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## LAW 11.947/2009 THE NATIONAL SCHOOL FOOD PROGRAM REVISITED

## LEI 11.947/2009 O PROGRAMA NACIONAL DE ALIMENTAÇÃO ESCOLAR REVISITADO

**MARCELO BRANDÃO CECCARELLI<sup>1</sup>**

I Universidade Estadual de Campinas (UNICAMP). Campinas (SP). Brasil

**ANA ELISA SPAOLONZI QUEIROZ ASSIS<sup>2</sup>**

II Universidade Estadual de Campinas (UNICAMP). Campinas (SP). Brasil

**GILL MAIN<sup>3</sup>**

III University of Leeds. (ULeeds). Leeds, England, United Kingdom.

**ABSTRACT:** The aim of this work is to unveil the importance of the Brazilian National School Food Program towards solving the problems of hunger, malnutrition, food sovereignty, food culture (regional), as well as to assert to the new challenges imposed by covid-19 and the recent attempts to change this policy regulation. The changes provided by the law 11.947/2009 are both in accordance with the Brazilian 1988 Constitution and to the UN Sustainable Development Goals numbers 1, 2, 3 and 4. In order to analyze this major public policy, it was used legislative interpretation as well as official data on resources destined to the program. Another method was the revision of the literature regarding this policy in order to perceive its effectiveness. The results show democratic governance decreasing during the last few years, aggravated by the covid-19 crises, the federal government gave a slow response to it, what generated uncertainty both for the states and municipalities and put at risk the program continuity, the food security of many school age population, as well as the producers. Therefore, the program should be seen as a world example of success and must be preserved on national grounds.

**KEYWORDS:** Policy, Kelsen, School food, Education, UN-SDG.

**RESUMO:** O objetivo deste trabalho é desvendar a importância do Programa Nacional de Alimentação Escolar brasileiro para a solução dos problemas da fome, desnutrição, soberania alimentar, cultura alimentar (regional), bem como afirmar-se para os novos desafios impostas pela covid-19 e as recentes tentativas de alteração desta regulamentação política. As mudanças trazidas pela lei 11.947/2009 estão de acordo com a Constituição Brasileira de 1988 e com os Objetivos de Desenvolvimento Sustentável da ONU números 1, 2, 3 e 4. Para analisar esta importante política pública, utilizou-se também a interpretação legislativa como dados oficiais sobre os recursos destinados ao programa. Outro método foi a revisão da literatura sobre esta política para perceber a sua eficácia. Os resultados mostram a governança democrática diminuindo nos últimos anos, agravada pela crise da covid-19, o governo federal deu uma resposta lenta a ela, o que gerou incerteza tanto para os estados quanto para os municípios e colocou em risco a continuidade do programa, a segurança alimentar de muita população em idade escolar, bem como dos produtores. Portanto, o programa deve ser visto como um exemplo mundial de sucesso e deve ser preservado em âmbito nacional.

**PALAVRAS-CHAVE:** Políticas Públicas, Kelsen, Alimentação escolar, Educação, ODS- ONU.

<sup>1</sup> Orcid do(a) autor(a) 1: <https://orcid.org/0000-0003-2114-0662>

<sup>2</sup> Orcid do(a) autor(a) 2: <https://orcid.org/0000-0003-3759-4845>

<sup>3</sup> Orcid do(a) autor(a) 3: <https://orcid.org/0000-0002-6191-5269>

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## INTRODUCTION

The National School Food Program (*Programa Nacional de Alimentação Escolar PNAE*) is considered the oldest public policy in operation in Brazil, and its origin can at least be traced back to the 1930s (VASCONCELOS, 2005). Such a statement gives the reader the idea of permanence and stability of a policy. Nevertheless, what happened with the school feeding policy in Brazil dialogues intrinsically with the national political and international geopolitical transformations, and, therefore, is permeated by advances and setbacks derived from the political conjuncture of each time, as well as with the understanding of the idea of development itself. The idea of development in Brazil has its own complex history. From the debate of the formation of Brazilian's economy (FURTADO, 1987), (PRADO JR, 2000) to the attempt to industrialize the country and to overcome underdevelopment (MELLO, 2009). In order to clarify the importance of development and PNAE one must take into account that there is a connection between State and economy, and how the State is organized into Capitalism, will have consequences regarding food policy towards time and governments. As (TIJERINA W, 2020) and (VASCONSELOS, 2005) points out, the shape of politics, particularly when it comes to food policies, has to do with international context and how at each period the State was willing/allowed to locate itself under the international division of labour.

How both internal and external forces were accommodated under the history of food policy in Brazil had to do with the perception of how to overcome a peripheral position in the capitalism system, together with solving its issues of underdevelopment. It is also important, because as we see in (PEIXINHO, 2013) the transformations along the way led to the present format of PNAE, under Law 11947/2009. Until then, the approach towards school meal.

One should highlight the importance of Josué de Castro, as a innovator to the debate of hunger and the overcome of poverty in Brazil. As pointed out (BIZZO, 2009):

"Born in Recife, in 1908, Josué Apolônio de Castro graduated as a doctor in 1929, from the Faculty of Medicine of Rio de Janeiro (Nascimento, 2009). He did internships in Italy, Argentina and the United States. He was the founder and first director of all Brazilian public agencies focused on food issues: Social Security Food Service (SAPS, created in 1940), National Technical Food Service (1942), Institute of Food Technology (1944) and National Food Commission (1945). A professor of medicine, human

geography, anthropology and nutrition, he taught at the Recife School of Medicine and School of Philosophy and Social Sciences, at the University of the Federal District, and at the School of Philosophy of the University of Brazil. In 1946, he created and directed the Institute of Nutrition at the University of Brazil (INUB), a teaching and research entity responsible for the "Arquivos Brasileiros de Nutrição", the first national scientific journal in the field. During the Vargas period, he was vice-president of the National Agrarian Policy Commission. Between 1954 and 1962, he was federal deputy for Pernambuco, for the Brazilian Labor Party. Member, from 1947, of the Food and Agriculture Organization of the United Nations (FAO), he was President of its Executive Council from 1952 to 1956. He was Brazil's ambassador to the United Nations in Geneva from 1962 to 1964. He published several works, contributed to scientific and scientific journals, had intense dialogue with scientists, intellectuals, and politicians from different parts of the world, and received several awards for literary, scientific, and humanitarian merit. Cassated by the military regime in April 1964, he moved to Paris, where he died in 1973 (Nascimento, 2009)." (BIZZO, 2009)

his trajectory is one of a life given to solving this problem. His most famous book is "Geography of Hunger", from 1946. One must highlight that he is responsible to alter the perception of the causes of hunger because since the 1930s he recognized that hunger was not as a problem of nature itself, but as a social issue. As such, it was amenable to human transformation and to be overcome through state action. This innovative vision, although presented by him then, only took constitutional form with the Federal Constitution of 1988, after his death.

In a broader sense, the struggle that were then faced by Josué de Castro were also the one that food policy faced itself and can be read as the distinction between an assistencialistic view of the State and a welfare (or development) kind of State. According to (SILVA, 2018) the insertion of school food under the umbrella of rights, and recognition that food can be an important path towards students identity, therefore, closer to the welfare style happened was intensified with law n° 11.947/2009. Until then, the vision that guided the State action was an assistencialism in a reifying form of social issues, since it is close to the idea of charity, favor, and not of rights. It is the CF88 by its article 208, VII says that "The duty of the State with education will be made effective through the guarantee of: VII - care for the student, in all stages of basic education, through supplementary programs of didactic school materials, transportation, food and health assistance." (BRAZIL, 1988) that points to the overcoming of hunger through the use of public policy in the broader sense of citizenship.

## CONSTITUTIONS, FOOD AND EDUCATION

Since Constitution and public policies are relevant factors, it is worth making some brief comments about them. (RICUPERO, FERREIRA, 2006) reminds that there is long lasting discussion among intellectuals and the political elite about the relevance that the State and law could have on solving Brazilian social problems. There are those who believe that the State is capable to set the nation together and those who believe that its bureaucracy would get in the way of development. (PAIXÃO, 2011) argues that this political-economic dispute makes the constitutional structure oscillates from autocracy alongside authoritarian modernization, and democracy, with a more participatory and inclusive opportunities. Contrary to the anglosaxon law tradition, changes in constitutional charters, and not their (re)interpretation, is a constant in Brazilian legal life.<sup>4</sup>

The Constitutions of 1824 (Brazil Empire) and 1891 (Brazil Republic) present a classic liberal structure, with no mention of food or the quality of life of the citizenry . Their content fundamentally contemplates the distribution of political powers.

Still retrospectively, from the Constitutional point of view, it is worth remembering that it is in the 1934 Constitution (Second Republic) that we observe the mention of social rights, with the mention of *dignified existence*:

Art 115 - The economic order shall be organized according to the principles of Justice and the needs of national life, so as to enable everyone to lead a dignified existence. Within these limits, economic freedom is guaranteed. Sole Paragraph - The Public Powers shall periodically verify the standard of living in the various regions of the country.

Article 117 - The law will promote the promotion of the popular economy, the development of credit and the progressive nationalisation of deposit banks. It will also provide for the nationalization of insurance companies in all their modalities, with the foreign companies currently operating in the country to be constituted as Brazilian companies. Sole Paragraph - Usury is prohibited and will be punished in accordance with the law.

Article 137 - The federal law will regulate the supervision and the revision of the tariffs of the services explored by concession, or delegation, so that, in the collective interest, the profits of the concessionaires, or delegates, do not exceed the fair retribution of the capital, which allows them to normally meet the public needs of expansion and improvement of these services.

Art. 138 - The Union, the States and the Municipalities are responsible, under the terms of their respective laws, for a) ensure support for the disabled, creating specialized services and encouraging social services, whose guidance they will seek to coordinate; b) stimulate eugenic education; c) support maternity and childhood; d) help families with large offspring; e) protect youth against all exploitation, as well as against physical, moral and intellectual abandonment; f) adopt legislative and administrative measures tending to restrict infant morality and morbidity; and of social hygiene, to prevent the

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<sup>4</sup> In this paper there will be no time to enter the complex history of political ideas and historical facts that led to this constant change of constitutions.



spread of transmissible diseases; g) care for mental hygiene and encourage the fight against social poisons.

Article 139 - Every industrial or agricultural company, outside school centers, and where more than fifty people work, and where these people and their children are at least ten illiterate, will be obliged to provide them with free primary education.

Article 140 - The Union will organize the national service to combat the country's major endemic diseases, and will be responsible for the funding, technical and administrative direction in areas where its execution exceeds the possibilities of local governments.

Article 141 - It is mandatory, throughout the national territory, the support to maternity and childhood, for which the Union, the States and the Municipalities shall allocate one percent of their respective tax revenues." BRAZIL. [Constitution (1934)].

In these articles we can see a social concern with the excluded, as well as with the need to mitigate regional inequalities in an attempt to form a modern nation. In addition, article 157, §1 and §2 of the Second Brazilian Republic Constitution says:

"Article 157 - The Union, the States and the Federal District shall set aside a part of their territorial assets for the formation of their respective education funds. § 1. The remainders of budget appropriations plus donations, percentages on proceeds from the sale of public lands, special taxes and other financial resources shall constitute, in the Union, the States and the municipalities, these special funds, which shall be applied exclusively to educational works, as determined by law. §2 Part of the same funds will be applied in aid to needy students, through the supply of free school material, scholarships, food, dental and medical assistance, and for holidays. BRAZIL. [Constitution (1934)]

and so it stipulates the formation of a fund for education as well as the allocation of part of it to food assistance. One can see that even if it is considered a great advance, the language of assistance and not of rights is constantly used.

The Constitution of 1937 (Estado Novo), in its articles 127 and 130 says that:

"Art 127 - Children and youth must be the object of special care and guarantees by the State, which will take all measures to assure them physical and moral conditions for a healthy life and harmonious development of their faculties. The moral, intellectual, or physical abandonment of children and youth will be considered serious fault on the part of those responsible for their care and education, and creates the duty of the State to provide them with the comfort and care indispensable to their physical and moral preservation. Miserable parents have the right to invoke the aid and protection of the State for the subsistence and education of their offspring." BRAZIL. [Constitution (1937). Constitution of the United States of Brazil. Rio de Janeiro, 1937.

Article 130 - Primary education is compulsory and free. Gratuitousness, however, does not exclude the duty of solidarity of the least towards the neediest; thus, at the time of enrollment, a modest, monthly contribution to the school fund will be required from those who do not claim, or notoriously cannot claim, scarcity of resources." BRAZIL. [Constitution (1937)]

and so they institutes the *school fund* and the duty of solidarity among family, society and the State in mitigating inequalities. The school fund consisted of a voluntary contribution by the more fortunate to help the poor. At the same time, the problem is structurally recognized, but a system is created that is closer to charity than to the formulation of public policies, therefore precarious and assistentialist.

The Constitution of 1946, in its article 172 says that "Each education system will obligatorily have educational assistance services that ensure to needy students conditions of school efficiency." (BRAZIL.[ Constitution (1946)]), also has a assistentialistic character, being the most explicit about educational assistance services, from which one could infer food, which, however, is not explicit.

The 1967 Constitution (Military Regime) deals with the issue in articles 8 and 169, §2:

"Article 8 - The Union is responsible for: XIII - establishing and executing regional development plans; XIV - establishing national education and health plans.

Article 169,§ 2 - Each education system will, obligatorily, have educational assistance services that ensure to needy students conditions of school efficiency." (BRAZIL. Constitution (1967) )

and so it is worth pointing out that like so many other dictatorships in Europe and South America, its supposed legitimacy was based on a sense of economic improvement in the country, and that conservative modernization was the tone for this development.

It is only with the 1988 Constitution that there is a qualitative change in the understanding about the eradication of poverty and school feeding. It is the strength of this Charter that adopts in its language (and which is gradually being put into vogue, despite the current setbacks), the idea that the problems related to poverty are of a social order, liable to be transformed and overcome, with a view to the dignity of the human being. "The constitution does not fit in the budget" has become the phrase of those who do not believe in the possibility of the Constitution's effectiveness, and who bet on the model of conservative modernization (DOMINGUES,2002).

In opposition to this view, it is necessary to explore the meaning and significance of (public) policy, starting with a brief mention of the theory that guides this text. It corroborates the analysis-synthesis made by Frey (FREY, 2000) regarding neo-institutionalism. The research problem mainly revolves around the policy cycle that "ends up revealing a very interesting

heuristic model for the analysis of the life of a policy” (FREY, 2000) and therefore it is relevant to consider whether or not a constitution predicts the direction both formal and in its content that should be followed by the administration.

Max Weber left perhaps the most important legacy of state theory in the twentieth century. His famous definition of the state as the *legitimate monopoly of physical force in a territory* (WEBER, 1991), as well as the derivations of this conception, produced multiple and fruitful consequences for interpretations in the fields of political science and economics (IMERGUT, 1998) or even if one thinks of Schumpeter's position of democracy as the image of market competition. In the wake of this formulation is Hans Kelsen's definition of the State as identical to positive law (KELSEN, 2009). . In this article we will focus on the consequences in the field of (public) policies in relation to constitutional interpretation, in articulation with human rights.

The legal norm, which originates in the political sphere, becomes valid when it conforms to a system of norms that we call the legal system. If this order is based on a dynamic system of norm creation, positive law norms will be derived and the organization of society will take place democratically. This functionalist quality of positive law (KELSEN, 2009) also conditions the conception of the function that international law will have in relation to the State. The Law form conditions, space and time in which the specific norm (public policy) will develop itself as a policy. The question that arises is that of the "legitimate government of the State" (KELSEN, p.234, 2009). This is because the problem of the effectiveness of the norm cannot be treated only from the point of view of a judge, but of the real adherence that the legal system finds when appropriated by the subjects of law that once participated, through representation (vote) of the legal construction of that same State. In other words, it is the constitutional and democratic dynamics of the *policy*<sup>5</sup>.

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<sup>5</sup> The executive function of law, little explored in Kelsen, can be read through different lenses, be it that of the inefficiency of the system (SCHMITT), or of communicative action (HABERMAS). Although this facet is less studied in his thought, when Kelsen ties the notion of validity and effectiveness as presuppositions for the existence of the legal system, he is not only saying that the democratic form should be observed in the creation of positive legal norms, he is also placing on the researcher the need to verify whether the State (since it is identifiable with positive law itself) fulfills (makes effective) the norms of which it is constituted. Remember that the Pure Theory of Law was published in 1934 and that its political function was to highlight (perhaps neutralize) the legal threats to democracy contained in the theories that were the basis of fascism, Stalinism and Nazism.



State and Law are identical, and the Constitution becomes effective when it establishes "effective general and individual norms, it is the legitimate government of the State" (KELSEN, 2009). Effectiveness refers to the effective reality of the world of being, thus the exploration of the "act-of-being" (KELSEN, 2009) that sets in motion the Law:

"The problem of the State as a juridical person, that is, as an agent subject and subject of duties and rights, is in essence the same problem that arises for the corporation as a juridical person. Also the State is a corporation, that is, a community which is constituted by a normative order which institutes organs functioning according to the principle of division of labor, organs which are provided in their function mediately or immediately" (Kelsen, 2009)

This is where what we now call public policy fits in. Differentiating between validity and effectiveness allows, as (DAHL, 1998) teaches: to migrate from ideal democracy to real democracy. It is the protection of the effectiveness of valid norms, democratically constructed and in the sense of the emancipation of what we are used to calling "human rights":

In light of Kelsen's thesis about the coincidence of law and state, insofar as the state is a synonym for centralized legal order, there is no analytical possibility for opposing parliamentary sovereignty and the (human) rights. This opposition turns out to be one of the erroneous ideological dualisms that Kelsen attempted to overcome in his *Pure Theory of Law*. (ANTONOV, 2016).

The question's asked when using Hans Kelsen as the inspiration for the analysis is whether his concept of rule effectiveness can contribute to the analysis of public policy. The relevance of "law in motion" is an aspect little explored in his work, especially if we insist on considering him only as "the father of the pure theory of law". Even in this spectrum of analysis, it seems that all focus has been given by him to the concept of validity.<sup>6</sup> When effectiveness is addressed, it usually cuts across the important issue of judicial decision. And usually the (right) criticism seems to focus on the lack of treatment of the topic:

"One further aspect is connected with the application of the law. Kelsen assumed that this is a continuous process, and that therefore legal rules cannot be "applied" in the literal sense of this verb. Rules are created, or endowed with meaning, at every stage of their application. Therefore, what matters for the protection of human rights is not written texts, but rather the mentality of judges (here and below "judges" also includes other law officers) the way they make a link between the factual situation and the first

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<sup>6</sup> On the subject see BOBBIO, Norberto. *Direito e poder*. São Paulo: Unesp Publisher, 2008.

constitution (the basic norm) that endorses reinterpreting and rules in their application. In this view, so-called "statutory injustice" and the "*Gesetz ist Gesetz*" principle do not determine the factual behavior of judges and their decisions. Every judge is simultaneously a decision-maker and a lawmaker who is responsible for the meaning he or she attributes to the rule (or, as Kelsen would say, "creates the rule") to be applied in this given situation. Surely, this can be a very dangerous power in the hands of a judge, which can transform "rule of law" into *gouvernement des juges*. But, on the other hand, this approach reveals the real power possessed by judges and, by this fact, justifies holding judges accountable for the outcome of court proceedings. Here, a judge is not a puppet speaking the words of the law (to recall Montesquieu's celebrated metaphor), but the real master of legal system, who cannot justify a poor decision by referring to bad laws. (ANTONOV, pp.24-5, 2016).

The point is to transport to the analysis of public policy the analytical tools that the author provides when dealing with the concept of democracy. Approaching food in the spectrum of the effectiveness of a right allows us to deepen the link between democracy and positive law, as well as to highlight a certain interpretation of human rights that also contemplates bridges between state and civil society (or people, in Kelsenian terms).<sup>7</sup> The constitutional importance, particularly of the Brazilian Constitution of 1988, in the implementation of the norm (policy) is also raised.

## PNAE LAW 11.947/2009 AND THE UN 2030 SUSTAINABLE DEVELOPMENT GOALS

Explore public policy as a promoter of democratic (AGUILAR, 2013) and sustainable citizenship shows the central place that public school feeding policies have in the daily lives of elementary school students, as an instrument of interaction, formation of taste, creation of *habitus* (BOURDIEU, 1983), (BOURDIEU, 1974), (ELIAS, 2011). Thought in this way, one can observe aspects of incentive that such policy can generate in the scope of reducing inequalities, hunger, and poverty as stated both by the 1988 Constitution and (OLIVEIRA, NANDY, FERNANDEZ, VECCHIO, ASSIS, VEDOVATO, 2021). Such reading encompasses in an innovative way the incorporation of human rights, reflected in the

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<sup>7</sup> In light of Kelsen's thesis about the coincidence of law and state, insofar as the state is a synonym for centralized legal order, there is no analytical possibility for opposing parliamentary sovereignty and the (human) rights. This opposition turns out to be one of the erroneous ideological dualisms that Kelsen attempted to overcome in his *Pure Theory of Law*. (ANTONOV, p.24, 2016).

implementation of the Sustainable Development Goals of the United Nations<sup>8</sup>, in which Brazil participates, which are: 1. eradication of poverty<sup>9</sup>; 2. zero hunger and sustainable agriculture; 3. health and welfare; 4. quality education, which goes in a large scale such as mentioned:

"PNAE serves, nationally, approximately 45 million children and adolescents. However, even with its magnitude and social importance, it is necessary to know how its users mean it and try to make it positive in areas where it is precarious. It is worth remembering that PNAE is a public policy that talks about complementing daily food to avoid feelings of hunger at the time of teaching/learning, establishing a link between food and school. For students suffering from malnutrition, the food provided by PNAE is essential because, by reducing the deprivation experienced, the school inscribes, in these young people, a social value linked to eating" (FREITAS, *et al*, 2013)

and because of that, the PNAE policy the relevance of the normative formulation of public policy in accordance with the institutional incentives to policy effectiveness is fundamental.

On the relationship between the PNAE and the UN goals we can add the pacifist character of Kelsen's work and his enthusiasm for a global government (KELSEN, 2011). Between the ideal construction and the ideal in the international sphere, the formulation of international norms that guarantee food security and the peaceful resolution of conflicts, will serve as a powerful instrument<sup>10</sup> to evaluate the importance of the Brazilian example in the fight against hunger and the encouragement of healthy eating in the world, with resonance in ecopacifism and the defense of healthy eating:

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<sup>8</sup> UN Sustainable Development Goal (hereafter SDGs) number 1 and 2. SDG 1: "Eradicate poverty: End poverty in all its forms, everywhere"; SDG 2: "Zero Hunger and Sustainable Agriculture: End hunger, achieve food security and improved nutrition and promote sustainable agriculture" Available at: <http://www.agenda2030.org.br/ods/2/>.

<sup>9</sup> It should be remembered that there is a dispute about the concept of poverty. This research seeks to contribute to the democratic method of conceptualizing poverty, "the '[consensual method](https://www.poverty.ac.uk/definitions-poverty)', which defines poverty as those whose lack of resources forces them to live below a publicly agreed minimum standard." Available at: <https://www.poverty.ac.uk/definitions-poverty>.

<sup>10</sup> "As Petra Gumplova justly mentions, "Law in Kelsen's theory has this unique double normative purpose: it enables a peaceful, nonviolent arbitration of conflicts both between individuals and the states, and it preserves individual freedom to the largest extent possible, especially when organized in conformity with principles and institutions of constitutional democracy." 106 This means that the law is justified insofar as it secures the peaceful coexistence of individuals and states, and the machinery of the law functions to secure this peaceful coexistence. In the perspective of the monist system advocated by Kelsen, human rights as the *ius cogens* of contemporary international law prevail over rules of the state law. 107 International law, therefore, indirectly endorses coercive intervention in inhumane practices of sovereign states, but this law still lacks effective dispute-resolution organs and enforcement bodies to secure the protection of internationally-recognized human rights. That is why Kelsen aspired to establish a world legal order, a *civitas maxima*, that would effectively enforce the peaceful protection of law-and-order and, we may add here, of human rights. 108 Even if this project of Kelsen's (along with his conception of democracy and formal normativity) is described by some scholars as a "utopia of legality," 109 it still remains an important topic for discussion among international lawyers. (ANTONOV, p.26, 2016).

"Family farming is the main form of agricultural production in several Brazilian cities and is a strategy for economic, social, cultural, and sustainable development. With the proper incentive, this production contributes to the reduction of unemployment, hunger and malnutrition, in addition to promoting the consumption of regional and healthy foods by the population, through the supply of fruits, vegetables, fibers and whole grains" (ARAUJO, 2019)

Starting in the 1930s, the Brazilian political agenda begins to recognize the problem of hunger as one of the obstacles to national development. It was only in 1979 that the PNAE was instituted, in the nomenclature known today. According to (PEIXINHO, 2013), until the 1988 Constitution, the focus on food was related to the notion of nutritional supplementation:

"between 1976 and 1984, PNAE was one of the guidelines of the II PRONAN, coordinated by the National Institute of Food and Nutrition (INAN), an autarchy linked to the Ministry of Health. The II PRONAN proposed food supplementation programs aimed at workers, the maternal-child group and schoolchildren, focusing on the poorest regions" (PEIXINHO, 2013)

and so, directly related to the notion of poverty. In the struggle for the right to food in Brazil, the origin of the program addressed the overcoming of malnutrition:

"In this sense, it is crucial that we understand malnutrition as a social phenomenon of poverty, therefore, an integral part of a complex of social exclusions, producer and reproducer of inequalities in the basic conditions of subsistence and life in which the presence in school is inversely proportional to the worst conditions of survival. The child present at school, even if hungry, will certainly have preserved his learning capacity" (CECCIM, 1995)

the school meal was treated as an instrument for the permanence of the student in school.

The importance of Law 11.947/2009 being read and worked in confluence with the UN 2030 goals is part of a narrative effort, within the logic of human rights, but also effective in overcoming inequalities towards an effective, substantial dignity. A quicky look at its articles:

Art. 1º For the purposes of this Law, school meals are defined as all food offered in the school environment, regardless of its origin, during the school term.

Art. 2º School feeding guidelines are

I - the use of healthy and appropriate food, comprising the use of varied, safe food that respects culture, traditions, and healthy eating habits, contributing to the growth and development of students and improving school performance, in accordance with their age group and health status, including those who need specific attention;

II - the inclusion of food and nutrition education in the teaching and learning process,



which goes through the school curriculum, addressing the topic of food and nutrition and the development of healthy life practices, from the perspective of food and nutrition security;

III - universal attendance for students enrolled in the public basic education network;

IV - the participation of the community in social control, in monitoring the actions taken by the States, the Federal District, and the Municipalities to ensure the supply of healthy and adequate school meals;

V - support for sustainable development, with incentives for the acquisition of diversified foodstuffs, produced locally and preferably by family agriculture and rural family entrepreneurs, giving priority to traditional indigenous communities and communities of descendants of slaves;

VI - the right to school meals, aiming to ensure food and nutritional security for students, with equal access, respecting the biological differences between ages and health conditions of students who need specific attention and those who are in social vulnerability.

Art. 3º School meals are a right of the students of public basic education and a duty of the State, and will be promoted and encouraged in order to meet the guidelines established in this Law.

Art. 4º The National School Meals Program - PNAE has the objective of contributing to the biopsychosocial growth and development, learning, school performance and the formation of healthy eating habits of the students, through food and nutritional education actions and the supply of meals that cover their nutritional needs during the school term.

marks that it establishes the healthy consumption of food at school, as well as the use of school meals as a tool to train a student who recognizes sustainable methods of development. It also encourages local sustainable food production, and respect for the food culture of each locality, taking into account the nutritional needs of individuals. It should be noted that the legal engineering behind the norm was very well constructed. The financial transfer from the federal government guarantees the states and municipalities some continuity in the program, even for the poorest municipalities. It also places the citizen and the family farmer closer to local demands.

When we think of national incentives and the fulfillment of internationally agreed treaties and targets, we must keep in mind that the national political power must have such a capillarization that it reaches the most diverse places in the nations. Brazil has achieved this historically with vaccination through SUS<sup>11</sup>, and with PNAE.

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<sup>11</sup> Only as a note, it is worth noting the deficit of production in the field of Law regarding the PNAE. In a search in the database <https://www.scielo.br/> updated on 07/10/2022 under the broad combination "school feeding", of the 278 articles found, none was in a specialized law journal. Of these, 217 were from the great area of Health, such as collective health, nutrition, and pediatrics. And the rest were from the Education, Social Sciences



It is noted that much of the literature is in the field of public health, which explains the important connection between the school feeding policy and the third goal outlined by the UN, to ensure a healthy life and the well-being of individuals:

"Another important contribution of PNAE was the inclusion of food and nutrition education in the school curriculum, in the context of food security, as well as the human right to adequate and healthy food. Like other countries, Brazil faces now the challenge of fighting obesity and other chronic illnesses associated with poor eating habits, in addition to guaranteeing population access to produce." (NOGUERIA, 2016)

shows us the evolution of public food policies that decentralized in its origin, stops thinking only as a source of nutrition and starts to include community participation, sustainability and healthy eating. This connects to UN SDG four, "quality education" as well as to set a change of paradigm, from the reaffirmation of poverty to the inclusion of both students and producers of sustainable food into citizens of rights. The language of rights emerges, allowing the expansion of citizenship. Keeping in mind the symbolic differentiations and the interactions between the fields, cultural capital.

Under Law 11947/2009, regarding to the National Fund for Education Development (FNDE), innovated in its article 14 by determining that at least 30% of food purchases by states and municipalities must come from family farms alongside with this innovation one must point to the simplification of contracts purchases using the *public call* mode:

"Art. 14. of the total financial resources transferred by the FNDE under the PNAE, at least 30% (thirty percent) must be used for the acquisition of foodstuffs directly from family farms and rural family entrepreneurs or their organizations, giving priority to agrarian reform settlements, traditional indigenous communities and quilombola communities. § The acquisition referred to in this article can be made without going through a bidding procedure, as long as the prices are compatible with those prevailing in the local market, observing the principles laid down in art. 37 of the Federal Constitution, and the foodstuffs meet the quality control requirements established by the rules that regulate the matter. § The observance of the percentage provided for in the caput will be regulated by the FNDE and may be waived when one of the following circumstances is present: I - impossibility of issuing the corresponding tax document; II - unfeasibility of regular and constant supply of foodstuffs; III - inadequate hygienic-sanitary conditions."

which allows an easier way of understanding of the need of the public authorities to endure the food program and the items coming from family agriculture.

According to Frey: "The various phases correspond to a sequence of elements of the political-administrative process and can be investigated with respect to the power constellations, political and social networks, and political-administrative practices typically found in each phase."(FREY, 2000). The shortage of food supply, whether in ordinary or extraordinary times, still needs to be observed, as pointed out (MACHADO, 2018) from the perspective of the intensive presence of agribusiness as a model of agrarian production.<sup>12</sup>

## THE COVID CRISIS AND ITS UNFOLDINGS

The Covid19 pandemic posed immediate challenges to the operation of public policy, but also points to future challenges.

First it is worth mentioning the lack of planning by the government in foreseeing the consequences of the pandemic in the Brazilian context, since the global north had already experienced the consequences of the lockdown and it was predictable that this would also take place in Brazil. The fact that school feeding is a shared responsibility between the Union, States and Municipalities as one can see on article 5:

Art. 5º The financial resources allocated in the Union budget for the execution of the PNAE will be transferred in installments to the States, the Federal District, the Municipalities, and the federal schools by the National Education Development Fund - FNDE, in accordance with the provisions of [art. 208 of the Federal Constitution](#) and in compliance with the provisions of this Law.

§ 1º The transfer of financial resources for the execution of the PNAE will be done automatically by the FNDE, without the need for an agreement, arrangement, agreement or contract, by means of a deposit in a specific current account.

§ 2º The financial resources mentioned in § 1º must be included in the budgets of the States, the Federal District, and the Municipalities being assisted, and will be used exclusively for the acquisition of foodstuffs.

§ 3º The balances of the financial resources received on behalf of the PNAE existing on December 31 must be reprogrammed for the following year, in strict compliance with the object of their transfer, as disciplined by the FNDE's Deliberative Council.

§ 4º The amount of the financial resources referred to in § 1º will be calculated based on the number of students duly enrolled in public basic education in each of the government entities, according to official enrollment data obtained from the school census conducted by the Ministry of Education.

§ 5º For the purposes of this article, at the discretion of the FNDE, the students enrolled in state, municipal and district networks will also be considered as part of the state, municipal and district network:

I - daycare centers, preschools, and elementary and high schools qualified as philanthropic entities or maintained by them, including those of special education;

<sup>12</sup> Vide in: <https://www.fnde.gov.br/index.php/programas/pnae/pnae-eixos-de-atuacao/pnae-agricultura-familiar>

II - day-care centers, preschools, and community elementary and high schools in agreement with the States, the Federal District, and the Municipalities.

gave some margin for the states and municipalities to act independently of the federal government.

During the confinement caused by the pandemic, there is the absence of school, and therefore the absence of a public space for the realization of the right to food. For this reason, several states have adopted income supplementation projects for low-income students. In the state of São Paulo, it is estimated that about 920,000 students, out of the 3.5 million in the public network, would be entitled to an emergency subsidy of R\$55.<sup>13</sup>

Furthermore, it should be noted that the damage caused by the pandemic is long lasting, which is why it is necessary to focus not only on restructuring the supply of items from family farms, based on an appropriate and efficient transportation system, but also on an assessment of the most needy localities and increased funding for cities with low human development indexes. In addition, the maintenance of school meals throughout the vacations would be a great advance in the fight against food insecurity (AMORIM, ET AL, 2020).

## CONCLUSION

It was intended to demonstrate how a reading of the PNAE in particular, and of public policies in general, needs to be guided by a precise appropriation by political actors of the 1988 Constitution, integrated with their reception of human rights, understood as a human construction. To this end, an adequate methodology must be used, capable of integrating a constitutional reading of the law, as well as that of international treaties and agreements. The approaches listed above demonstrate the need to deepen the transformations in the direction of sustainable development, a way of projecting dignity as a daily practice, as a citizen and a democracy. It is argued that the feedback of Kelsen's pure theory of law is a path to the international expansion of the implementation of the UN sustainable development goals, particularly in overcoming the items 1, 2, 3 and 4, through healthy food, and sustainable food production.

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<sup>13</sup> <https://merendaemcasa.educacao.sp.gov.br/>



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#### Sobre os(as) autores(as):

**Marcelo Brandão Ceccarelli** | *E-mail*: m103300@dac.unicamp.br  
PhD Student at UNICAMP-Campinas, SP

**Ana Elisa Spaolonzi Queiroz Assis** | *E-mail*: anaelisasqa@gmail.com  
Professor of Education at Universidade Estadual de Campinas-SP, Brazil (UNICAMP)

**Gill Main** *E-mail*: G.Main@leeds.ac.uk

Professor of Childhood, Youth and Social Justice (University of Leeds). School of Education

Artigo Convidado