



PRIVATIZATIONS, BASIC SANITATION, AND THE COMMONS PARADIGM: NEW ENCLOSURES OF NEOLIBERALISM

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Abstract: This article analyzes the privatization of essential public services, focusing on basic sanitation in Brazil, in light of the paradigm of the commons. It hypothesizes that the transfer of the management of goods indispensable to life, such as water and sewage, to models oriented towards competition, economic efficiency, and private profitability can be understood as a contemporary form of neoliberal enclosure. The research adopts a qualitative, theoretical-critical approach, through a narrative bibliographic review and normative analysis of the Brazilian privatization agenda, especially Law No. 8.031/1990 and Law No. 14.026/2020. Initially, the concept of neoliberalism is delimited based on its different critical matrices, articulating the contributions of David Harvey, Pierre Dardot, Christian Laval, and the national literature on austerity, inequality, and public policies. Then, the paradigm of the commons is examined as an interpretative key to understanding the mercantile appropriation of collective goods and the expansion of business logic over essential public services. It is argued that the privatization of basic sanitation is not a merely administrative or neutral phenomenon, but rather integrates a broader process of reconfiguring the welfare state, reducing the centrality of direct public provision, and opening new spaces for private accumulation. It is concluded that the paradigm of the commons offers a relevant theoretical tool for rethinking the limits of privatization and affirming the democratic protection of goods essential to human dignity, social justice, and collective well-being.

Keywords: Common; Privatizations; Neoliberalism; Basic sanitation

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Abstract: *This article analyzes the privatization and divestiture of essential public services, with a focus on Brazilian basic sanitation, in light of the commons paradigm. It proceeds from the hypothesis that the transfer of the management of goods indispensable to life, such as water and sewage services, to models oriented by competition, economic efficiency, and private profitability may be understood as a contemporary form of neoliberal enclosure. The research adopts a qualitative, theoretical-critical approach, through a narrative bibliographic review and normative analysis of the Brazilian privatization agenda, especially Law No. 8,031/1990 and Law No. 14,026/2020. Initially, the concept of neoliberalism is delimited based on its different critical matrices, articulating the contributions of David Harvey, Pierre Dardot, Christian Laval, and the Brazilian literature on austerity, inequality, and public policies. The article then examines the commons paradigm as an interpretive framework for understanding the market appropriation of collective goods and the expansion of entrepreneurial logic over essential public services. It argues that the privatization of basic sanitation is not a merely administrative or neutral phenomenon, but rather part of a broader process of reconfiguring the social State, reducing the centrality of direct public provision, and opening new spaces for private accumulation. The article concludes that the commons paradigm offers a relevant theoretical instrument for rethinking the limits of privatization and affirming the democratic protection of goods indispensable to human dignity, social justice, and collective well-being.*

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1. Introduction

The privatization of essential public services occupies a central position in the contemporary debate on the State, the market, and fundamental rights. In Brazil, since the 1990s, the privatization agenda has been presented as an instrument for administrative modernization,

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attracting investment, increasing efficiency, and overcoming the State's fiscal limitations. This rationale gained new momentum with recent sectoral reforms, among which the New Legal Framework for Basic Sanitation, established by Law No. 14,026/2020, stands out, favoring the expansion of private participation in the provision of water and sewage services.

This article proposes to analyze this process from the paradigm of the commons. It starts from the understanding that certain goods and services—such as water, sanitation, energy, health, knowledge, and the environment—cannot be adequately understood merely as commodities or economic assets, since they are directly linked to life, human dignity, social justice, and the realization of fundamental rights. In this sense, the transfer of the management of essential services to the market can represent a contemporary form of enclosure, that is, the institutionally mediated appropriation of goods and resources that have a collective dimension.

The research problem consists of investigating to what extent the privatization of essential public services, especially in Brazilian basic sanitation, can be understood, in light of the paradigm of the commons, as contemporary forms of neoliberal enclosure. The hypothesis is that such processes, although legally presented as mechanisms of efficiency, universalization, and modernization, can operate as instruments of commodification of common goods, subjecting services indispensable to life to the logic of competition, profitability, and private accumulation.

To address this problem, the article adopts a theoretical-critical bibliographic review methodology, articulated with a normative analysis of Brazilian legislation on privatization and basic sanitation. It is not, therefore, an empirical case study, but a theoretical and legal-political reflection on the institutional and discursive bases that underpin the transfer of essential public services to the market. The examples relating to basic sanitation are used illustratively, as an expression of a broader trend towards the corporatization of public services.

The choice of basic sanitation as the focus of analysis is justified by its essential nature. Access to potable water and sewage disposal constitutes a material condition for health, dignity, equality, and social well-being. For this reason, the privatization of this sector allows for a clearer observation of the tensions between economic efficiency, social justice, democracy, and the protection of the commons.

The article is divided into four parts. The first defines the concept of neoliberalism adopted, acknowledging the semantic diversity of the category and articulating the contributions of Harvey, Dardot and Laval, and Daniel Pereira Andrade. The second presents the paradigm of the commons and the notion of enclosures as critical instruments for understanding the mercantile appropriation of collective goods. The third examines the relationship between privatization, austerity, and accumulation by dispossession, incorporating national literature on the social impacts of reducing the role of the State. The fourth analyzes Brazilian basic sanitation



as a privileged field for the manifestation of contemporary neoliberal enclosures.

2 The “paradigm of the commons” and the “enclosure of the commons”

Before proceeding with the analysis of privatizations, it is necessary to define the meaning in which the term neoliberalism is used in this article. As Daniel Pereira Andrade (2019) observes, the concept of neoliberalism is marked by significant semantic dispute in the social sciences, being mobilized by different theoretical traditions, such as Foucault's, Marxist's, Bourdieu's, Weberian, and approaches that emphasize the multiple historically situated neoliberalisms. This diversity, however, does not preclude the use of the concept; on the contrary, it reveals its strategic importance for articulating critical knowledge, social struggles, and diagnoses of the contemporary reconfiguration of the State and the market.

In this article, neoliberalism is understood in a broad sense, as a political-economic rationality that is not limited to the defense of the "minimal state," but involves the active restructuring of the state according to the logic of competition, efficiency, corporatization, and the opening of new fields of accumulation to private capital. Thus, the perspectives of Harvey and Dardot and Laval are mobilized here in a complementary way: Harvey allows us to understand privatization and divestiture as mechanisms of accumulation by dispossession, while Dardot and Laval allow us to interpret neoliberalism as a normative rationality that expands the business form to the state, to public services, and to the subjects themselves.

Dardot and Laval develop their concepts regarding the new forms of appropriation in capitalism. In the 21st century, capitalism has developed in such a way that, far beyond property as representative of its being, it encompasses goods that were previously thought to be unappropriable. Dardot and Laval will call these forms of appropriation (or expropriation) "enclosures".

According to the authors (2017, p. 102), the privatizations that occurred in the 1980s and 1990s represent a large part of the appropriation brought about by neoliberalism. And from this perspective, the concept of "commons" emerges, which can be understood as a direct reaction to one of the central characteristics of neoliberalism, namely, the appropriation by capital of assets that previously belonged to the public domain, the welfare state, or were under the management of local communities.

This new form of appropriation has generated upheavals in capitalist society, as can be seen with the exponential increase in privatizations throughout this century, more pronounced than those witnessed in the 1980s and 1990s. According to Dardot and Laval (2017, p. 103)

The effects on social relations were considerable. In about thirty years, inequalities



deepened, the wealth of the richest grew vertiginously, and real estate speculation accelerated urban segregation. The forms of integration of the popular classes into national society were altered, workers' organizations and left-wing parties lost their mediating function, and income redistribution mechanisms did not disappear, but their capacity for integration suffered a notable decrease. In short, society became polarized, fragmented, and depoliticized.

Following this new form of neoliberal generalization and hegemony, it became possible to observe a concept present in the writings of Dardot and Laval, namely, the concept of "governance," which, among other factors, represents a "neoliberal hybridization of the public-private" (Dardot; Laval, 2017, p. 103).

According to Dardot and Laval (2017, pp. 103-108), this comprehensive "enclosure" movement is led by large corporations, with the complicity of governments that submit to market logic. Commodification, the growing dominance of large companies, and the pressure of proprietary logic go hand in hand, without political or moral restrictions. As David Bollier points out, the "paradigm of the commons" has had a controversial and strategic impact from the outset, as it directly opposes the dominance of the market economic model and the ideology of property rights, which are presented as the only ways to promote economic efficiency and collective well-being.

Dardot and Laval point out two important aspects of the commons, the first being the defensive aspect. This relates to the paradigm of the commons by understanding the term "commons" as all the "common resources" available to humanity or restricted to a select group in society. According to Bollier, by recognizing that "common resources" encompass not only landscapes, water, air, ideas, science, radio waves, and the internet, but also social relations, education, and civic engagement, we would be able to formulate strategies to protect the commons against market incursions and appropriation practices that constitute the "silent theft" of what is collectively owned (Dardot; Laval, 2017, p. 108).

The second aspect, the offensive aspect, concerns the development of the commons from "common resources". In this sense, for David Bollier (2011, p. 306),

The commons constitute the humus in which new communal social practices (*commoning*) are born; these provide us with effective clues for rethinking our social order, our political governance, and our environmental management. The commons make possible new upward energies capable of redesigning our political institutions.

According to Dardot and Laval (2017, pp. 108-109), understanding this offensive perspective would allow us to understand that the accumulation of wealth goes beyond the accumulation by the owners of capital, but also includes the communities in which members "share knowledge and skills." An example of this would be the wealth of information provided by the internet.



From this perspective, the paradigm of the commons has gained strength, as exemplified by the writings of David Bollier and Naomi Klein, who propose a more developed form of the concept of the commons. For the authors (2017, p. 111), the issue of the commons has a strong appeal, as it appears to have the capacity to connect the battles against the most harmful elements of neoliberalism, e.g., privatization, global warming, to the struggles for a new social structure, based on renewed principles of solidarity, sharing, respect for the environment and biodiversity.

The question of the commons is based, as Naomi Klein rightly observes, on the active and self-determining aspect of this paradigm. If not evident, it is at least in defense of a counter-attack against the "enclosure" of the commons. For the author (2001)

What we need is to formulate a political framework that can both take on corporate power and control, and empower local organizing and self-determination. That has to be a framework that encourages, celebrates and fiercely protects the right to diversity: cultural diversity, ecological diversity, agricultural diversity—and yes, political diversity as well: different ways of doing politics. Communities must have the right to plan and manage their schools, their services, their natural settings, according to their own lights.

This reflection reveals that the study of the commons provides a solid theory for interpreting the ways in which neoliberalism expropriates common goods, stemming from a movement that is not only political and cultural, but also structured and theoretically defined. The various crises in modern capitalism represent institutional changes that serve as objects of study for the paradigm of the commons, and this understanding is coupled with the rhetorical and real advancement of the theme as a way of defending the commons.

3 Privatizations as expropriation of the commons

Initially, the authors (2017, p. 124) question whether the traditional understanding of the expropriation of the commons is suitable for new forms of enclosure of the commons. To this end, they examine texts dealing with agricultural capitalism in Europe. The first of these is Thomas More's *Utopia*, in which he denounces, among collectives and individuals whose behavior can harm a nation, parasites of the aristocracy, cruel mercenaries, plunderers, and all those who, driven by greed, seized the land to raise sheep.

Karl Planyi, in turn, offers his perspective on "enclosures." Enclosures in the literal sense of "fences" placed on common land. For the author (1983, p. 61),

It is rightly said that the enclosures were a revolution of the rich against the poor. The nobles and lords subverted the social order and shook the law and custom of ancient times, employing violence at times, and often pressure and intimidation. They literally stole the portion of communal goods that belonged to the poor and demolished the houses that these, thanks to the hitherto unbreakable force of custom, had long considered theirs, theirs and their heirs'. The fabric of society was torn; the abandoned villages and ruined houses bore witness to the violence with which the revolution



unfolded, jeopardizing the country's defenses, devastating its cities, decimating its population, turning exhausted soil into dust, scourged the inhabitants, and transforming those honest farmers into a mob of beggars and thieves.

This form of expropriation, appropriation, or enclosure is interesting from the point of view of representing in an equally universal way what happens in Latin America. The pillaging and enclosures followed the economic and social transformation of the extinction of communal lands and customs, accompanied by the appropriation of Church property during the Reformation period. The enclosure of communal lands and the implementation of large-scale pastures are considered the main factors of this economic revolution that provided the conditions for the emergence of capitalism (Dardot; Laval, pp. 124-125).

As Marx (2013) observes, the appropriation of communal lands enabled large landowners to become breeders of extensive herds, resulting in an increase in the amount of manure required for agriculture and, consequently, raising yields and revenues.

Dardot and Laval (2017, p. 127) go further, stating that Marx's argument is crucial in this context, since capitalism represents a form of production that is more collective than the productive forms it extinguishes, and is, in any case, doomed to historical condemnation. Only economists with a limited vision maintain the idea that capitalism is based on private property in a broad sense; in fact, its essence lies in the elimination of the private property of direct producers. In this sense, according to the authors, the destruction of the "commons" would be justified.

However, contemporary capitalism, unlike industrial capitalism in Marx's time, represents "accumulation by dispossession." According to the authors (2017, p. 131), "accumulation by dispossession" refers to an increase in value that occurs not through the traditional endogenous methods of capitalist exploitation, but rather through a combination of political and economic tools, which allows the ruling class to appropriate – whenever feasible, without cost – goods that did not belong to anyone or that were previously under public guardianship or collective cultural and social heritage.

The category “accumulation by dispossession,” developed by David Harvey (2005) based on a reinterpretation of Marxist primitive accumulation and in dialogue with the critical tradition of imperialism, allows us to understand the privatization of public goods, the commodification of natural resources, and the opening of new spaces for private investment as permanent mechanisms for the reproduction of capital. Unlike accumulation based solely on the direct exploitation of labor, accumulation by dispossession operates through the appropriation of assets, rights, services, and resources previously situated outside the logic of the market or protected by public, community, or social regimes.



Dardot and Laval's contribution, in turn, allows us to understand that such processes are not limited to economic acts of asset transfer, but rather integrate a broader normative rationality that reorganizes the State, public services, and individuals according to the form of competition and enterprise.

It is possible, however, to achieve the same goal of accumulation through the devaluation of existing capital assets and labor. According to David Harvey (2005, p. 125), crises can be planned, managed, and controlled with a view to rationalizing the system, and are essentially related to austerity programs implemented by the State, which utilize the important levers of interest rates and the credit system.

To understand how privatizations represent forms of enclosure of the commons, it is initially necessary to clarify a certain terminological imprecision of the term in Brazilian law. As Professor Washington Peluso Albino de Souza (2005, p. 368) observes, there is some imprecision in the adoption of the term "privatization".

According to Washington Peluso Albino de Souza, if "nationalization" refers to companies created by the State, then "privatization" would be the return to private ownership of companies that previously belonged to the State and whose ownership was transferred to the State.

The privatization agenda must also be understood in connection with the rationale of austerity. In the Brazilian debate, austerity has been defined as an adjustment policy based on reducing public spending and diminishing the role of the State as an inducer of economic growth and promoter of social welfare. This orientation shifts the debate on public services to a restrictive fiscal grammar, in which cost containment, managerial efficiency, and the attraction of private investment are presented as necessary solutions to structural problems of financing and universal access (Rossi; Dweck; Arantes, 2018).

However, national literature critical of austerity demonstrates that reducing public spending is not neutral from a distributive point of view. By compromising the state's capacity to provide free public services and social policies, austerity tends to affect socially vulnerable groups more intensely, widening inequalities and transferring the provision of goods previously treated as rights to the market. It is at this point that austerity and privatization converge: both operate as techniques for reconfiguring the welfare state, reducing the centrality of direct public provision and expanding spaces for private accumulation in sectors linked to basic needs (Rossi; Dweck; Arantes, 2018).

Having made this distinction, it is important to understand the concepts of privatization for critical social theory. For David Harvey (2005, pp. 130-131), privatization and market liberalization constituted the mantra of the neoliberal movement, resulting in the transformation



of the "expropriation of common lands" into a central objective of state policies. Assets previously owned by the state or intended for the collective use of the population were transferred to the market, allowing accumulated capital to invest in them, increase their value, and speculate on them.

This was initially reflected in Margaret Thatcher's England ³, with its social housing policies, as well as the privatization of services provided by the state, such as water, telephone, electricity, etc. This sector adopted market logic, which generated a radical transformation of social classes and a redistribution of assets that, obviously, favored the upper classes much more than the lower classes. This logic was similarly replicated in South Africa, Argentina, and Mexico (Harvey, 2005, pp. 131-133).⁴

In Brazil, the privatization project took place after redemocratization, going against the interventionist policy used until then. As Professor Washington Peluso Albino de Souza (2005, p. 366) points out, the first major milestone was Law 8.031 of 1990, legislation committed to the neoliberal agenda in Brazil.

In the National Privatization Program (Law 8.031/1990), the very adoption of the term "intervention" already denotes the neoliberal bias of the State's position in relation to the economy, since, in light of the substantial economic analysis of Professor Washington Peluso Albino de Souza (2005), the State does not "intervene" but rather "acts" in the market, as it is a legitimate actor, as stated in the 1988 Constitution. The objective of the Program, as stated in Article 1, is to reorganize the strategic position of the State in the economy, transferring to private initiative the activities improperly exploited by the public sector.

4 Privatization of public services as the "armed wing" of neoliberalism

It is in public services that the enclosure of the commons seems most evident to us, since

³According to David Harvey (2005, p. 131), in the context of Thatcher's administration, the extensive stock of social housing was one of the first elements to be subjected to the privatization process. At first glance, this measure seemed like an opportunity for the most disadvantaged segments of the population, who could transition from renters to homeowners at a relatively affordable cost. However, soon after this change in status, real estate speculation began, especially in the most valued central areas. This phenomenon brought with it practices such as influence peddling, outright deception, and the expulsion of low-income populations to the peripheries in cities like London, converting old housing complexes intended for the working class into points of intense occupation by members of the middle classes. The erosion of affordable housing culminated in an increase in the number of homeless citizens and the emergence of social anomie in various urban contexts.

⁴According to Harvey (2005), the World Bank considered post-apartheid South Africa as an example of the greater potential efficiency resulting from privatization and market liberalization. The institution, for example, promoted both the privatization of water supply and the implementation of "full cost recovery" in relation to municipally owned resources. Instead of having free access to water, consumers were required to pay for its supply. This same logic motivated Argentina to experiment with a wide range of privatizations (encompassing sectors such as water, energy, telecommunications, and transport), culminating in a significant influx of overaccumulated capital and a substantial appreciation of assets. However, this also led to a surge in impoverishment affecting large segments of the population, reaching about half of the citizens.



it focuses its attention on "enclosing" common goods that were previously not imagined to be appropriable, especially because they are historically related to state service.

According to Robertônio Pessoa (2020, p. 3), influenced by neoliberal rationality, several sectors of the Administration and public services have been increasingly subjected to a market logic. Public services considered essential are being transformed into fields of private investment, being managed and exploited according to the interests of big capital, especially through the proliferating development of "business models" between the State and business groups through public-private partnerships.

When understanding natural resources as common goods, it becomes clear that many of them are intangible, such as electricity and the air we breathe. Transferring the management of these essential services to the market represents a new form of enclosure, where the paradigm of the commons identifies an active form of participation by neoliberalism.

According to Robertônio Pessoa (2022), this specific form of enclosure (privatization, or divestiture) differs from the simple privatization of public or state-owned companies, in which the transfer of public share capital to private companies or consortia is characterized as an irreversible act, except in cases of eventual nationalization or renationalization.

Furthermore, because we are at a stage where financial capitalism is characterized precisely by the demand for this new process of dispossession (or spoliation), in which what had previously managed to avoid capitalist domination begins to suffer one form or another of colonization (Dardot; Laval, 2017), the accumulation of capital goes beyond the appropriation of the service provided, as in financial speculation.

There is a congruence between rent-seeking interests and the private provision of public services, which, although not treated as "privatizations" because they are mostly concessions or PPPs (Public-Private Partnerships), reveal the de-statizing character of neoliberalism, fulfilling the privatization agenda.

As Dardot and Laval (2017) observe, in essence, what appears innovative in the theory of "accumulation by dispossession" aligns with a conventional line of reasoning in Marxism: although the State has the capacity to intervene significantly, it never goes beyond the role of a more or less explicit manifestation of the fundamental logic of capital. Enclosures, in their various manifestations, result in significant phenomena of exclusion and inequality, as well as accelerating environmental deterioration. This dynamic transforms culture and communication into commodities and increasingly fragments society into consumer-individuals who are indifferent to their collective destiny.

Robertônio Pessoa (2022) will call this adoption of neoliberal market logic to public services "corporatization," where health and basic sanitation – which until then were considered



essential and exclusively provided by the State – have gradually become sectors of private investment, managed according to market logics in different forms of partnership with the State. This approach is defended with the argument that opening the market to public services would be the only way to promote competitiveness and efficiency in this sector, thus encouraging the universalization of these services.

According to the author (2024), this attractive and well-structured rhetoric about the “sharing of responsibilities” (verantwortungsteilung) between the public and private sectors has become one of the characteristics of the new public governance. This distribution of responsibilities, in which business groups are presented as “partners” of the State, has been promoted as a way to “democratize” public management, making it more consensual, dialogical, and more open to the “endogenous potential” of civil society in relation to knowledge, expertise, and solutions to the various problems that the State needs to address.

As illustrative examples of this trend, recent experiences of granting concessions and expanding private participation in basic sanitation can be mentioned, such as regional concessions and the privatization or divestiture of state-owned companies. These examples are not analyzed in this article as autonomous case studies, but as institutional manifestations of a broader movement to reconfigure the sector after Law No. 14,026/2020.

Based on the New Regulatory Framework for Basic Sanitation (Law 14.026/2020), it is possible to perceive an even greater trend towards privatization of public services, as exemplified by the concession of Water and Sewage services in the State of Piauí, as well as the privatization of the Basic Sanitation Company of the State of São Paulo (SABESP), which is the largest sanitation company in Brazil with more than 28 million users.

By way of illustration, we have the current concession to Aegea – Saneamento e Participações SA for water and sewage services in municipalities of Piauí, for a period of 35 years, having won the auction with an offer of a 1% discount on the tariff, associated with a grant amount of R\$ 1 billion. The same company received an investment of R\$ 1.2 billion from Banco Itaú, which currently owns 10% of its shares ⁵.

One of the fundamental aspects of the new discipline is the rule that determines that the execution of basic sanitation services by an entity that is not part of the administration of the entity responsible for the service, in this case the municipalities, requires the signing of a concession contract, through prior bidding, as stipulated in article 175 of the Federal Constitution. In this way, the new framework implements a gradual replacement of program

⁵Press release published on the ITAÚSA website, which can be accessed via the link: <https://www.itausa.com.br/show.aspx?idMateria=zLESinoh97cgyWLz962y5g==#:~:text=A%20Aegee%20Saneamento%20%C3%A9%20uma,de%2011%20milh%C3%B5es%20de%20pessoas.&text=A%20Ita%C3%BAsa%20%C3%A9%20uma%20holding,e%20para%20toda%20a%20sociedade..>



contracts with concession contracts, allowing the progressive entry of private companies into the operation of sanitation services, in place of the state companies that previously performed functions in this segment. (Pessoa, 2022, p. 9-10).

In empirical research conducted by Larissa Silveira Côrtes et al (2023), using an econometric analysis, results were obtained regarding the impacts of the privatization of public water and sewage services. The research aimed to analyze the effect of the privatization of sanitation, particularly concerning the supply of water and sewage services, on access to these services and the tariffs applied. To this end, data from 1998 to 2019 were evaluated, employing difference-in-differences models with municipal information extracted predominantly from SNIS and IBGE.

In summary, the research results indicate that the privatization of water and sewage services has a positive effect on access to these services, the sewage treatment rate, and the average tariff charged for such services. However, as the author (2023) observes, the results obtained must be analyzed in conjunction with the limitations of the models used, arising both from the scarcity of available variables and from the generalization made by consolidating all public providers into a single category, since they include municipalities served by both state concessionaires and municipal providers, which are substantially different from each other.

In this sense, Larissa Cortês (2023) warns that indicators of water and sewage service provision, despite aiming to reflect the inclusion of the population in access to these services, are not capable of evaluating the quality of service received nor the equity of this access in different municipalities.

Therefore, the maxim of efficiency propagated by neoliberalism at any cost is observed, which cannot be considered a purely financial result. The arguments brought by neoliberal logic are diverse: 1) it would generate more significant social benefits and resolve historical issues related to the administration and provision of services by state entities; 2) private companies, by acting in place of public institutions, would demonstrate greater reactivity, dynamism, responsiveness, and adaptability to modernization and technological innovation processes; 3) greater flexibility and debureaucratization, showing less susceptibility to clientelistic and patrimonial practices that frequently hinder the performance of state entities responsible for providing public services. (Pessoa, 2022, p. 7).

In the enclosure of the commons, the pursuit of efficiency emerges as an argument for the exploitation of public services previously provided by the State. These public services are mostly essential public services, such as basic sanitation, electricity, gas, etc.



The critique of efficiency as an absolute criterion for legitimizing public policies can be reinforced by the notion of austerity neoliberalism. Gomes and Clark (2021) observe that austerity presents itself as a legitimizing narrative based on the performance of the capitalist model, shifting the democratic debate towards parameters of efficiency, productivity, and optimization. In this context, the principle of efficiency tends to override the democratic principle, reducing the space for dissent and naturalizing certain political choices as if they were inevitable technical impositions.

This aspect is especially relevant for the analysis of basic sanitation. When the universalization of access to water and sewage treatment comes to depend primarily on the capacity to attract capital, the tariff structure, and the profitability of contracts, there is a risk of shifting the focus of public policy: from a fundamental socially oriented right to an economic service regulated by criteria of efficiency and financial return.

Applied to essential public services, this logic produces significant effects. The decision about who should manage water, sanitation, or other services indispensable to life ceases to be treated primarily as a democratic choice about fundamental rights and begins to be presented as a technical problem of contractual modeling, economic and financial viability, and regulatory efficiency. The paradigm of the commons allows us to reposition this discussion on another level: that of collective deliberation on goods whose importance transcends their economic measurement.

In this sense, Robertônio Pessoa (2022, p. 6) observes that in the analysis of the category of essential public services, the issues at stake are needs that are objective, vital, urgent, and indispensable, far removed from mere "utilities" or "conveniences." In a more contemporary context, what should guide the legal-political discussion about the "essentiality" of certain "public services" is the "fundamental" nature of the rights involved, which are related to the satisfaction of basic needs that are intrinsic to the human condition and the dignity of the individual.

As an example cited earlier regarding the privatization of essential public sanitation services, especially the provision of services and exploitation of water resources, from a perspective of analyzing the constitutionality of the Basic Sanitation Regulatory Framework, Robertônio Pessoa (2022, p. 11) observes that the restriction imposed by the new regulatory framework that prevents municipalities from entering into program contracts with state-owned companies is unconstitutional, since it infringes on the autonomy guaranteed to these federative entities to determine the most appropriate modality for providing the services assigned to them.

This is because, according to the author, this perspective does not fit our cooperative



federal model, which would ultimately force municipalities to opt for delegating sanitation services. There is even an attempt to transfer responsibility for basic sanitation to the private sector, arguing that competition will provide greater efficiency in the provision of this service and enable the desired universalization.

Final considerations

This article sought to analyze the privatization of essential public services, with special attention to basic sanitation in Brazil, in light of the paradigm of the commons. Based on a theoretical-critical literature review, articulated with a normative analysis of the Brazilian privatization agenda and the New Legal Framework for Basic Sanitation, it aimed to demonstrate that the transfer of the management of goods and services indispensable to life to models oriented by competition, economic efficiency, and private profitability is not a merely administrative or technically neutral phenomenon. On the contrary, this movement can be understood as an institutional expression of a neoliberal rationality that reconfigures the relationship between the State, the market, and society.

The initial hypothesis was confirmed on a theoretical-interpretative level. It was argued that the privatization of essential public services, especially in the basic sanitation sector, can be interpreted as contemporary forms of enclosure of the commons, insofar as they shift goods and services of strong collective density, such as water, sewage, and the public infrastructure necessary for health and human dignity, to circuits of economic exploitation subject to market logic. This conclusion does not mean asserting, in universal empirical terms, that every concession or privatization necessarily produces exclusion, tariff increases, or a worsening of service provision. The central argument is more specific: the rationality that structures such processes tends to subordinate common goods to criteria of profitability, managerial efficiency, and financial return, which requires a critical reading from the perspective of fundamental rights, social justice, and democracy.

The conceptual delimitation of neoliberalism proved to be an indispensable step in constructing the argument. As a contested category in the social sciences, neoliberalism cannot be used generically or indiscriminately. Therefore, this article sought to articulate, in a complementary way, different critical frameworks. On the one hand, David Harvey's contribution allows us to understand privatizations, the commodification of public goods, and the opening of new spaces for private investment as mechanisms of accumulation by dispossession. On the other hand, Dardot and Laval allow us to understand neoliberalism as a normative



rationality that goes beyond the defense of the minimal state, since it presupposes the active role of the state itself in the production of markets, in the imposition of competition, and in the diffusion of the business form over institutions, public services, and subjectivities.

In this sense, the notion of the enclosure of the commons has proven especially relevant for understanding the current state of privatization. Historically, enclosures have been associated with the appropriation of communal lands and the dissolution of collective forms of resource use and management. In contemporary capitalism, however, these enclosures take on more sophisticated forms, legally mediated and institutionally legitimized. It is not just about enclosing land, but about converting services, infrastructure, natural resources, data, knowledge, health, education, energy, and sanitation into fields of private investment, exploitation, and accumulation. What was previously perceived as a right, a public good, or a social need is now being reorganized as an economic asset.

In this context, basic sanitation in Brazil constitutes a privileged field of observation. Water and sewage treatment are not ordinary commodities, as they are linked to life, public health, human dignity, material equality, and the very possibility of enjoying other fundamental rights. When the universalization of these services comes to depend primarily on the attractiveness of contracts, the ability of users to pay, tariff modeling, and the security of private return, a qualitative shift occurs in the understanding of public service. The focus of public policy ceases to be exclusively the universal guarantee of an essential right and begins to decisively incorporate the criteria inherent in economic rationality.

The analysis also allowed for a connection between privatization and austerity. In the Brazilian context, austerity has operated as a discourse limiting the social role of the State, presenting spending cuts, budget restraint, and the transfer of responsibilities to the private sector as inevitable responses to the fiscal crisis. This narrative transforms political choices into supposed technical impositions. Thus, the privatization of essential public services appears not only as an administrative option but as part of a broader project of reconfiguring the welfare state, in which direct provision, public universalization, and redistributive solidarity are progressively replaced by models of contractual management, public-private partnerships, concessions, and economic regulation. From this perspective, the critique of efficiency as an absolute criterion of legitimation becomes central.

Administrative efficiency, while a relevant constitutional principle, cannot be isolated from other constitutional commitments, especially the dignity of the human person, the reduction of inequalities, social justice, the universality of essential public services, and democratic participation. When efficiency is taken as an autonomous and superior value, there is a risk of



reducing complex political and social problems to questions of performance, productivity, and economic-financial modeling. The debate about who should manage water, how tariffs should be structured, which territories will be prioritized, and what mechanisms of social control will be ensured cannot be relegated to a purely technical sphere, immune to democratic dissent.

The paradigm of the commons therefore offers a critical key to repositioning this discussion on a different level. Its contribution is not limited to denouncing the commodification of collective goods. It also allows for the formulation of a theoretical and political alternative that transcends both unrestricted trust in the market and the simple abstract defense of a return to the classic welfare state. By emphasizing co-participation, co-decision, and co-obligation, the commons points to institutional forms of protection, management, and collective deliberation on goods indispensable to life. From this perspective, water, sanitation, and other essential services should be considered not only as objects of economic regulation, but as goods whose allocation involves shared responsibility, democratic control, and a material commitment to equality.

The article's contribution, therefore, lies in proposing a theoretical-critical interpretation of the privatization of basic sanitation in Brazil as contemporary manifestations of neoliberal enclosures. The work did not intend to conduct an empirical case study, econometric analysis, or exhaustive evaluation of concession contracts. The examples used were employed as institutional manifestations of a broader trend: the expansion of private presence in essential sectors, accompanied by a grammar of efficiency, modernization, competitiveness, and austerity. This methodological delimitation is important because it allows us to recognize the research's limitations without compromising its analytical contribution.

As a limitation of this study, it is recognized that the interpretation proposed here requires further empirical investigation. The theoretical-critical reading of privatizations as enclosures of the commons must be complemented by research that concretely examines the effects of concessions and privatizations on tariffs, service quality, universal access, regional inequalities, investments made, fulfillment of contractual goals, social participation, and the regulatory capacity of the State. It is also relevant to investigate whether private service provision models have equitably served peripheral, rural, poor populations, or those located in municipalities with low economic attractiveness.

Therefore, the future research agenda should advance in two complementary directions. The first consists of deepening empirical studies on basic sanitation in Brazil after Law No. 14,026/2020, paying attention to the social, territorial, economic, and democratic effects of concessions. The second consists of developing institutional alternatives guided by the paradigm of the commons, capable of articulating universalization, sustainability, social control,



democratic participation, and the protection of essential goods against processes of market appropriation. This involves considering not only the risks of privatization but also the possibilities of building new models of public, community, or cooperative management committed to social justice.

It can be concluded, therefore, that the defense of the commons constitutes one of the most relevant contemporary forms of resistance to neoliberal rationality. In the case of essential public services, especially basic sanitation, this defense is not to be confused with institutional nostalgia nor with an abstract rejection of any innovative legal-administrative arrangement. It means affirming that certain goods and services cannot be fully subjected to the logic of profit because they concern the minimum material conditions for a dignified existence. In light of the 1988 Federal Constitution, especially its commitments to well-being, social justice, the reduction of inequalities, and human dignity, the protection of the commons reveals itself not only as a theoretical requirement but as a legal-political imperative for the democratic reconstruction of the State and public policies in Brazil.

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