

## **Financing of Education in Brazil: from the literary subsidy to FUNDEB**

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**ABSTRACT – Financing of Education in Brazil: from the literary subsidy to FUNDEB.** This paper aims to describe the evolution of the financing of education in Brazil, especially of basic education (preschool-secondary education). The methodology consisted of investigating the legislation to ascertain how the legal framework incorporated this financing. The study also seeks to highlight advances and setbacks, especially regarding constitutionally earmarked tax revenue for education maintenance and development. Such earmarking began with the Constitution of 1934 and peaked with Constitutional Amendment no. 59 of 2009, which resulted in the National Education Plan in Law no. 13005/2014. One of the most visible points of the evolution is that such earmarking was suppressed under authoritarian or dictatorial regimes and maintained in democratic regimes.

**Keywords: Financing of Education. Education in Brazil. Legislation.**

**RESUMO – Financiamento da Educação Brasileira: do subsídio literário ao FUNDEB.** Este artigo busca descrever a evolução do financiamento da educação brasileira, em especial da educação básica. A consulta à legislação foi o recurso metodológico para assinalar como o ordenamento jurídico incorporou este financiamento. O estudo procura evidenciar também os avanços e recuos, principalmente no caso da vinculação constitucional de um percentual de impostos para manutenção e desenvolvimento da educação. A vinculação, iniciada com a Constituição de 1934, alcança seu auge na emenda constitucional n. 59 de 2009, da qual resultou o Plano Nacional de Educação na lei n. 13.005/2014. Um dos pontos mais visíveis da evolução mostra que nos regimes autoritários ou ditatoriais suprimiu-se esta vinculação, já nos regimes democráticos ela permanece.

**Palavras-chave: Financiamento da Educação. Educação no Brasil. Legislação.**

The goal of this paper is to provide overall information regarding the financing of school education in Brazil. It does not aspire to describe the financial accounting or management that ensures, to a greater or lesser extent, this social right, via public, earmarked, obligatory or voluntary resources. Macro or micro studies ranging from the large figures of the Brazilian Transparency Portal ([www.portaltransparencia.gov.br](http://www.portaltransparencia.gov.br)) or the studies of the Institute for Applied Economic Research ([www.ipea.gov.br](http://www.ipea.gov.br)) to dissertations and theses available on the CAPES Portal ([www.capes.gov.br](http://www.capes.gov.br)). Far more modest, the goal of this study is to present the historical evolution of the legal framework for financing education, which, in turn, helps ensure the right to education as a legally protected right. This legal framework may provide elements for a more in-depth study of the policies and financing related to investment in education, such as those developed by the National Association for Research on Education Financing ([www.fineduca.org.br](http://www.fineduca.org.br)), which has studies on Cost of Quality Education per Student (CAQ) and Cost of Initial Quality Education per Student (CAQi) and a discussion about the amount of funds needed to finance a quality school.

## Introduction

The trajectory of the legal framework for financing education is not linear. It comprises advances and setbacks, since it is inserted in different social and historical backgrounds that make it a socially constructed product and process. After all, a social good turned into a right, as is the case of school education, and whose indispensable benefits target millions of people, cannot be left to individualized initiatives. The trajectory requires goals and purposes and contains principles, objectives and strategies that depend on a funding system. In this sense, there has always been some financial support. What changes in its pattern is its size and the historical and institutional context surrounding it. That is why this study follows a historical course comprising Colony, Empire and Republic. The abovementioned contextual support is based on studies and research on the history of education.

## A Historical Course: colony and empire

The Jesuit mission, the first educational enterprise in Brazil, arising from the need of a religious order to recruit new believers in sixteenth-century Europe, arrived in Brazil in 1549, together with Governor Tomé de Souza. This work is fully associated with the Portuguese colonial project. Between 1549 and 1604 there were many Jesuit expeditions to Brazil to catechize the natives and convert them to the *true faith*. At first the Jesuits were busy in the native communities. Later, from the 1560s, their work was geared towards the opening of schools for the settlers' children in the main existing villages. These schools were funded by the *retithe*, that is, a percentage on the tithe on sugar. Tithe was a ten percent tax on goods entering the colony through its ports, imposed by the General Government.

This reality may be interpreted in light of what Luzuriaga (1959), speaking of Europe, calls *religious public education*, insofar as the relations between Portugal and its colonies were also based on the so-called *Padroado* system. As Cunha (2017) states, the *Padroado* was a *State-Catholic Church symbiosis* which found support in the papal bull *Eximiae votrae devotiones*:

When the colonization of Brazil began, the *padroado* was already well established in Portugal and other 'Catholic kingdoms'. [...] In Portugal it consisted in the transfer of ecclesiastical power to the king, as state authority and as spiritual authority, with the title of Grand Master of the Order of Christ. [...] The King of Portugal was granted the power to collect tithes in exchange for assuming the material maintenance of temples, monasteries, schools and of the entire religious community (priests, nuns, brothers, etc.) (Cunha, 2017, p. 25).

Herein may possibly reside the origin of the government's traditional limitation to charge and impose taxes on non-profit institutions of education and social care, present in the Constitutions of 1934, 1946, 1967, and in the present one, according to Article 150, VI, item c, even after the separation of Church and State.

It should be noted that the *Padroado* would only end with the advent of the Republic, by Decree no. 119-A of 1890 and with the Constitution of 1891.

However, the first form of state financing of public education in Brazil came with the reforms of the Marquis of Pombal. The Royal Charter of June 28, 1759 abolished all Jesuit schools in Portugal and colonies. But it did not abolish the presence of other religious orders or the teaching of Catholic doctrine. What Pombal's initiatives introduced was a secular dimension in state activities. Eager to accompany the advances of the European Enlightenment and new economic trends, Portugal starts seeking new ideas to recover from its economically stagnant situation. The Society of Jesus, whose power was considered one of the causes of this delay, was therefore abolished. More than 500 priests involved in education in Brazil were expelled from the country and the Crown sought to replace the Jesuit schools by creating the so-called *aulas régias*, provided in the 1759 Charter.

Each *aula-régia* consisted of a teaching facility, with a single teacher, set up for a specific subject. It was autonomous and isolated as it did not interact with others or belong to any school. There was no curriculum in the sense of a set of ordered and hierarchical studies, nor was its fixed term subject to the development of any content (Chagas, 1982, p. 9).

To finance these classes, especially the payment of the teachers, a source of resources was created through the Royal Charter of November 10, 1772 called *literary subsidy*, for which the Marquis of Pombal created a specific fund.

This resource was thus provided:

The pecuniary fund to maintain this project may be established very cheaply and with the satisfaction of the peoples, who will contribute the charge of one real in each *canada* of wine and pint of sugar cane rum in the kingdom and in the islands and in each *arrátel* of cattle in Asia, America, and Africa (Portugal, 1772).

Article 6, paragraph 2 of the Royal Charter stated:

I herein command that for the useful investment in the same public education, in place of the abovementioned collections so far charged from the peoples, it be established, as I establish the single tax: namely, in these kingdoms and islands of Madeira, Azores of one real in each *canada* of wine and four réis in each *canada* of sugar cane rum; of 160 réis per cask of vinegar; in America and in Africa: of one real in each *arréte*l of beef cut at the butcher's; and in Asia, of ten réis in each *canada* of sugar cane rum produced in those lands, under whatever name it is given or will be given (Portugal, 1772).

The administrators of captaincy counties would be responsible for recording and collecting this tax. The precarious situation in which these subsidies were charged on butchered meat, Portuguese wines, sugar cane rum, salt and vinegar did not allow the regular and permanent subvention of this first attempt to create a public school system.

This precarious state will only start changing with the arrival of D. João VI and the royal family in 1808. The presence of a metropolitan court in the colonial tropics inverted the normal relationship existing between mother country and colony and implied the creation of multiple governing bodies. Only then did Brazil experience the creation of higher education schools and a preparatory secondary education for the newly created academies of higher education.

The tax called the literary subsidy remained in effect until the Decree of March 15, 1816, which created the post of General Director of Studies and appointed to this high position the Viscount of Cairu, an intimate friend of D. João VI. In its last years, the literary subsidy tax amounted to 12 million réis per annum (Almeida, 1989, p. 38).

This fund may have been "forgotten" by D. João VI in the Decree of June 28, 1821 (Portugal, 1821), when he, taking with him all the amounts deposited with the Bank of Brazil, provides that:

[...] given that it is not possible to immediately establish, as appropriate, schools in all places of this kingdom by the public treasury; and wanting to assure the freedom that every citizen has to make due use of his talents, with no ensuing public damage, I decree that from the publication of the herein any citizen is free to teach and open schools of first letters in any part of this kingdom, whether

for free or by agreement between the interested parties, with no dependence on examination or any license.

This regal provision, a sign of the State's withdrawal from offering education, in itself quite precarious, clearly establishes the so-called *freedom of teaching* and, in this case, *with no dependence on examination or any license*.

During the Empire, with the country politically independent, the state of precariousness was no different. The basic reference for financing is Article 172 of the Constitution of 1824, according to which the ministers of state should forward their budgets to the State Minister of Finance. From this budget came general funds for education. The Legislative Decree of December 15, 1830 was the first General Budget of the Brazilian Empire.

Therefore, neither the Imperial Constitution of 1824 nor the General Education Law of 1827 provided for any consistent modality of specific funding for education. Tonholi's thesis (2016, p.106) notes:

Thus, one can verify that the literary subsidy ceased to come from the collection of taxes on wine, sugar cane rum and vinegar and was reformulated by this Budget Law with the charge of 2\$000 per head of cattle, 400 réis for sheep and 800 réis for pigs when offered for public consumption.

The subsidy, mentioned for the last times in official documents in the Decree of July 26, 1827 and in the Budget Law for 1836-1837, is now provided within the twofold administrative system established by the Supplementary Act of 1834.

With this act and the ensuing decentralization of primary education to the provinces, a twofold schooling system is created in which the most important taxes were under the aegis of central general authorities. The so-called *general revenues* comprised 12 taxes. In 1831, however, provincial treasuries were created which took charge of collecting taxes. As provided in the Supplementary Act in Article 12, the provincial Legislative Assemblies could not legislate on import taxes.

Primary education, assigned to the provinces by Article 10, paragraph 2 of the Supplementary Act, started being funded by smaller provincial taxes. As there had to be some revenue for public education, it ended up coming out of general revenue funds, lotteries and raffles.

A Decree of December 9, 1835, therefore already under the Supplementary Act, instructs during the Regency the presidents of the provinces regarding the proper execution of the law of June 14, 1831, which provides the presidents' responsibilities, among them, in Article 18, those related to employment. These instructions include, among the paragraphs that make up the decree, the proposal for a common education plan for the whole country, in order to promote instruction and morality:

Paragraph 12. Satisfied the needs of the administration that are indicated, it is necessary to promote instruction and morality, without which there is no civilization, much less freedom. *An education plan, common to all provinces, which renders it national, which gives character and a particular feature to the Brazilian people, is the object of great need.* The principles which serve for the development of human reason, and the main rules of the rights and obligations of man, should form the basis of general instruction. The maxims of conduct, prescribed by the Gospel, and taught by the Ministers of Religion with their voice, and practically by example, will serve as a foundation for public morality. But while this plan cannot be realized, it is at least desirable that a certain degree of instruction and morality be an indispensable requirement for admission to employment, in which the educated and moral man should always be preferred, and among them the married, and those who are heads of legitimate families (italics added) (Portugal, 1831).

One notes in these instructions a silence regarding the financing of *instruction and morality, without which there is no civilization, much less freedom*, whether the increase of funds or details of existing ones. Nevertheless, this by no means diminishes the significance of the section which calls for *an education plan, common to all provinces, which renders it national* . . .

Decree no. 1331.A of 1854, the Couto Ferraz Reform, provided in Article 3, paragraph 5 that it was the duty of the Inspector General of the Empire:

To coordinate the maps and information that the presidents of the provinces annually forwarded to the government on primary and secondary instruction and submit a detailed report of the comparative progress in this branch among the several provinces and the municipality of the court, with all the clarifications that in that respect he is able to render (Portugal, 1854).

Thus, the Inspector General was charged with providing the general authorities with detailed information on instruction. In our days, in a much more complex and demanding way, it is the responsibility of the National Institute for Educational Research and Study (INEP), together with various levels of government, to provide specific information, according to Article 9 V and VI and Article 87 of Law no. 9394/96.

In this decree, although the teachers' wages are specified, there are no references to the financing of education, even when it stresses the need to build new schools.

This does not mean that the Empire's Parliament had no proposals for other means to achieve compulsory education.

At the Parliament session of August 6, 1870, for example, the imperial minister Paulino de Souza, considering the importance of primary education, asserts that it

[...] is that which arouses the greatest interest for encompassing all classes of the population and tends to the satisfaction of the first intellectual aspiration [...] and that in a civilized country no one should not be able to at least read and write [...] I go so far as to consider that the public authorities should impose it as an obligation for all those who are of school age (Portugal, 1870).

Then, aware of the burden of an obligation on provincial resources, he affirms and proposes, to much applause:

If there is a subject in which we should come to the aid of the provinces it is, without dispute, public education (Favorable reaction). I have always considered that legislating on public education should not be exclusive to provincial assemblies, and that the burden to promote education which has rested solely upon the provinces can be shared by the State, which should assist them in this part, as soon as reasonably possible (Much favorable reaction) (Portugal, 1870, p. 72-73).

Alongside this early proposal for a cooperative regime, interpreting the Supplementary Act, Paulino de Souza refers to the general authorities as competent to act in primary education through a general law and concludes that this

[...] responsibility is cumulative. [...] I do not include public education in any of the three levels of government because, in my opinion, the State, the Province and the Municipality should all promote it (Favorable reaction) (Portugal, 1870, p. 74).

Therefore, for him, besides being simultaneous at all levels of government, education should be viewed as a common competence which, in this case, would be the aid of the general authorities to the provinces.

Decree no. 7247 of 1789, the so-called Leôncio de Carvalho Reform, by providing in Article 2, paragraph 3 for clothing and textbooks for *poor boys*, rules that resources for this purpose should come from the General Assembly. The decree also refers to *private donations and aid provided by any charity institutions* with the goal of *developing and spreading public education*. In turn, the decree states clearly the possibility of the government subsidizing *in remote places . . . private schools that inspire the necessary confidence* [...] And it also addresses the school treasury. As in the other decree, there are tables of teachers' earnings and the obligation to open libraries, among other requirements. But there is no specific article or chapter on funding.

## **A Historical Course: republic**

In the Republic, with the autonomy of the states provided in Article 5 of the Constitution of 1891, the federal government should be responsible for *the expenses exclusive to its own government and adminis-*



tration. However, it could provide assistance to the states *in the event of public calamity*, upon their request.

Aside from such calamity cases, from the point of view of education, the Republic did not significantly alter the twofold schooling system inherited from the Empire.

In the Constitution of 1891, Article 7 rules on federal taxes and Article 9 on state taxes. However, this Constitution also creates a Court of Auditors in Article 39, and, in Article 34, establishes that National Congress would be responsible for drafting the federal budget.

However, primary education continues to be the responsibility of the states, which must finance it. The Constitution of 1891 does not mention free primary education, formerly present in the Imperial Constitution. It is evident that a more specific study on the financing of primary education in the states requires consulting the state constitutions and the infra-constitutional laws, since such responsibility was assigned to them.

This means that the situation does not change significantly in the Old Republic, despite proposals for national funding by the federal government. Existing resources came from tax revenues. Only in 1922, through Decree no. 4536, was a Federal Accounting Code created establishing the ministries' budgets.

Venâncio Filho (1996, pp. 111-112), commenting on education in the Old Republic and the book *A Província* by Távares Bastos (although it addresses the Empire), stresses:

Examining the division of responsibilities between local and general authority in matters common to both, it begins with instruction, stating that the most worthy object of the cogitations of Brazilians after the emancipation of labor is the emancipation of the captive spirit of ignorance. It points out statistics showing that, from the point of view of elementary instruction, our country had not yet entered the orbit of the civilized world; discusses aspects of the freedom of private teaching, the development of public education and compulsory education, stating that an effective instruction system consumes a lot of money and proposes the creation of an exclusively provincial tax, the school fee.

In December 31, 1922, income tax is created by Budget Law no. 4625, approving the federal general revenue. This decree features funds for federal higher education schools and school for apprentices and craftsmen. Other planned resources derive from higher education fees paid by students. And there are contributions from the treasury to charity from taxes on alcoholic beverages, contributions to *popular instruction* due to the assistance and protection offered by charitable organizations.

A significant initiative in terms of federal support for school education in the states came about with Decree no. 16782/A, dated January 13, 1925, known as the João Alves/Rocha Vaz Reform. It established the



federal government's contribution to the spread of primary education. According to Article 25 of the decree, the federal government would subsidize a share of the salary of primary teachers in rural schools, with the states paying the outstanding amount and offering lodgings, facilities and textbooks.

One therefore sees that the federal government is recurrently called on to support education since the state treasuries (as those of the provinces) are considered insufficient to cope with offering public instruction.

In the Constitutional Review between 1925 and 1926, the congressional budget forecast was subject to conditionalities and could not contain elements extraneous to the revenue/expenditure forecast in order to avoid the earmarking of funds with no sources.

In this review, when discussing the amendment on free and mandatory education, Afrânio Peixoto introduced an amendment drafted by him linking the financing of school education to a constitutional fund. This amendment to the review is reproduced by Cury (2003, p. 72):

Paragraph 3. To provide for national guidelines of primary education and to regulate and democratize secondary education, administered and funded by the states, through the education fund created by special laws, aiding their development throughout the country wherever they prove to be deficient.

The same congressman would say how this could be done:

[...] the respective budgets should allocate funds necessary for this nourishment of the spirit [...] But an education fund is necessary [...] the school fund, formed by public land assets [...] and other taxes and funds (Cury, 2003, p. 71).

The situation starts changing with the Revolution of 1930, especially due to the social and political process leading to the National Constituent Assembly of 1933-34.

Not only had unfunded public policies become meaningless, but the spirit of the time ascribed to planning and its ensuing projects the possibility of overcoming or at least alleviating social conflicts.

As Gomes states (1979, p. 113):

In the 1930s, proposals for the establishment of a strong and authoritarian State, which were being formulated and debated in the country for over a decade, gained effective political space, accompanied by a nationalist ideology that advocated growing centralism and state intervention in economic and social issues.

This spirit will be present in education and school instruction. One might say that it responds to the yearnings of educational and social renovation defended by the renovating professionals in the *Manifesto of the New Education Pioneers*. Demands will be made regarding

the role of the federal government, especially by these renovators united around the manifesto. It states:

Economic autonomy cannot be achieved except by the institution of a 'special or school fund,' which, comprising assets, taxes and revenue of its own, is managed and invested exclusively in the development of education by the actual educational bodies entrusted with it administration (Azevedo, 1932, p. 50).

Thus, the Federal Constitution of 1934 will innovate in the matter by establishing, in an original way, the financing of education through the constitutional earmarking of a percentage of taxes for education. Article 156 states:

The federal government and municipalities will never invest less than ten percent and the states and the Federal District never less than twenty percent of revenue from taxes in the maintenance and development of educational systems (Brasil, 1934).

To achieve this goal, quite original at that time, resulting from the right to free and mandatory education provided in Article 149, the Constitution of 1934 will determine in Article 157 that:

The federal government, the states and the Federal District shall reserve part of their territorial assets for the formation of the respective education funds.

Paragraph 1. The surplus of budget allocations plus donations, percentages on the proceeds of sales of public lands, special taxes and other financial resources shall constitute, in the federal government, states and municipalities, those special funds that will be invested exclusively in educational works determined by law.

Paragraph 2. Part of the same funds will be invested in aiding deprived students through the free provision of school supplies, scholarships, food, dental and medical aid, and recreation (Brasil, 1934).

The Constitution of 1934 expresses the trends of the times, among them the importance of education. Made free and compulsory at primary level, it would only be feasible with resources of its own. Therefore, the Constitution imposes for the federal government, states and municipalities an earmarked percentage of tax revenue. The constitutional earmarking of a percentage of tax revenue for education will be a distinctive feature in funding school education in Brazil.

Meanwhile, to prevent this imposition from generating waste or vague purposes, the Constitution provides in Article 152 a national law of education guidelines, expressed in a National Education Plan to be drafted by the National Council of Education. One must recall here the provisions of Articles 91 and 103 of the Federal Constitution of 1934 creating Technical Councils as counseling bodies to the Chamber of Deputies and the Federal Senate and determining that all ministries should be assisted by these Technical Councils. These technical intellectuals

would therefore be able to guide the course of the nation and introduce the necessary reforms within the period's spirit of planning, whether inspired by Keynesianism or post-1917 Russian centralism. Law 174/36, which gave constitutional status to the CNE, provided in Article 3 that:

Article 3. The National Council of Education shall be formed by 16 members, 12 of them representatives of education in its different levels and areas and four of them representatives of free and popular culture, all appointed by the President of Brazil with the approval of the Federal Senate, and chosen in the form provided herein among persons of recognized competence for those functions and *preferably experienced in education management and knowledgeable of national needs* (Brasil, 1936a, italics added).

The preliminary draft of the National Education Plan, prepared by the National Council of Education, contained 506 articles, thus being detailed and centralizing. It covered all areas of knowledge of higher education and the modalities of secondary education, determining curricula, workload and evaluation.

Chapter VI of this plan, titled *Student Aid*, addressed *facilitating education for deprived students (Article 473)*. Accordingly, *a minimum of 10% of the special education funds shall be set aside annually to cover the costs of student aid (Article 474)*. The concept of *School Treasury* would be revived, also receiving a share of public revenue as well as donations and other resources. Article 479 establishes what would be considered student aid. Among other provisions, item c includes *free supply of school material, including textbooks indicated by the respective teachers*. Articles 494 to 497 detailed the origin of the resources for the federal government, Federal District and state education funds. Given the difficulty in finding that document, it is worth reproducing those articles:

Article 494. For the maintenance and development of educational systems, the federal government and the municipalities shall never invest less than ten per cent, and the states and the Federal District never less than twenty per cent of the tax revenue.

Article 495. The federal government shall set aside for education in rural areas at least 20% of funds allocated to education in its annual budget.

Art. 496. The following comprise the education funds of the federal government, states and Federal District:

- a) the revenue from land assets reserved for the formation of the respective funds;
- b) the surplus of budget allocations, duly calculated;
- c) the percentages established by law on the proceeds of sale of public lands;
- d) special fees and other resources created by law;
- e) donations and bequests.

Sole paragraph. These funds are intended exclusively for the educational works established in this law and others to be created.

Article 497. Education beyond primary level should tend to be free (Brasil, 1936b).

Subsequently, on January 13, 1937, the federal government justifies, by means of Law no. 378, in its supplementary action, the disbursement of funds for the construction and maintenance of primary and professional schools in rural areas, in accordance with Articles 117 and 118 of the same law.

However, the coup of 1937 aborted the continuance of this ambitious plan. The (imposed) Constitution of 1937 established a difference between federal government and states regarding taxation. Article 20 ruled on federal taxes and Article 23 on state taxes. The federal budget would be drafted by the Public Service Administration Department (DASP), submitted to the approval of the Ministry of Finance and then decreed by the dictator.

With regard to education and its financing, this despotic constitution removed the constitutional earmarking of resources for education, since there is no mention of it in the chapter on education. Despite the serious threat this represented to the maintenance and development of education, one cannot ignore, on the other hand, certain initiatives of the *Estado Novo*, such as the rationalization of statistical data under the command of Teixeira de Freitas, who, as head of the Department of Statistical Studies of the Ministry of Education and Health, never ceased to be concerned about the absence of state funds for education in public budgets.

In view of the disturbing data disclosed by an official statistics service, the 1<sup>st</sup> National Conference on Education of 1941, based on technical studies, stresses the need to resume earmarked funds for school education. And that is what happens with Decree-Law no. 4958, dated November 12, 1942, which establishes the National Fund for Primary Education. The fund, formed by federal taxes created for this purpose, should be used to expand and improve the primary school system throughout the country. According to the text:

Article 1. The National Fund for Primary Education is hereby established.

Article 2. The National Fund for Primary Education shall be formed by revenue from federal taxes to be created for this purpose.

Sole paragraph. The resources and use of the National Fund for Primary Education shall be included in the federal budget of revenue and expenditure and governed by federal accounting legislation.

Article 3. The resources of the National Fund for Primary Education shall be destined to the expansion and improvement of the primary school system throughout the country. These resources shall be invested to aid each one of the states and territories and the Federal District, in accordance with their greatest needs (Brasil, 1942).

In turn, the National Agreement on Primary Education, established by the aforementioned decree-law, will be signed on November 16, 1942 by the Minister of Education and state representatives. However, it would only become effective on March 1, 1943 under Decree-Law no. 5293. The federal government would provide technical and financial aid for the development of this level of education in the states, provided they invested at least 15% of their tax revenue in primary education, increasing to 20% within 5 years. The states, on the other hand, were obliged to make similar agreements with their municipalities by means of a state decree-law, transferring resources provided there was an initial minimum investment of 10% of revenue from municipal taxes in primary school education, increasing to 15% within 5 years.

Article 1. The National Agreement on Primary Education is hereby ratified, provided in Article 4 of Decree-Law no. 4958, dated November 14, 1942 and executed on November 16, 1942 between the Minister of Education and the heads or delegates of the governments of the states, the Federal District and the territory of Acre (Brasil, 1942).

Signed by all state interveners, it is worth reproducing:

#### NATIONAL AGREEMENT ON PRIMARY EDUCATION

The federal government, represented by the Minister of Education and Health, on the one hand, and, on the other hand, the states of Alagoas, Amazonas, Bahia, Ceará, Espírito Santo, Goiaz, Maranhão, Mato Grosso, Minas Gerais, Para, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, São Paulo and Sergipe, the Federal District and the Territory of Acre, represented by the heads of their respective governments or their authorized delegates, present at Monroe Palace in Rio de Janeiro, on the 16th of November of 1942, decide to execute the following National Agreement on Primary Education:

#### CLAUSE 1

The federal government will cooperate financially with the states and with the Federal District by granting federal aid for the development of primary education throughout the country. This cooperation shall be limited, each year, to the resources of the National Fund for Primary Education, created by Decree-Law no. 4958, dated November 14, 1942, and will be made in accordance with the greatest needs of each of the federative bodies.

#### CLAUSE 2

The federal government, whenever requested by any of the federative bodies, will provide it with all technical assistance necessary to ensure the perfect organization of its primary education.

#### CLAUSE 3

The states, signatories to this agreement, undertake to invest in 1944 at least fifteen percent of the revenue from their taxes to maintain, expand and improve their primary school system. This minimum percentage shall be

increased to sixteen, seventeen, eighteen, nineteen and twenty per cent, respectively, in the years 1945, 1946, 1947, 1948 and 1949. In the following years, the minimum percentage for the year 1949 shall be maintained. Those states which currently invest more than fifteen per cent of tax revenue shall not decrease this percentage of investment in primary education as a consequence of the signing of this agreement. All states shall endeavor to ensure that the above percentages may be exceeded.

CLAUSE 4

The budget of the Federal District shall adopt the same criteria regarding primary education expenditure set forth in the previous clause. The federal government shall ensure compliance with these criteria for primary education expenditure in the territories.

CLAUSE 5

The state governments shall execute forthwith a state agreement on primary education with the municipal governments in which each municipality commits to invest, in the year 1944, at least ten percent of revenue from their taxes in the development of primary education, increasing this minimum percentage to eleven, twelve, thirteen, fourteen and fifteen per cent, respectively, in the years 1945, 1946, 1948, 1948 and 1949. The minimum percentage for the year 1949 shall be maintained in subsequent years. The method of investment of municipal resources earmarked for primary education shall be determined in said agreement or in special agreements.

CLAUSE 6

The departments in charge of the administration of primary education in the states, the Federal District and the territory of Acre shall coordinate with the relevant departments of the Ministry of Education and Health for the exchange of data and information that enable enhanced studies and knowledge on the issue of primary education in the country.

CLAUSE 7

This agreement shall be ratified, on the one hand, by a federal decree-law, and, on the other hand, by state decree-laws.

Rio de Janeiro, November 16, 1942 (Brasil, 1942).

In 1944, through Decree-Law no. 6785 of August 11, the federal government will in turn create the federal source for the funds:

Article 1. An additional five percent (5%) of Consumer Tax rates on beverages is hereby created (Article 4, paragraph 2 of Decree-Law no. 739, dated September 24, 1938) to constitute revenue for the National Fund for Primary Education, instituted by Decree-Law No. 4958, dated November 14, 1942 (Brasil, 1944).

Even so, there was need for a further decree to regulate Decree-Law no. 4958 of 1942 and provide the transfer of federal funds to the states to support the expansion of primary education. It is worth reproducing herein Decree no. 19513 (Brasil, 1945a):

DECREE No. 19513, DATED AUGUST 25, 1945.

Regulatory provisions governing the granting of federal aid for primary education.

THE PRESIDENT OF BRAZIL, in order to execute the provisions of Article 5 of Decree-Law no. 4958, dated November 14, 1942, and under the authority conferred on him by Article 74, item a of the Constitution,

Decreets:

Article 1. The resources of the National Fund for Primary Education, instituted by Decree-Law no. 4985, dated November 14, 1942, shall be annually invested as federal aid to promote the expansion and improvement of primary education school systems throughout the country.

Article 2. Federal aid for primary education shall be granted to each of the states and territories and to the Federal District in accordance with their greatest needs.

Paragraph 1. The greatest needs in each federative body shall be evaluated according to the proportion of the number of children between seven and eleven years of age who are not enrolled in a primary school.

Paragraph 2. This calculation shall consider the number in the whole country and the number in each federative body of non-enrolled school-age children, so that the percentage relation of these numbers corresponds to the percentage distribution of resources available in each financial year.

Article 3. The calculation referred to in the previous article will be based on the following criteria:

1. The primary school population shall account for 12.5% of the general population, based on data of the Brazilian Institute of Geography and Statistics.

2. Enrollment in primary education shall be estimated according to data from the last survey made by the Education and Health Statistics Service of the Ministry of Education and Health.

Article 4. Federal aid from the National Fund for Primary Education shall be invested as follows:

1. The amount corresponding to 70% of each federal aid shall be allocated for school buildings. The projects shall be previously approved by the Ministry of Education and Health. The works will be executed by the administrative authority of each federative body concerned, with all or part of the expenses being borne by the federal aid granted.

2. The amount corresponding to 25% of each federal aid shall be invested in the primary education of illiterate adolescents and adults, according to the provisions of a general plan of supplementary education approved by the Ministry of Education and Health.

3. The amount corresponding to 5% of each federal aid shall be converted into scholarships for technical training of primary education inspection and guidance staff at the discretion of the National Institute of Educational Studies.



Article 5. The granting of federal aid for primary education shall depend in each case on a special agreement executed between the Minister of Education and Health and the duly authorized representative of the federative body concerned, in accordance with the general criteria provided in the previous articles and with prior authorization of the President of Brazil.

Paragraph 1. The agreements for each financial year shall be signed at their beginning, or even before, as long as the corresponding federal budget has been decreed.

Paragraph 2. The Ministry of Education and Health shall be responsible, through its competent administrative department, for supervising, in all their provisions, the performance of the special agreements executed in accordance with this article.

Article 6. In order to receive federal aid for primary education, each federative body shall submit proof of fulfillment with the previous year's commitments assumed with the federal government in the National Agreement on Primary Education, executed on November 16, 1942.

Article 7. The special agreements for the granting of federal aid for primary education in the current year may be executed up to December 31, with delivery of the aid depending on whether the federative body concerned has complied with all clauses of the National Agreement on Primary Education, executed on November 16, 1942.

Article 8. This decree shall come into force on the date of its publication. All provisions contrary to the decree are hereby revoked.

Rio de Janeiro, August 25, 1945; 124<sup>th</sup> year of the Independence and 57<sup>th</sup> year of the Republic.

Getúlio Vargas

Gustavo Capanema

Decree-Law no. 8349, dated December 11, 1945, under the interim presidency of José Linhares, amends the wording of Articles 3 and 4 of Decree-Law no. 6785, dated August 11, 1944, in the following way:

Article 3. The appropriation established in the expenditure budget of the Ministry of Education and Health, based on the estimate of the corresponding revenue, shall be automatically distributed to the Treasury of the Administration Department to be credited to a special account opened at the Bank of Brazil for the National Fund for Primary Education.

Article 4. Voluntary contributions by any individual or legal entity governed by public or private law to the National Fund for Primary Education shall be credited to the account opened at Banco do Brasil (Brasil, 1945b).

Decree-Law no. 8529, dated January 2, 1946, the Organic Law of Primary Education, preserves, at the end of the dictatorship regime, the presence of the federal government according to Decree-Law no. 4958/42.

It therefore took six long years, with advances and retreats, until the final approval, covering two political regimes (dictatorship and

transition back to democracy), which demonstrates the difficulty of establishing a shared revenue regime for education. It should be noted that the number of students *not enrolled* in education systems is taken into account, based on a statistics system. In any case, one sees that the creation of the Fund for the Maintenance and Development of Elementary Education and Appreciation of Teaching (FUNDEF) has a significant predecessor here. On the other hand, Decree no. 19513/45 will be preserved in the democratic period, as seen below, and only be revoked by Decree no. 99678, dated November 8, 1990.

The Constitution of 1946 restores free and mandatory education as a right and the earmarking of funds established in the Constitution of 1934. According to Article 169:

Annually, the federal government shall never invest less than ten percent, and the states, Federal District and municipalities never less than twenty percent of revenue from taxes in the maintenance and development of education (Brasil, 1946).

In turn, Article 171 of the Constitution states:

The states and the Federal District shall organize their education systems.

Sole paragraph: For the development of those systems, the federal government shall cooperate with financial aid, which, regarding primary education, shall come from the respective National Fund (Brasil, 1946).

At the same time, Article 172 addresses student aid: "Each educational system shall have compulsory educational aid services that assure conditions of educational efficiency to deprived students" (Brasil, 1946).

And in Article 168, which addresses free primary education, the Constitution provides in items III and IV the responsibility of companies regarding the education of underage staff and the children of the employees when the latter exceed 100.

Probably due of those articles of the Constitution, the Gaspar Dutra administration and Minister Clemente Mariani issue Decree no. 24191, dated December 10, 1947, which amends Articles 4 and 5 of Decree no. 19513/45.

Article 1. Articles 4 and 5 of Decree No. 19543, dated August 25, 1945, are hereby amended as follows:

Article 4. Federal aid from the National Fund for Primary Education shall be invested as follows:

I - The amount corresponding to 70% of federal aid shall be allocated to the construction and renovation of school buildings and the acquisition of teaching facilities, in accordance with the plan developed by the National Institute for Educational Studies and approved by the Minister of State. The works will be carried out by the federative body concerned or, when convenient, at the discretion of the Minister of State, by the federal government. Expens-

es related to the execution of the plan and inspection of the works shall be borne by this percentage.

II - The amount corresponding to 25% of federal aid shall be invested in the primary education of illiterate adolescents and adults, according to the supplementary education plan approved by the Minister of State.

III - The amount corresponding to 5% of federal aid shall be invested in the granting of scholarships, the maintenance of training and improvement courses for teaching and technical staff, specialized in primary education and teacher training, and in the operation of primary education classes destined to the demonstration of educational practice, according to the plan organized by the National Institute for Educational Studies and approved by the Minister of State.

Art. 5 The granting of federal aid shall depend, in the cases of item I of the previous article, on the execution of an agreement between the Ministry of Education and Health and the duly authorized representative of the federative body concerned, in compliance with the general criteria described in the previous articles and with the prior authorization of the President of Brazil.

Paragraph 1. The agreements shall be executed annually, in any period, in view of the availability of the National Fund for Primary Education.

Paragraph 2. The Ministry of Education and Health shall be responsible for supervising, in all their provisions, the performance of the agreements hereby executed (Brasil, 1947).

This support for teaching facilities and other forms of student aid goes beyond free access, the so-called *passive free education*, which is the absence of tuition and fees. Such a support constitutes what is called *active free education*. It consists of complementary conditions offered by the public authorities that result in the successful permanence of students in school with learning support, food and textbooks. This is the case of Decree-Law no. 8460/1945, later amended by Decree no. 91542 of 1985, which progresses to what is now known as the National Textbook Program and the National School Library Program. In some cases, there are other forms of support for people from low-income or vulnerable backgrounds. A typical case of this support is currently one of the conditions for receiving the *Bolsa Família* (Law no. 0836/2004 and Decree no.5209/2004), a welfare handout for poor families which requires children's school enrolment and attendance.

The National Education Guidelines and Framework Bill, a law provided in the Constitution of 1946, introduced by Minister Clemente Mariani in October 1948, includes Chapter X, called Resources for Education. The bill provides:

Article 55. The National Fund for Primary Education, consisting of the part of the federal revenue earmarked for this purpose, other appropriations allocated to it and the balance verified at the end of each year in the budget appropriations for educational purposes, shall be invest-

ed in the development of the federal systems of primary education and in aid to mainstream and supplementary primary education of local systems, including in the territories.

Paragraph 1. The resources of the National Fund for Primary Education shall be distributed among the federative bodies according to their needs, directly assisting the state population and inversely to their income per capita.

.....  
.....  
Article 56. The federal government may execute agreements with the states and the Federal District to facilitate or guide the investment of education funds and to make local school systems more efficient [...] (Brasil, 1946).

Strictly speaking, these resources had a meaning set forth in Chapter I of the bill (Right to Education) and which, in item C, established aid to deprived students by providing school supplies, clothing, food and medical and dental services for free or at reduced prices.

In 1955, Decree no. 37082 of March 24 established a new regulation for the investment of resources of the National Fund for Primary Education. Of the fund's existing resources, 70% would be allocated for school buildings and teaching facilities, 25% would be destined for youth and adult literacy and 5% for scholarships to train teaching and technical and administrative staff. The criteria should comply with the regulation set forth by the then National Institute for Educational Studies (INEP).

In the early 1960s, the executive branch had the great challenge of ensuring compulsory education according to Law no. 4224/61, which clearly rules on the allocation of resources provided in the Constitution for education, and meeting the goals set forth in the National Education Plan of 1962 – 100% enrollment up to fourth grade of children aged 7 to 11 and 70% enrolment in fifth and sixth grades of children aged 12 to 14. This plan, drafted by the Federal Council of Education (CFE), was managed by Anísio Teixeira. Thus, the plan extends compulsory schooling to the age of 14, significantly increasing the number of children involved.

The goal of eradicating illiteracy in Brazil, however, would require greater financial resources than those available.

The final version of Law no. 4024/61 confirms the constitutional earmarking and, in Article 92, charges the CFE with developing the National Education Plan by means of goals and funds for each level of education.

Article 95 of the Guidelines and Framework Law also provided that:

The federal government shall grant its financial cooperation to education in the form of: subvention, in accordance with the special laws in force;

.....  
.....

financing to establishments maintained by states, municipalities or individuals for the purchase, construction or renovation of school buildings and their facilities and equipment in accordance with the special laws in force (Brasil, 1946).

Drafted in 1962 under the leadership of Anísio Teixeira, the National Plan referred to each fund, with performance forecast within a specific term. Specific plans would have quantitative and qualitative funds and targets.

Analyzing Anísio Teixeira's proposals, Amaral (2001) stresses how that educator devised sharing the burden to comply with mandatory education established by the Constitution of 1964:

Considering 35 students per teacher, Anísio calculated the yearly expenditure of a school per student. To this end, it sufficed to calculate how much each teacher would be paid in 12 months, that is,  $1.5 \times \text{MW} \times 12$  and divide it by 35 (students), which resulted in  $0.5143 \times \text{MW}$ . As this amount corresponds to 55% of a student's total cost, an evolution to reach 100% results in  $0.9351 \times \text{MW}$  for the yearly cost per student. He calls attention to the cost of other staff expenses (Teixeira, 1962, p.5), which are the responsibility of the public employer, which leads us to incorporate another 14% to that amount, resulting in  $1.0660 \times \text{MW}$  for the yearly cost per student. From this definition, to obtain the yearly expenditure with primary education per state, it suffices to multiply the total number of students in that state by  $1.0660 \times \text{MW}$  and, consequently, one can find the amount of resources needed to cater for all students in the country. To finance this total number of students, Anísio Teixeira defined quotas for municipalities, states and federal government. If the municipal and state quotas were insufficient to meet the yearly cost per student ( $1.0660 \times \text{MW}$ ), the federal government would contribute the federal quota 'corresponding to what is missing' (1968, p. 61) (p. 279).

Additionally:

The author also proposes setting up education councils composed of lay members 'with a high degree of administrative autonomy' (1968, p. 67). The financial resources would be managed by these councils 'in the form of education funds – national, state and municipal' (1968, p. 280).

According to Celso Kelly, the plan fits into the science of management that designs public interest services which necessarily result from planning. Still according to Kelly (1963, p. 11):

[...] Anísio Teixeira described in a single document the quantitative and qualitative targets, the rules for the distribution of national funds for primary and secondary education and the reasons that prevented the funding of higher education.

Kelly concludes the introductory text to the 1962 National Education Plan in an optimistic and hopeful tone: “Comprehensive, secure and financially and economically sound planning will replace the old system of partial and uncoordinated solutions. A gigantic step towards productivity” (Kelly, 1963, p.11).

Apparently, such expectations were frustrated. According to Nascimento et al., existing and earmarked resources were insufficient to achieve the proposed goals. In turn, the political context of the 1960s changed the directions previously established:

COPLED (Education Planning Committee), organized by the federal government, would develop and detail the PNE regarding the goals to be achieved. Next, the regulations governing the investment of resources of the funds instituted by LDB were detailed. The Federal Council of Education was confident that, as early as 1963, the Ministry of Education would approve the budget according to PNE guidelines, which did not happen (Nascimento et al., 1987, p. 19).

Once again, the right to education as a legally protected right would be defrauded by the cost of its *investment*, seen as an *expense* by the bureaucracy or undermined for political reasons. And so, rights proclaimed as values are reduced by real values as in the brilliant analysis by Anísio Teixeira (1962).

## **A Historical Course: military dictatorship**

Following the military coup of 1964, the dictatorship opted for a technocratic approach to economic planning aimed at accumulation, as established in Law no. 4320/64, in such a way that the social area took second place in governmental priorities, according to Horta (1982) and Rodrigues (1982).

The existence of the most different (National) Development Plans, despite addressing education, given their economic bias, will present until 1972 “[...] lower goals than those determined by the Federal Council of Education in 1961” (Horta, 1997, p. 169).

With the Constitution of 1967, which prevented through Article 67 Congress from elaborating or amending laws that created or increased expenses of any nature, the legislature merely ratified decisions made by the executive. In the case of education, it removes the earmarking of tax revenue to fund education. At the same time, it extends compulsory and free primary education from the ages of seven to fourteen (until then from seven to ten) in official primary schools, according to Article 167, paragraph 3, item II. This would pose serious problems for public policies, for the teaching career and for teachers’ salaries. How to extend primary education from four to eight years (despite focusing on age groups) and cut earmarking? However, Article 169, paragraph 1 preserves the mechanism by which the federal government should give financial aid to the states and the Federal District, *verbis*:

Paragraph 1. The federal government shall provide technical and financial assistance for the development of the state and Federal District systems;

Paragraph 2. Each educational system shall mandatorily provide educational aid services that ensure efficient schooling conditions for deprived students (Brasil, 1967).

In turn, Article 170 says: “Commercial, industrial and agricultural enterprises are obliged to maintain, as established by law, the free primary education of employees and their children” (Brazil, 1967).

Understanding the importance of this moment for education, Carlos Pasquale, heir to a tradition linked to public schools, drafts a proposal for a new financing mechanism capable of funding the demands of the expansion of education and submits it to the approval of the Ministry of Education (MEC), the institution of the *education wage*. Next, the executive branch submits to Congress a bill that becomes Law no. 4440/64. Its provisions, given by Decree no. 55551/65, were amended by Decree no. 58093/66. This refers to a contribution made by companies to supplement public resources for primary education only.

It is important to note that the law actually introduces a new reality in Brazilian education: the determination of the cost of primary education per student. The then National Institute for Educational Studies (INEP) was charged with carrying out studies to that end. Pasquale’s description of these calculations is transcribed below.

Admitting that:

1. primary education teachers are paid the equivalent of 1.5 minimum wage (MW);
2. expenses with teachers’ wages account for 70% of the total cost of maintaining this education, the remaining 30% represented by expenses with textbooks and school supplies (13%), buildings and facilities (10%), education supervision and management (7%);
3. the average number of students per class is 30, the per capita monthly cost of primary education in each region of the country will be given by the formula:

$$\frac{1,5SM}{70} \times \frac{100}{30} = 0,07SM$$

The cost of primary education thus determined (7% of the minimum wage) will be borne by companies regarding each child of employees in compulsory school age.

According to the actuarial estimates made by the Ministry of Labor and Social Security, and with age rates applied to the 1960 Census, there are 30 children between the ages of 7 and 11 for every 100 workers registered with the various Social Security Institutes. The contribution for each active employee should then be 30% of the cost of a child’s primary education, i.e.:

$$\frac{30}{100} \times (7SM) = 0,02SM$$

(Pasquale, 1965, p. 21).



The rate thus established (2% of the minimum wage) is what constitutes the so-called “education wage” and will be collected by the Social Security Institutes to which the companies are linked (Pasquale, 1965, p. 21).

One notes that to calculate the amount to be paid by companies as education wage, there is a study on primary school teachers’ salary, the number of students per classroom and, finally, the cost of primary education. If the aforementioned proposal by Anísio Teixeira is added to this study, a specific federalist focus will also be added. Again, without a teleology, a financing formula becomes increasingly dense, opening the path for a FUNDEF, FUNDEB or a CAQi.

A significant fact during this period is the 1966 Tax Reform that creates the State and Municipal Participation Fund to reduce regional inequalities. The federal government would centralize certain resources such as 20% of income tax revenue and 20% of the tax on industrialized products to then distribute them to states and municipalities.

Law no. 5531/68 creates tax incentives that allow individuals and legal entities to allocate up to 2% of the amount of their income tax to the then Federal Education Development Fund (FFDE). Such incentives would be used to fund educational projects in underprivileged segments and regions, especially regarding professional training.

Nevertheless, there is evidence, as showed by Melchior (1980), of the decrease in resources for education precisely at the moment when compulsory primary education was being expanded to eight years without constitutional earmarking of resources.

It is also possible to surmise that, for the same reason, the Military Junta’s (imposed) constitutional amendment of 1969, which maintains non-earmarking for states and federal government, restores earmarking for municipalities only, according to Article 15, paragraph 3, item f. Here we have an early sign of the municipalization of primary education as indicated by the studies of Rosar (1997) and Oliveira (1999).

Law no. 4024/61, amended by Law no. 5692/71, confirms the extension of free and compulsory primary education to 8 years, from the ages of seven to fourteen. In its Article 56, paragraph 1, it generally provides: “To the federal resources, the states, Federal District and municipalities will add resources of their own for the same purpose” (Brazil, 1971).

The sole paragraph of the same article provides *technical aid by the federal government* to states and municipalities and makes it possible to transfer resources from the federal government to those public bodies. And it assigns new responsibilities to municipalities.

Article 58. The supplementary state legislation, according to Article 15 of the Federal Constitution, shall establish the responsibilities of the state itself and of its municipalities in the development of the different levels of education and shall rule on measures aimed at making the investment of resources in education more efficient.

Sole paragraph. The measures referred to in this article shall aim at the progressive transition of education duties and services to municipal responsibility, especially primary education, which by their nature can be carried out more satisfactorily by local administrations (Brasil, 1971).

It is clear here that the traditional defense of decentralization, proposed by Anísio Teixeira and the Pioneers' Manifesto, obfuscates the principle of solidarity advocated by both in favor of *municipal responsibility for education duties and services, especially primary education*, without freeing it from authoritarian central control. This reality led, for example, to the introduction of the infamous third period in many schools, squeezed in between morning and evening.

Law no. 5537, dated November 21, 1968 creates the National Institute for the Development of Education and Research (INDEP), which, by Decree-Law no. 872, dated September 15, 1969 was renamed the National Fund for the Development of Education (FNDE).

Subsequently, Law no. 7044/82 preserves the same provisions of Law no. 5692/71. Whether by one or the other, the negative impact on the joint financing of teaching salaries and careers was quite significant.

Constitutionally compulsory funding for education was only restored through the Calmon amendment, Amendment no. 24/83, regulated by Law no. 7348/85. However, lacking in clarity on the meaning of maintenance and development of education, it ended up allowing the investment of resources in ways that were hardly relevant to schooling.

## **A Historical Course: redemocratization**

Following the struggles for the restoration of democracy, civil society played a significant role in drafting the Constitution of 1988. People yearned for a country with greater social and political rights, without neglecting civil rights.

The Constitution of 1988 recognized the right to education as the first of social rights (Article 6) as well as a right of citizens and duty of the State (Article 205). Therefore, it established principles, guidelines, rules, earmarked resources and plans to support that right. In detailing this right, it listed ways to achieve it, such as free and compulsory quality education, extended legal protection and legal instruments made available to citizens to put it into effect or to demand it in case of omission.

The Constitution recognizes Brazil as a Federative Republic formed by the indissoluble union of states and municipalities and the Federal District (Brasil, 1988, Article 1).

An important change appears here compared to previous constitutions: the elevation of municipalities to the status of federative bodies. And, in adopting this framework, it does so under the principle of cooperation, according to Article 23, sole paragraph.

To make this federated and cooperative model feasible, the Constitution established a complex legal order in which coexist, according to Almeida (1991, p. 79), exclusive duties, horizontally distributed, and concurrent duties, vertically distributed, allowing also the participation of partial orders in the sphere of duties exclusive to the central order, through delegation.

Article 211, paragraph 1 clarifies the system of collaboration regarding the federal government, which plays a redistributive, supplementary and equalizing role, providing technical and financial aid to states, municipalities and the Federal District.

The issues related to financing and its redistribution in Article 212 of the Constitution, regarding constitutionally earmarked resources, were the subject of constitutional amendments, such as constitutional amendment 14/96 and amendment 53/06, which respectively sub-earmarked resources to Fundef and Fundeb. In other words, within the scope of what could be termed *cogent cooperation*, these funds have a state dimension (state funds with state and municipal resources) and are mandatory for all states.

The National Education Guidelines and Framework Law, no. 9394/96, has a chapter dedicated to financing, with special attention to what *maintenance and development of education* is and is not. The same law provides in Article 74:

The federal government, in cooperation with the states, Federal District and municipalities, shall establish a minimum standard of educational opportunities for elementary education, based on the calculation of the minimum cost per student, capable of ensuring quality education (Brasil, 1996).

Article 75 is entirely dedicated to explaining the basic definition of cost per student and minimum standard of quality.

Regardless of policies of restriction, contingency, focus and other forms of imposing limits on social rights arising from initiatives related to neoliberalism, this earmarking represented a check on or even a buffer against them.

Through amendment 14/96, important articles of the chapter on education of the Federal Constitution were amended, namely Articles 34, 208, 211 and 212. Also altered for a 10-year period was Article 60 of the Transitory Constitutional Provisions Act (ADCT), the article on financing.

From this amendment originated Law no. 9424 / 96, ratified on December 24, 1996, published in the Official Gazette of December 26, 1996, better known as the FUNDEF Law.

This law addressing elementary school funding policies had an equal or even greater impact than the LDB itself. After all, it deals with the federative pact and the financing system of compulsory education through sub-earmarked resources and control of resources by the Courts of Auditors and the Monitoring and Supervision Councils.

FUNDEF represents the controversial result of a long trajectory in the quest for earmarked resources for compulsory education, whose regulation had long been on the agenda of educators. The National Education Plan, created as early as 1934, the student cost per year included in the education wage and Anísio Teixeira's studies for the Education Funds are examples of initiatives of planned expansion of education stages and of well-managed resources.

Cost and expansion intersect with the historical demand by the federative bodies for federal financial complementation to address the burden of compulsory education. One can affirm that this demand is clear in the Constitution of 1934 and takes shape in the Estado Novo regime, from the National Conference on Education of 1941 to redemocratization in 1946.

The calculations of the cost of primary education are made explicit in their connection with studies on the education wage, including, as seen, with regard to cost per student. INEP was charged with carrying out studies for this purpose with Pasquale's participation.

The classic book *Educação é Direito* (Education is a Right) by Anísio Teixeira represents the encounter of those two projects, integrating the competence of primary school teachers and students with a view to financing this mandatory stage. But there are differences between this project of the 1960's and the FUNDEF of the 1990's. According to Amaral (2001, p. 278):

The ideas introduced by Anísio Teixeira, however, have clear differences compared to Fundef. The main purpose of the latter is to redistribute existing resources for elementary education among the municipalities of a federative state, based on a pre-fixed national average cost per student per year. Fundef provides the provision of federal resources to those states that are not able, with their own resources, to cover this national average cost. Anísio's ideas go beyond this: There is an effective concern with the quality of teaching, expressed by the definition of a salary for teachers, and an ingenious permanent integration between the three spheres of government.

The updated synthesis of this proposal will reach its apex in 1994 with the National Conference on Education, resulting in the pact for education.

The Fernando Henrique Cardoso administration will take the projects born from this conference and give them a singular course alongside its decentralizing policy. But for the serious omission of this government to comply with the very arithmetic equation it advocated in Law no. 9424/96 for the average cost of student per year, FUNDEF, despite its conservative remodeling, could have been better implemented.

Its real implementation stemmed from the focused *sub-earmarking* of tax revenue for elementary education; from the regulation of existing resources provided in Article 212, by financing mechanisms

which introduced a mini tax reform; from the greater clarity regarding the responsibilities of governments in the provision of this level of education and the constitution of councils for social and financial control of resources.

Despite its incomplete and imperfect implementation, due to the omission of the federal government to contribute its share to the constitution of the Fund and the hasty introduction of municipalization, this focus reduced the gap between the country's regions in terms of expenditure with elementary education and helped to universalize access to this educational stage.

However, it should be stressed that within the concept of basic education in Brazil (preschool, elementary and secondary education), the focus on eight years of compulsory education eclipsed policies for the expansion of early childhood education, secondary education and modalities such as Education for Youngsters and Adults. This gap in the initial and final stages of basic education, coupled with generalized municipalization, is one of the reasons for the poor performance of elementary and secondary students.

Nevertheless, in compliance with Article 214 of the Constitution, Law no. 10.172/01 of the National Education Plan was created. Its debate exposed the conflict between two projects: that of the executive, more synthetic and less comprehensive, and that of civil society, more analytical and comprehensive. The law passed in Congress is realistic in the diagnosis of national education and goals to be achieved. However, its effectiveness, dependent on financing, when sanctioned by the president, suffered from vetoes to all its items related to funding that went beyond earmarked and sub-earmarked resources. Such a mutilation meant a substantive loss of the mandatory character of the plan, practically made declaratory. In this sense, this plan, alongside those of 1936 and 1962, expresses yet another failure, whether due to undemocratic coups or veto to financing goals.

Constitutional amendment n. 53/2006, on Article 214 of the Constitution, replaced amendment 14/96, created the Fund for Maintenance and Development of Basic Education and Appreciation of Education Professionals (FUNDEB) and filled the abovementioned gaps, although insufficiently for access at all stages of basic education and their respective quality. Its regulatory law is no. 11494/2007, with a significant impact on basic education as a whole.

In addition, there is now the National Professional Wage Floor, Law no. 11738/08, which establishes a wage floor for basic education teachers. Due to the variability in salary and careers plans among federative bodies, thanks to insufficient complementation of funds by the federal government, many states and municipalities do not pay what is due to teachers.

## Constitutional Amendment 59/2009

On November 11, 2009, National Congress approved Constitutional Amendment 59 with important changes in the education chapter. Compulsory and free basic education became a subjective public right for the 4-17 age group, and student aid in all stages of basic education should include various supplementary programs such as textbooks and school supplies, transportation, food and health care.

On the other hand, Article 214, as amended by the aforementioned provision, established in item VI that the goal for investment of public resources in education should use the Gross Domestic Product (GDP) as a proportional reference. This measure accords with the increase of responsibilities by federative bodies, especially regarding the age group introduced in the amendment. In view of all this, the universalization of compulsory education must necessarily depend on forms of cooperation among all education systems of the federative bodies.

This plan agrees with several provisions of the Constitution of 1988, of the infra-constitutional legislation, specifically with the approval of Law no. 13005 / 2014, the National Education Plan Law.

It is important to note that, concurrent with the PNE, one must consider what is stated in the sole paragraph of Article 23 of the Constitution that provides for *cooperation* among federal bodies: "Supplementary laws shall establish rules for cooperation between the federal government and the states, Federal District and municipalities to provide balanced development and well-being at national level" (Brasil, 1988).

Despite the amendment of this paragraph, whose original wording had supplementary law in the singular, to date Congress has not yet regulated this essential aspect of the federative pact. The drafting of this supplementary law would make it possible to improve the systematization of competencies of the federative bodies in order to coordinate them clearly in form, cooperatively in interaction and effectively in the development and well-being of Brazilian citizens. This is provided in goal 20 and its strategy 20.9.

Linked to this is the challenge of financial sustainability of the National Education Plan. The reference to GDP (reaching 10% of GDP in two terms) is very clear in the constitutional amendment and in Law no. 13005/2014 in goal 20. Such sustainability is crucial. This constitutional clause is a condition for the possible success of the PNE. Not putting it into effect is yet another return to the failure of past PNEs.

An additional challenge is that brought about by the Cost of Initial Quality Education per Student (CAQi), corresponding to the minimum standard of opportunities of the LDB, set forth in Article 74 of the Guidelines and Framework Law, its redistribution provided in Article 75 of the same law and the broader principle in Article 3, item IX (guarantee of quality standard) and which must correspond to Cost of Quality per Student.

It is true that the current average cost per student (of 2,155 reais/month in elementary education according to *Education at a Glance 2014* (OECD)) is insufficient to meet the cost of quality requirements, especially regarding the extended school day. It suffices to observe the new mandatory age range, the extension of the school day (goal 6 of PNE) and the demands made by the strategies of several goals, especially those of goal 20.

Therefore, in June 2016, CAQi should have been implemented . . . which presupposes a process of discussion and elaboration of the necessary basic inputs so that the transition from the current state, especially where there are gaps, happens progressively and in the most appropriate way. Cost analysis entails an idea of the magnitude of the viability of education plans in view of the right to education. This analysis includes the public network management as a whole.

Not surprisingly, goal 20 was by far the most discussed. After all, what is being redressed is the right to education, which in our country was delayed, leading to serious forms of exclusion of the Brazilian population.

Simultaneously, there is Constitutional Amendment Bill no. 15/2015, which makes FUNDEB permanent, a proposal that is consistent with the right to education. If this right is essential to ensure citizenship and human rights, it is imperative that its support be also permanent.

Contrariwise, considering the 20-year period of FUNDEF plus FUNDEB, the end of FUNDEB would be nonsensical and conducive to chaos, and its discussion every 10 years would leave in suspense an entire policy supported by this sub-earmarking. Once again it is insisting on the possibility of discontinuity, one of the greatest evils of public education administration. And it would not live up to the hard struggles of the past to make education a sustainable right.

In any case, a permanent FUNDEB advances and its constitutionalization allows the preservation of its essence without waiving adjustments specific to a changing reality.

## **Financing in the Current Setting**

Currently, the country has experienced a variety of economic and financial problems, including a decline in GDP and in the price of oil, which may compromise the accomplishment of the goals and their strategies. Nevertheless, the plan should explain better the relationship between the goals, their strategies and the responsibilities of the federative bodies and the respective division of resources from clear sources of financing.

Still in the political sphere, the democratic continuity of the term of the President of Brazil, elected by popular vote, was interrupted. From the economic and financial point of view, one observes nowadays that the PNE is once again *neglected*, including a presidential veto in Law no. 13473, dated of August 8, 2017, which provides the budget guidelines for



2018, of the cost of initial quality per student, a crucial point for the PNE. The reason given for the veto was fiscal adjustment:

The measure would restrict the discretionary allocation of the executive branch in implementing public policies and reduce flexibility in the prioritization of discretionary spending in the event of adjustments required by Supplementary Law no. 101/2000 (LRF), jeopardizing the achievement of the fiscal target (Brasil, 2017).

Once again the tension between fiscal adjustment and the provision of social rights tends to favor the former, signaling a setback in the sphere of rights. As stated by Amaral (2016), based on broader funding studies:

The movement of budgetary resources towards capital, to the detriment of social rights, was made explicit in the very enunciation of PEC 241/55, which became EC 95, by not stipulating any limit to the payment of interest, charges and amortization of the debt, which was later materialized in LOA 2017 by substantially increasing, 60.2%, the amount possible for this expenditure over that paid in 2016.

[...]

Therefore, the analysis of the budget execution of the executive power in the period 1995-2016 and of the budget approved in the LOA for 2017 allows us to affirm that the fulfillment of the goals contained in the PNE (2014-2024) in the context of EC 95, which will be in force until 2036, extending also to the next 10-year PNE, is a virtually impossible task, and it can be said that EC 95 has imposed a “death sentence” on the PNE (2014-2024).

This *death* of the PNE, by asphyxiation of the constitutional (EC 59/09) and legal (Law No. 13005/16) financing of national education, gained yet further support in the recent guidelines of the World Bank Group with the study commissioned by the former Minister of Finance Joaquim Levy, now called *A Fair Adjustment: Efficiency and equity of public spending in Brazil*, November, 2017. This study suggests the end of free federal public higher education, the introduction of payment based on income distribution. This study aiming at a fiscal adjustment, although the title mentions *equity*, tends much more to the privatization of the public fund than the redistribution of income.

## Conclusion

The right to education, which dates back to the Imperial Constitution of 1824, being more than an individual right, i.e., a social right, cannot subsist without adequate funding. If civil and political rights have a cost, even more so have social rights.

What the historical evolution reveals through the paths of legislation is that at least until 1934, this funding was irregular, either due to insufficient resources or inefficiency of the revenue collection.

However, one should not forget that we had a slave-owning, hierarchical and agro-exporting society, whose paradigm for citizenship and its consequences for education was no more than privilege for a few or values proclaimed without effectiveness. Thus, education was not in the interests of the slave-owning and post-abolition oligarchies, the background in which the twofold education system was formed. An education for the elite (or otherwise, an education given at home) and a fragile education of limited scope for *the others*. From this twofold system, the result of inequality and discrimination, stem both poor inclusion and the great exclusion of the more numerous social classes.

The most effective concern with school education occurred, on the one hand, when capitalist urban and industrial conditions started emerging and, on the other, due to vexatious statistics that shamed us before countries like Argentina, Chile and Uruguay.

Strictly speaking, financing for school education, thanks to the initiative of educators aware of its importance, starts systematically with the constitutional earmarking of a percentage of tax revenue collected for this purpose.

From then on, there is a contradictory movement between abolishing earmarking, as in 1937, 1967 and some proposals currently on the political agenda, and reestablishing it as in 1946 and 1988. On the one hand, the government discourse of planning flexibility, and, on the other, educators' movements for public school financing, whether in the late 1950s or in the redemocratization movements of the late 1970s and the 1980s. Despite their different paradigms, these movements advocated education as a social right and, therefore, expanded access, guarantee of higher quality and support by a necessary and sufficient budget. The failure of the National Education Plans (1936, 1962, 2001) illustrates how slowly progress is made in ensuring this right.

Alongside this quest for greater equality, regarding basic education, another important and mediating factor in the demand for equality was federalism. The distribution of responsibilities and the consequent funding have been an irregular process which calls for a more proactive role of the federal government regarding financing and a system of tax redistribution to subsidize the responsibilities of states and municipalities.

The National Education Plan for 2014-2024, of Law no. 13005/14, which extends compulsory education to the 4-17 age group and establishes 20 goals and multiple strategies, suggesting sources of funding, represents for educators and many managers the peak of an intense process of participation. Having undergone numerous debates and proposals in municipalities and states before reaching the federal government, the expectation is that, this time, there would be congruence between radiography, objectives, goals, strategies and financing.

However, once again, the horizon for this plan does not match the intensity of its production. It extends compulsory education, calls for full access to day care, but, although it stems from a constitution-

al amendment with all its rituals and an infra-constitutional law, the paths of financing remain hazy. Despite the requirements for effective management of investments and the countless controls by Councils and Courts of Auditors to increasingly improve performance, the greatness of the plan cannot be solely supported by earmarked resources.

Citizenship, as proclaimed in our Constitution, and the Human Rights of which Brazil is a signatory, support a democratization of education. But this path once again clashes with the advocates of a conservative modernization who, in order to enhance it, limit the possibilities of a more equal and fairer country. The financing of education is a thermometer of this dialectic between modernization and democracy.

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