) restructuring of credit operations with financial system institutions and multilateral credit organizations; and v) temporary provision of financial aid to states, the Federal District, and municipalities (MAURO SILVA, 2020).

Due to the significant increase in public spending, a tremendous growth in the state's public debt was observed, as expected. According to the National Treasury, on the "Transparent Treasury" page, it can be seen that the government spent a total of R$ 524 billion in 2020 to combat Covid-19.

Among the amounts actually paid in 2020, the following segments stand out: i) R$ 293.11 billion were paid for Emergency Aid; ii) R$ 33.50 billion were paid for the Emergency Benefit for Job and Income Maintenance; iii) R$ 78.25 billion were paid for financial aid to states, the Federal District, and municipalities; R$ 6.81 billion were allocated for payroll financing; R$ 5 billion were spent on the Emergency Access to Credit Program for card machines; and R$ 42.70 billion were paid for additional expenses with the Ministry of Health and other ministries[12].

In 2021, it was observed that R$ 83.2 billion had been spent as of August. The Emergency Aid represents the highest volume of payments, with R$ 44.30 billion, followed by additional expenses by the Ministry of Health and other ministries with R$ 14.21 billion, and the acquisition of vaccines and supplies for prevention and control with R$ 11.65 billion.

[12] Available in https://www.tesourotransparente.gov.br/visualizacao/painel-de-monitoramentos-dos-gastos-com-covid-19. Accessed on September 5, 2021.

4.2.5 *Debt Incurrence And Its Effects On The Brazilian Public Debt*

According to José Ronaldo, Marco Cavalcanti, and Paulo Levy (2020), the pandemic temporarily affected the fiscal consolidation process that the Brazilian economy was undergoing. According to the authors, it was projected that, due to the fiscal deterioration, the Gross Government Debt (DBGG) would reach 93.7% of GDP by the end of 2020[13]. At the end of 2019, the DBGG was 75.8% of GDP.

The authors emphasize that, despite some expectation that the emergency measures would not extend beyond 2020, the crisis generated by the pandemic increased the fiscal challenges of the country, which would likely emerge from the crisis with a much higher public debt and the problem that levels of economic production and revenue would remain low.

According to Ronaldo, Cavalcanti, and Levy (2020), IMF predictions already indicated that global GDP could decline by 4.9% in 2020. According to the researchers, in Brazil, GDP fell by 1.5% in the first quarter, and the projection was that this decline would approach 10% in 2020.

According to the World Bank, the estimate was that global GDP fell by -3.5% in 2021, in emerging and developing economies it was -1.7%, in Latin America and the Caribbean it was -6.5%, and in Brazil, it was -4.1%[14].

In the last quarter of 2020, in the Public Debt Projection Report, the National Treasury made technical projections indicating that by the end of 2020, the Gross Government Debt and Net Public Sector Debt would be 96% and 68.2% of GDP, respectively. According to the analysis, the fiscal consequences generated by the pandemic would require a more intense medium-term fiscal effort than previously anticipated. According to the Treasury, the DBGG would continue to grow in the coming years, reaching 100.8% of GDP in 2026, and then begin a declining trajectory, ending 2029 at 98% of GDP.

According to the National Treasury's analysis (2020), the increasing trend in the Debt/GDP ratio would occur due to the fiscal framework marked by significant government deficits. However, the study suggests that the intensity of the debt increase could be mitigated by the expectation of low real interest rates and the prospect of real GDP growth recovery.

---

[13] According to the website of the Central Bank, it was found that in December 2020, the General Government Gross Debt (DBGG) was 89.3% of GDP. You can consult this information at https://www.bcb.gov.br/estatisticas/historicofiscais?ano=2021. Accessed on September 5, 2021.

[14] Available at https://www.worldbank.org/pt/publication/global-economic-prospects. Accessed on September 5, 2021.

The report indicates that the State's financing needs for the period of 2020 reflected a clear increase in the debt level for that period, which amounted to 12.7% of GDP, only for that specific period in 2020. Thus, it pointed out that besides weakening economic activity, the Covid-19 crisis generated additional expenses for the government, necessary to address the situation, along with a significant loss in tax revenue, resulting in an extraordinarily high primary deficit.

According to the National Treasury, if there were a negative change in the perspective that GDP could grow, that the basic interest rate would remain stable and at a low level, and that the government's primary result would be increasing, this scenario could be much worse. Therefore, negative shocks that hinder economic growth, increase the cost of public debt, or deepen the state's deficit make the public debt trajectory unstable in the foreseeable future.

According to the technical analysis by the Treasury (2020), it was inevitable that significant public spending would be incurred to mitigate the economic and social impacts of the coronavirus crisis. However, the fiscal impacts of these expenditures reverberate over the years, especially when combined with expenses for paying interest on the public debt. Thus, the report concludes that, based on the average cost of issuing Domestic Federal Public Debt (DPMFi), the additional expense on interest payments would reach R$ 261.6 billion over the next 10 years. This is because, as explained, although the extraordinary expenses are temporary, the additional interest expenses resulting from them extend over time.

The Treasury noted that it should be observed that the context of low interest rates may attenuate this impact of interest on the public account in the short term. However, for the medium term, it warns that there must be continuity in structural reforms that promote sustainable growth and fiscal consolidation of the State. In this context, it points out that without the necessary fiscal adjustment in public accounts and with the persistence of primary deficits, not only will it be difficult to reverse the increasing trajectory of the debt, but this trajectory will be accelerated as real interest rates increase.

Finally, the National Treasury highlights a pressing risk in raising funds for public indebtedness. This is because, along with the increased issuance of public debt securities in 2020, there was a shortening of the maturity dates of the securities. For example, an investor who used to purchase a security maturing in 2030 can now buy the same security with a maturity in 2022.

According to the Treasury, this means a greater risk that the government will be able to refinance the debt due to possible adverse conditions at the time of refinancing or an inability to raise new funds to honor these commitments. This factor leads investors to increasingly

demand short-term securities with higher interest rates, which may be unfeasible for debt management.

To address this problem, the report emphasizes the importance of implementing a fiscal agenda with solutions that allow the management of public debt at lower and more compatible levels with a lower risk perception, ultimately generating more confidence from domestic and foreign investors in the solvency of the Brazilian State.

In the Public Debt Projection Report No. 1 of 2021, the National Treasury (2021) explained that, for 2021, it is expected that the Gross Government Debt (DBGG) will reach a lower level compared to 2020, ending the year at 87.2% of GDP. According to the recent report, a relatively stable behavior of the DBGG is expected until 2026, where it will peak at 88.5%, and by the end of 2030, the gross debt would reach 83.6% of GDP.

The report warns that scenarios with low real GDP growth and poor fiscal results would cause the indicators to exceed 100% of GDP, revealing a high risk for public debt management. As an important means to reduce this impact, the report highlights the importance of repayments of loans from federal financial institutions to the National Treasury, as well as the possibility of reviewing tax benefits. Regarding the latter point, it mentioned that with the enactment of Constitutional Amendment 109/2021, there will be a plan to reduce tax benefits over the next eight years so that this amount does not exceed 2% of GDP. According to the National Treasury (2021), this reduction in benefits has the potential to reduce public debt by approximately 12% of GDP by 2030.

As a conclusion of Report No. 1 of 2021, the Treasury (2021) explains that the level of the Gross Government Debt (DBGG) in 2020 is undoubtedly high compared to pre-Covid-19 levels and even higher compared to emerging countries in a similar situation to Brazil. For the institution, this problem means that the fiscal effort must be greater than what stabilizes the debt at current levels.

The National Treasury (2021) concludes by stating that a lesson learned from recent years is that gaining credibility requires time, commitment, and concrete results. Thus, the implementation of policies that strengthen the path of fiscal consolidation and risk balance positively affects the formation of market agents' expectations, with beneficial effects not only on the debt but on the entire economy.

5. FINAL CONSIDERATION

Throughout this study, it was realized that issues related to public finances and the consequent topic of public spending, even in times of public calamity, are of utmost importance for society as a whole, especially for governments.

The establishment of budgetary rules in the Brazilian legal system, especially when focusing on fiscal responsibility and budget balance, must be taken with utmost seriousness by society as a whole, particularly those dealing with public funds. It would be futile to have efficient and robust tax collection if there is no budget planning and responsibility that allocate resources to an optimal level. The construction of stability for these rules in the Brazilian legal system, as well as in other countries, required time and effort, and should not be forgotten by those subject to them, nor by legal practitioners.

Financial Law norms have clearly reached a level of great relevance in recent years, which was not the case in the past. Especially with the advent of the Covid-19 pandemic, society began to view norms regarding public budget with greater importance and relevance.

It is precisely noticeable that, with the advent of the public health calamity, which also caused an economic crisis, the government found itself in an extremely delicate situation. There was no alternative. There was an urgent need for spending to implement public health policies, provide assistance to low-income citizens, support the unemployed population, and aid businesses. There was even consideration of increasing taxes to address this situation, but such a hypothesis proved to be unfeasible at a time when taxpayers themselves could not bear the minimum conditions to support an increase in the tax burden.

Within the analysis conducted, it was understood that the government, after realizing that it would have to incur significant expenses, would face another problem: fiscal responsibility and the constant barriers imposed by budgetary laws. The trigger of Article 65 of the Fiscal Responsibility Law (LRF) was not sufficient, at first, to ensure the execution of high expenses with the necessary legal certainty. Furthermore, the decision to incur expenses through extraordinary credits was unfeasible, as the government would have to reallocate resources from one area to another within the budget planned for 2020 in order to maintain the targets listed in the Budget Guidelines Law (LDO).

Faced with these problems, it was analyzed that the measures to be adopted necessarily had to involve the Judiciary and the Parliament. In the Judiciary, a more urgent approach sought an interpretation consistent with the Federal Constitution of various articles of the LRF that required the demonstration of budgetary adequacy and compensation regarding the creation or

expansion of public programs. With the interim decision, this obligation was overcome. Subsequently, the solution came from the National Congress with the approval of the "War Budget Amendment." With this measure, one of the main points sought by the government was to suspend the "golden rule" during the public calamity. Thus, Article 4 of the constitutional amendment exempted compliance with the "golden rule" during the period of the public calamity.

With the combination of these exceptional provisions, particularly with the departure from the constitutional mandate of the "golden rule," the State was able to carry out credit operations beyond the limit of the amount of capital expenses. In other words, borrowing and issuing public debt securities were authorized without the imposition of the mentioned constitutional limit. This measure clearly facilitated the increase in spending through debt. From that moment on, the effective public spending in various areas of government action was observed through all the assistance provided to the population, businesses, states and municipalities, financing of payroll, provision of liquidity in the financial market, and the numerous tax benefits granted.

When analyzing the above-described situation, an immediate connection can be made with the first chapter of this study, particularly with the theory and advice given by Keynes to various Western governments, especially in England and the United States, which were experiencing an economic depression. According to his theory, to save a country in crisis or even in a depression, the most recommended remedy would be public spending, the so-called necessary debt.

However, even though the spending policy implemented in Brazil bears some resemblance to Keynes' recommendation, it is necessary to clarify that the Debt-to-GDP ratio of those countries and those times was very different from the current situation, especially when compared to Brazil's Debt-to-GDP ratio, which can reach 100% if fiscal responsibility measures are not taken. In a context of high debt and low economic growth, it is necessary to approach this situation with extreme care and responsibility.

Future generations cannot be held responsible and heavily burdened by the current fiscal situation if due care and control are neglected. It is of utmost importance to adopt a highly cautious and responsible stance. The World Bank itself, in its latest Global Economic Prospects report published in June 2021[15], warns that the recovery of the global economy, although

[15] Available at https://www.worldbank.org/pt/publication/global-economic-prospects. Accessed on 05.09.2021.

vigorous, is uneven. In low-income countries, the effects of the pandemic are reversing previous progress in reducing poverty and exacerbating food insecurity.

The World Bank points out that policymakers, especially in emerging countries, are faced with a real barrier to finding a balance between stimulating recovery and safeguarding price stability and fiscal sustainability. Moreover, the world continues to be subject to significant negative risks, such as the possibility of new waves of COVID-19 and financial tension arising from high levels of indebtedness in emerging countries. These decision-makers can help consolidate a lasting recovery by adopting reforms that promote growth and lead their economies toward sustainable fiscal development.

In summary, it is not forgotten that the pandemic period, the public health emergency, and the calamity required the State to incur necessary public debt. No other alternative was envisioned other than the path that followed Keynes' theory of indebtedness to achieve social welfare.

However, the problems arising from uncontrolled indebtedness can clearly lead the country to discredit and even to further crises. History has already shown this. In the years following 1945, when governments began to use Keynes' theory of indebtedness for purposes contrary to those that would strictly help nations recover from crises, it was realized how much this movement harmed nations, brought about crises, and inflation.

Since history itself has shown how extremely detrimental distorted indebtedness can be to a nation, it is evident that the same mistake cannot be made today. In this way, the country is preserved from economic instability and even from international distrust and investors who tend to believe in countries fully committed to fiscal responsibility.

BIBLIOGRAPHIC REFERENCES

ABRAHAM, Marcus. **Curso de Direito Financeiro Brasileiro**. 3ª edição. Rio de Janeiro: Editora Forense, 2015.

ABRAHAM, Marcus. **Coronavírus e a Lei de Responsabilidade Fiscal**. Coluna Fiscal do Jota. Brasília, março de 2020. Disponível em: https://www.jota.info/opiniao-e-analise/colunas/coluna-fiscal/coronavirus-e-a-lei-de-responsabilidade-fiscal-23032020. Acesso em 25 de maio de 2021.

ABRAHAM, Marcos. **Mais de R$ 4 trilhões da dívida pública: Quanto maior for a dívida pública e maior forem os juros, mais custoso será mantê-la e difícil reduzi-la.** Coluna Fiscal do Jota. Brasília, outubro de 2019. Disponível em: https://www.jota.info/opiniao-e-analise/colunas/coluna-fiscal/mais-de-4-trilhoes-de-divida-publica-03102019. Acesso em 25 de maio de 2021.

ABRAHAM, Marcus. **Efeitos da pandemia nas contas públicas e o papel fiscal do Estado**. Coluna Fiscal do Jota. Brasília, junho de 2020. Disponível em: https://www.jota.info/opiniao-e-analise/colunas/coluna-fiscal/efeitos-da-pandemia-nas-contas-publicas-e-o-papel-fiscal-do-estado-11062020. Acesso em: 25 de maio de 2021.

AFONSO, José Roberto R. **Desenvolvimento, Trabalho e Seguro Social: volta a Keynes para enfrentar novos desafios – Development, work and social insurance: back to Keynes to face new challenges**. Revista do BNDES 50: edição especial FAT 30 anos. Rio de Janeiro, v. 28, n. 50, p. 203-245, dezembro, 2018.

AMITRANO, Cláudio e MAGALHÃES, Luís Carlos e SILVA, Mauro. **Medidas de enfrentamento dos efeitos econômicos da Pandemia Covid-19: Panorama internacional e análise dos casos dos Estados Unidos, do Reino Unido e da Espanha**. Texto para discussão nº 2559 do Instituto de Pesquisa Econômica Aplicada (IPEA). Brasília, maio de 2020.

BRASIL. **Decreto-Lei 2.848, de 7 de dezembro, de 1940**. Institui o Código Penal. Diário Oficial da União, Rio de Janeiro, 31 de dezembro de 1940. Seção 1. P. 23911.

BRASIL. **Mensagem nº 93, de 18 de março de 2020**. Solicita ao Congresso Nacional o reconhecimento de estado de calamidade pública. Diário Oficial da União, Brasília, 18 de março de 2020. Seção 1, p. 1.

BRASIL. **Medida Provisória 924, de 13 de março de 2020.** Abre crédito extraordinário em favor dos Ministérios da Educação e da Saúde no valor de R$ 5.099.795.979,00, para os fins que especifica. Diário Oficial da União, Brasília, 13 de março de 2020. Seção 1 – Extra. p.1.

BRASIL. **Lei nº 5.172, de 25 de outubro de 1966.** Dispõe sobre o Sistema Tributário Nacional e institui normas gerais de direito tributário aplicáveis à União, Estados e Municípios. Diário Oficial da União, Brasília, 27 de outubro de 1966. Seção 1, Parte 1. P. 5801.

BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade n. 2.238/DF**. Autores: Partido Comunista do Brasil, Partido dos Trabalhadores e Partido Socialista Brasileiro. Intimados: Presidente da República e Congresso Nacional. Relator: Ministro Alexandre de Moraes, Brasília, 24 de junho de 2020. Disponível em: http://portal.stf.jus.br/processos/detalhe.asp?incidente=1829732. Acesso em 5 de junho de 2020.

BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade n. 6.417/DF**. Autor: Partido Cidadania. Intimados: Presidente da República e Congresso Nacional. Relator: Ministro Alexandre de Moraes, Brasília, 11 de maio de 2020. Disponível em: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5908151. Acesso em 5 de junho de 2021.

BRASIL. **Constituição da República Federativa do Brasil de 1988.** Diário Oficial da União, Brasília, 5 de outubro de 1988, Seção 1. P. 1.

BRASIL. **Lei Complementar 101, de 4 de maio de 2000.** Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. Diário Oficial da União, Brasília, 5 de maio de 2000, Seção 1. P. 1.

BRASIL. **Lei 4.320, de 17 de março de 1964.** Estatui Normas Gerais de Direito Financeiro para elaboração e controle dos orçamentos e balanços da União, dos Estados, dos Municípios e do Distrito Federal. Diário Oficial da União, Brasília, 23 de março de 1964, Seção 1. P. 2745.

CEPEDA, Francisco José Terroso**. O Pensamento Económico de Lord Keynes: 50 Anos da Teoria Geral- 1936/1986**. Única edição. Bragança: Instituto Politécnico de Bragança, 1986.

CAVALCANTE, Marco e JÚNIOR, José e LEVY, Paulo. **Carta de Conjuntura nº 47 – 2º Trimestre de 2020**. Previsões Macroeconômicas do Instituto de Pesquisa Econômica Aplicada (IPEA). Brasília, 2020.

CONTI, Maurício. **Direito Financeiro em tempos de pandemia**. Coluna Fiscal do Jota. Brasília, março de 2020. Disponível em: https://www.jota.info/opiniao-e-analise/colunas/coluna-fiscal/direito-financeiro-em-tempos-de-coronavirus-19032020. Acesso em 25 de maio de 2021.

DERZI, Misabel Abreu Machado. Lei de Responsabilidade Fiscal: Normas Gerais de Direito Financeiro. *In*: MARTINS, Ives Gandra da Silva (coordenador). **Tratado de Direito Financeiro, volume 2**. 2ª edição. São Paulo: Editora Saraiva, 2013. p. 340-379x.

FERREIRA, Francisco Gilney Bezerra de Carvalho. A Regra De Ouro Como Limite Constitucional ao Endividamento Público no Brasil. *In:* CONTI, José Maurício

(coordenador). **Dívida Pública: série de direito financeiro**. 1ª edição. São Paulo: Editora Bluche, 2019. p. 607-638.

FORTUNA, Eduardo. **Mercado Financeiro: Produtos e Serviços**. 22ª Edição. Rio de Janeiro: Editora Qualitymark, 2020.

FILHO, Oswaldo Othon de Pontes Saraiva. Receitas Públicas: Conceito e Classificação. *In*: MARTINS, Ives Gandra da Silva (coordenador). **Tratado de Direito Financeiro, volume 2**. 2ª Edição. São Paulo: Editora Saraiva, 2013. p. 7-32.

GASTALDI, J. Petrelli. **Elementos de Economia Política.** 19ª edição. São Paulo: Editora Saraiva, 2005.

GAZIER, Bernard. **A Crise de 1929: uma breve introdução**. Tradução de Júlia da Rosa Simões. 1ª edição. Porto Alegre: Editora LePM Editores. 2009.

HARADA, Kiyoshi. **Direito Financeiro e Tributário**. 29ª edição. São Paulo: Editora Atlas, 2020

HUNT, Mark Lautzenheiser. **História do Pensamento Econômico**. Tradução de André Arruda Villela. 3ª edição. Rio de Janeiro. Editora Elsevier, 2013.

LEITE, Geilson Salomão. Crédito e Empréstimo Público. *In*: MARTINS, Ives Gandra da Silva (coordenador). **Tratado de Direito Financeiro, volume 2**. 2ª Edição. São Paulo: Editora Saraiva, 2013. p. 33-49.

LIMA, Edilberto Carlos Pontes. Legislação da Dívida Pública Brasileira. **Série Cadernos de Autos Estados 2: Dívida Pública Brasileira,** Brasília: Câmara dos Deputados, n. 2, p. 103-107, 2005.

MATIAS PEREIRA, José. **Finanças Públicas: a política orçamentária no Brasil**. 2ª edição. São Paulo: Editora Atlas, 2003.

MENDONÇA, Félix. Desmitificando a Dívida Pública. **Série Cadernos de Altos Estudos 2: Dívida Pública Brasileira,** Brasília: Câmara dos Deputados, n. 2, p. 15-29, 2005.

MENDES, Gilmar Ferreira e NETO, Celso de Barros Correia. Transparência Fiscal. *In*: MARTINS, Ives Gandra da Silva (coordenador). **Tratado de Direito Financeiro, volume 1**. 1ª Edição. São Paulo: Editora Saraiva, 2013. p. 177-201.

MILL, Stuart. **Princípios de Economia Política**. 1ª edição. ISBN: 9788583863656. [S.l.] Editora Lebooks, 2019.

PARDINI, Daniel Jardim. **O Déficit Público Brasileiro: uma perspectiva do império ao plano cruzado**. Revista de informação legislativa, v. 35, n.139, p.83-92, julho/setembro, 1998.

PISCITELLI. Tathiane. **Direito Financeiro**. 6ª edição. Rio de Janeiro: Editora Método, 2018.

SANDRONI, Paulo. **Novíssimo Dicionário de Economia**. 3ª edição. São Paulo: Editora Best Seller, 1999.

SQUIZZATO, Ana Carolina. **Direito Financeiro e Econômico**. 1ª edição. Rio de Janeiro: Editora Forense; São Paulo: Editora Método, 2013.

SILVEIRA, Daniel Marinho da. **A Capacidade de Endividamento do Estado e o Desenvolvimento Econômco: Caso Bahia**. 1979. 128 f. Dissertação (Mestrado em Economia) – Universidade Federal da Bahia (UFB), 1979.

SILVA, Muro Santos. **Política econômica emergencial orientada para a redução dos impactos da pandemia da Covid-19 no Brasil: medidas fiscais, de provisão de liquidez e de liberação de capital**. Texto para discussão nº 2576 do Instituto de Pesquisa Econômica Aplicada (IPEA). Brasília, junho de 2020.

TESOURO NACIONAL. **Relatório de Projeções da Dívida Pública nº 3 de 2020**.Ministério da Economia, Secretaria Especial de Fazenda, Secretaria do Tesouro Nacional. Brasília, outubro de 2020: Disponível em: https://sisweb.tesouro.gov.br/apex/f?p=2501:9::::9:P9_ID_PUBLICACAO:34723. Acesso em 5 de setembro de 2021.

TESOURO NACIONAL. **Relatório de Projeções da Dívida Pública nº 1 de 2021**. Ministério da Economia, Secretaria Especial de Fazenda, Secretaria do Tesouro Nacional. Brasília, abril de 2021: Disponível em: https://sisweb.tesouro.gov.br/apex/f?p=2501:9::::9:P9_ID_PUBLICACAO:38868 Acesso em 5 de setembro de 2021.

TORMIN, Sérgio. **Déficit Público, Dívida Pública e Crescimento Econômico: uma Análise do Período Pós-Real**. 2008. 118 f. Dissertação (Mestrado em Economia Política) – Pontifícia Universidade Católica (PUC) de São Paulo, 2008.

TORRES, Ricardo Lobo. **Curso de Direito Financeiro e Tributário**. 11ª edição. Rio de Janeiro: Editora Renovar, 2004.

VASCONCELLOS, Marco Antonio Sandoval, GARCIA, Manuel Enriquez**. Fundamentos de Economia**. 5ª edição. São Paulo: Editora Saraiva, 2014.