

RETHINKING PUBLIC POLICIES: A BRAZILIAN DEBATE ON PROGRAMMATIC INTERVENTION AND SOCIAL RIGHTS

REPENSANDO AS POLÍTICAS PÚBLICAS: UM DEBATE BRASILEIRO SOBRE INTERVENÇÃO PROGRAMÁTICA E DIREITOS SOCIAIS

Josué Mastrodi¹
Aleteia Hummes Thaines²
Mzukisi Njotini³

ABSTRACT: This article addresses a conceptual problem in contemporary Brazilian legal and policy discourse: the imprecise use of the term "public policies". It argues that the widespread association between public policies and the promotion of rights results from a conceptual conflation between programmatic state action and continuous constitutional obligations. The analysis adopts a qualitative and deductive approach, based on bibliographical research and conceptual reconstruction. Drawing on a functional reconstruction of the concept, the article contrasts its development within North American policy studies, where public policies were predominantly associated with governmental intervention aimed at solving specific problems, with its expanded use in the Brazilian context, where it is frequently applied to actions directed towards the implementation of social rights. The article proposes that the expansion of the concept of public policy within welfare-state constitutional systems raises questions regarding the adequacy of classical policy typologies when applied to forms of state action organised around permanent duties to realise social rights. By revisiting the distinction between distributive and redistributive logics, it suggests that conceptual frameworks originally developed to explain governmental intervention in a liberal institutional context may not be sufficient to explain the functional structure of welfare-state constitutionalism.

Keywords: Public policies; Social rights; Constitutional obligations; Welfare State; Programmatic Intervention; Legal theory.

RESUMEN: Este artículo aborda un problema conceptual presente en los debates jurídicos y de políticas públicas contemporáneos en Brasil: el uso impreciso del término «políticas públicas». Sostiene que la asociación generalizada entre políticas públicas y promoción de derechos resulta de una confusión conceptual entre la acción estatal programática y las obligaciones constitucionales continuas. El análisis adopta un enfoque cualitativo y deductivo, basado en investigación bibliográfica y reconstrucción conceptual. A partir de una reconstrucción funcional del concepto, el artículo contrapone su desarrollo en los estudios de políticas públicas en los Estados Unidos, donde las políticas públicas fueron asociadas predominantemente con la intervención gubernamental orientada a la solución de problemas específicos, a su uso ampliado en el contexto brasileño, donde con frecuencia se aplica a acciones dirigidas a la

¹ Professor in the Graduate Program in Law. Pontifical Catholic University of Campinas (PUC-Campinas, Brazil). School of Human, Legal and Social Sciences. Orcid: <https://orcid.org/0000-0003-4834-0170>. E-mail: mastrodi@puc-campinas.edu.br.

² Professor in the Graduate Program in Law. Pontifical Catholic University of Campinas (PUC-Campinas, Brazil). School of Human, Legal and Social Sciences. Orcid: <https://orcid.org/0000-0003-4834-0170>. E-mail: aleteia.hummes@puc-campinas.edu.br.

³ Dean of the Faculty of Law and Professor in the Postgraduate Programme in Law, University of Fort Hare (UFH, South Africa). Orcid: <https://orcid.org/0000-0002-2711-4097>. E-mail: mnjotini@ufh.ac.za.

implementación de derechos sociales. El artículo sostiene que la expansión del concepto de políticas públicas en los sistemas constitucionales de Estado de bienestar plantea interrogantes acerca de la adecuación de las tipologías clásicas de políticas públicas cuando se aplican a formas de acción estatal organizadas en torno a deberes permanentes de realización de derechos sociales. Al revisar la distinción entre lógicas distributivas y redistributivas, sugiere que los marcos conceptuales originalmente desarrollados para explicar la intervención gubernamental en un contexto institucional liberal pueden resultar insuficientes para explicar la estructura funcional del constitucionalismo de bienestar. De este modo, ofrece un marco analítico orientado a un uso más preciso del concepto de políticas públicas y contribuye a los debates contemporáneos en teoría del derecho, derecho público y estudios de políticas públicas.

Palabras clave: Políticas públicas; Derechos sociales; Obligaciones constitucionales; Estado de bienestar; Intervención programática; Teoría del derecho.

RESUMO: Este artigo aborda um problema conceitual presente nos debates jurídicos e de políticas públicas contemporâneos no Brasil: o uso impreciso do termo “políticas públicas”. Sustenta-se que a associação generalizada entre políticas públicas e promoção de direitos resulta de uma confusão conceitual entre a ação estatal programática e as obrigações constitucionais contínuas. A análise adota abordagem qualitativa e dedutiva, baseada em pesquisa bibliográfica e reconstrução conceitual. A partir de uma reconstrução funcional do conceito, o artigo contrapõe seu desenvolvimento nos estudos de políticas públicas nos Estados Unidos, onde as políticas públicas foram predominantemente associadas à intervenção governamental voltada à solução de problemas específicos, ao seu uso ampliado no contexto brasileiro, onde frequentemente é aplicado a ações voltadas à implementação de direitos sociais. Sustenta-se que a expansão do conceito de políticas públicas nos sistemas constitucionais de Estado de bem-estar social suscita questionamentos acerca da adequação das tipologias clássicas de políticas públicas quando aplicadas a formas de atuação estatal organizadas em torno de deveres permanentes de realização de direitos sociais. Ao revisar a distinção entre lógicas distributivas e redistributivas, o artigo sugere que os referenciais conceituais originalmente desenvolvidos para explicar a intervenção governamental em um contexto institucional liberal podem ser insuficientes para explicar a estrutura funcional do constitucionalismo de bem-estar social. Com isso, oferece um quadro analítico voltado ao uso mais preciso do conceito de políticas públicas e contribui para os debates contemporâneos na teoria do direito, no direito público e nos estudos de políticas públicas.

Palavras-chave: Políticas públicas; Direitos sociais; Obrigações constitucionais; Estado de bem-estar social; Intervenção programática; Teoria do direito.

1. INTRODUCTION

The expression “public policies” has become ubiquitous in contemporary legal and political discourse. It is widely used to refer to a broad range of governmental actions, particularly those aimed at addressing social and economic problems. In many contexts, however, the term is employed without any concern for its conceptual precision, serving as a general label for different forms of state action.

This widespread use is accompanied by a notable lack of definitional clarity. Although a substantial body of literature refers to public policies, relatively few works are concerned with

defining the concept itself. In many cases, the term is used instrumentally, as a convenient expression to designate governmental actions, without any effort to delimit its meaning or to distinguish it from other forms of state activity (Souza, 2006; Mastrodi; Ifanger, 2019). Similar concerns regarding conceptual fragmentation and definitional diversity have been identified in the broader international policy studies literature (Anderson, 2015; Peters, 2021; Howlett; Ramesh; Perl, 2020).

This imprecision thus becomes particularly evident when public policies are associated with the promotion and guaranteeing of rights. For example, it is common for the term to be used to describe actions aimed at implementing social rights, and, in some instances, public policies are presented as mechanisms capable of ensuring the effectiveness of rights in general. In this sense, they tend to be treated as a kind of general remedy for social problems, capable of promoting and guaranteeing a wide range of rights. In fact, they are often described as “a remedy capable of solving almost all social demands” (Mastrodi; Ifanger, 2019, p. 5).

Such usage, however, is conceptually problematic. It presupposes that public policies are inherently connected to the promotion of rights, and, more strongly, that rights (whether public or private law rights) depend on public policies for their realisation. This assumption is often taken for granted, rather than explicitly justified, and results in the approximation of two distinct dimensions, that is, the normative structure of rights and the concrete actions undertaken by the State.

The problem addressed in this article lies precisely in this approximation. When public policies are treated as the primary means for the promotion or guarantee of rights, the concept itself becomes analytically unstable. It ceases to designate a specific type of state action. Instead, it becomes a generic expression encompassing a wide variety of governmental activities.

Conceptual instability is not merely a terminological difficulty. Concepts operate as analytical tools through which phenomena are identified, compared and classified. When a single category is employed to describe both temporary problem-oriented interventions and continuous constitutional obligations, the capacity to distinguish different forms of state action is weakened. As a consequence, explanatory frameworks, typologies and evaluative criteria developed for one phenomenon risk being indiscriminately applied to another. The result is a loss of analytical

precision in both legal and policy research, making it more difficult to explain, compare and evaluate distinct modes of state action.

The hypothesis developed here follows directly from this concern. Conceptual frameworks originally developed to explain public policies in a liberal institutional context may not be sufficient to explain constitutional systems organised around permanent duties to realise social rights. In the context in which policy studies emerged, they were primarily understood as instruments directed towards specific governmental objectives, while improvements in rights tended to occur as consequences of successful intervention rather than as explicit objectives of state action (Mastrodi; Ifanger, 2019, p. 10). The expansion of the concept within welfare-state constitutional systems therefore raises questions regarding the adequacy of classical policy classifications when applied to forms of state action structured around the implementation of constitutionally guaranteed social rights.

Therefore, they should be conceptualised as structured forms of state action directed towards the achievement of specific objectives. From this perspective, the promotion of rights may occur because of public policies, but it does not constitute their immediate or defining purpose. This article does not argue that social rights are realised independently of public policies, nor that welfare-state programmes aimed at implementing social rights cannot be described as public policies. Its claim is narrower. The conceptual difficulty emerges when permanent constitutional obligations become indistinguishable from the specific programmes, strategies and institutional arrangements adopted to fulfil them. This distinction, however, does not exhaust the problem examined here, which also concerns the adequacy of conceptual frameworks originally developed in a different institutional context.

This argument is grounded in a functional approach to the concept of public policies. Instead of defining them by their formal characteristics or by their association with particular rights, public policies are better understood in terms of the objectives they are designed to achieve. In this framework, they correspond to coordinated programmes of action aimed at solving specific problems, structured within defined frameworks of implementation and evaluation (Bucci, 1997; Souza, 2006).

From this standpoint, it is also necessary to recognise that the concept of public policies is historically situated. It emerged in the North American context as a category associated with

governmental intervention directed at solving concrete problems, particularly in situations of crisis. In its original formulation, public policies were conceived as programmes with defined objectives and limited duration, rather than as mechanisms for the universalisation of rights (Mastrodi, 2024).

By contrast, in legal systems shaped by the development of welfare states –such as Brazil– the concept has undergone a significant transformation. Public policies have increasingly been associated with the implementation of social rights, especially those that require continuous state action. This perspective is consistent with approaches that relate public policies more directly to development processes than to the direct promotion of rights, emphasising that improvements in rights often result from broader socio-economic transformations (Ribeiro; Anjos, 2011). As a result, the term has come to designate a wide range of governmental activities, contributing to the expansion and dilution of its original meaning (Mastrodi; Ifanger, 2019).

This shift introduces a conceptual tension that lies at the core of the present analysis. The expansion of the concept of public policy from its original problem-oriented formulation to its contemporary use in welfare-state constitutional systems raises questions regarding the explanatory reach of existing policy frameworks. Conflating these two different institutional contexts obscures important distinctions concerning the purposes, structures and functions of state action.

The objective of this article is to clarify this conceptual transformation and to examine whether the analytical frameworks traditionally employed in policy studies remain adequate when applied to welfare-state constitutional systems. The analysis is conceptual rather than empirical and seeks to differentiate between two analytically distinct levels: the normative structure of rights and the instrumental nature of public policies. This article adopts a qualitative and deductive approach, based on bibliographic research and conceptual reconstruction of the literature on public policies, social rights and constitutional obligations.

The article is structured as follows. The next section presents the North American theoretical construction of public policies as a reference point, emphasising its functional character and its orientation towards the resolution of specific problems. The third section examines the transformation of the concept in the context of welfare states, with particular attention to the Brazilian legal framework. The fourth section analyses the conceptual consequences of conflating public policies with the guarantee of rights, and the fifth section revisits the distinction between distributive and redistributive policies.

2. PUBLIC POLICIES IN THE AMERICAN CONTEXT: A REFERENCE POINT

The concept of public policies emerged within the North American context as a category associated with specific forms of governmental intervention. The emergence of policy studies is often associated with Harold Lasswell's proposal of a policy-oriented social science directed towards problem solving and informed governmental decision-making (Lasswell, 1951). Its development is closely linked to the need to address concrete social and economic problems, particularly in situations of crisis or disruption. In this original formulation, public policies were not conceived as general instruments of state action, but as structured programmes designed to respond to defined circumstances.

Under this logic, public policies correspond to coordinated sets of actions aimed at solving particular problems. Broad definitions of public policies as encompassing any form of state action have been widely criticised in the literature for their lack of analytical precision, particularly when they fail to distinguish between different types of governmental activity (Dye, apud Souza, 2006). Accordingly, public policies may also be understood as the State implementing a project of government through programmes and actions directed at specific sectors of society (Höfling, 2001). Similar debates may be found in the literature contrasting broad and restrictive definitions of public policy (Dye, 1972; Anderson, 2015; Peters, 2021)

This functional understanding is consistent with theoretical approaches that emphasise the analysis of law and state action in terms of their social function rather than their formal structure. In this regard, Norberto Bobbio's distinction between structural and functional analysis provides an important conceptual foundation, as it shifts the focus from the formal characteristics of legal institutions to the purposes they serve within society (Bobbio, 2007). Applied to public policies, this perspective reinforces the idea that they should be understood according to the objectives they pursue and the problems they are designed to address, rather than as abstract normative categories.

Their existence depends on the prior identification of a concrete situation requiring intervention, which must be incorporated into the public agenda and translated into a structured programme of action. As such, public policies are not defined by their content, but by their function as instruments directed towards the resolution of specific problems (Mastrodi, 2024). This understanding is consistent with the literature that defines public policies primarily in terms of their

capacity to “put government into action”, rather than as a normative category linked to rights (Souza, 2006).

This functional character is best understood when considering the internal structure of public policies. As noted in the literature, their formulation presupposes a sequence of stages that includes the identification of a problem, its incorporation into the public agenda, the design of alternative solutions, the selection of a course of action, and its subsequent implementation and evaluation (Souza, 2006; Kingdon, 2014). The definition of the public agenda is a decisive moment in this process, as it determines which problems will be recognised as requiring state intervention. This understanding is broadly consistent with the classic literature on agenda-setting, policy processes and policy cycles (Kingdon, 2014; Howlett; Ramesh; Perl, 2020, Viana, 1996), while also leaving room for interpretive approaches that emphasise the political construction of policy problems (Stone, 2012).

The process through which situations become recognised as public problems is itself politically contested. As Deborah Stone (2012) argues, policy problems are not objective facts awaiting governmental response, but social constructions shaped by narratives of causation, responsibility and legitimacy. The incorporation of an issue into the public agenda therefore reflects not merely administrative priorities, but political choices concerning which situations deserve collective intervention and how they should be understood.

This cycle-based understanding has been widely discussed in the literature on public policies, particularly in works that emphasise agenda-setting and decision-making processes (Kingdon, 2014), as well as both “ex ante” and “ex post” evaluation as essential components of policy design and assessment (Lassance, 2018). These elements define public policies as organised and deliberate forms of state action, rather than as spontaneous or diffuse governmental practices.

A central element of this structure is the relationship between public policies and the allocation of public resources. Public policies are necessarily linked to budgetary decisions, as their implementation depends on the availability and allocation of resources directed towards the achievement of specific objectives. In this regard, it is important to note that all rights, including civil and political rights, depend on public resources, as demonstrated in the literature on the cost of rights (Holmes; Sunstein, 1999).

Within this approach, they are not merely political choices, but programmes that require formalisation, planning, and institutional coordination. In this sense, the relationship between public policies and budgetary allocation reinforces their programmatic nature, distinguishing them from broader normative structures within the legal system (Bucci, 1997)

Accordingly, public policies are therefore characterised by their programmatic and temporal nature. They “have a beginning, a middle, and an end”, since they depend on the allocation of public resources and on the evaluation of their results (Mastrodi; Ifanger, 2019, p. 11). Their continuation is conditioned upon the achievement of the objectives that justified their creation, as well as upon the assessment of their effectiveness.

This temporal structure reflects a specific understanding of the role of the State within a predominantly liberal framework. Public intervention is justified by the need to correct situations considered irregular—such as market failures, economic crises, or disruptions caused by extraordinary events—and is therefore conceived as exceptional and limited. Once the conditions that justified the intervention have been restored, the continuation of the policy is no longer justified.

Historical examples frequently associated with this logic include programmes such as the New Deal initiatives of the 1930s, the GI Bill enacted after World War II, and the large-scale governmental interventions implemented in the aftermath of Hurricane Katrina to restore infrastructure and public services in New Orleans. Although they differed substantially in content and scope, such measures were conceived as governmental interventions directed towards specific economic or social circumstances, organised around defined objectives and institutional mechanisms rather than permanent constitutional duties. Such measures were organised around clearly identifiable problems, defined objectives, extraordinary resource allocation and the expectation that governmental intervention would gradually recede once normal conditions had been restored.

This understanding is also reflected in the typological frameworks developed within the field. Lowi's classification distinguishes between distributive, regulatory, redistributive, and constituent policies, according to the type of governmental intervention involved (Lowi, 1972). Lowi's typology remains a central point of reference in discussions concerning the classification of governmental action, despite later refinements proposed by subsequent authors (Wilson, 1995;

Peters, 2021). However, as noted in the literature, such classifications do not define public policies, but merely categorise different forms of state action (Souza, 2006). Their analytical usefulness lies in describing how the State acts, rather than in establishing what public policies are.

From this standpoint, distributive policies occupy a central position in the North American understanding of public policies. They are associated with the allocation of resources and the creation of infrastructure aimed at addressing specific problems. Their defining characteristic is not the nature of what is distributed, but the fact that they correspond to targeted interventions structured as programmes with defined objectives and temporal limits.

This functional and programmatic understanding provides a reference point for the analysis developed in this article. It establishes a concept of public policies grounded in intervention, temporality, and problem-solving, which will be contrasted, in the following section, with the expanded use of the term in welfare state contexts.

3. PUBLIC POLICIES, SOCIAL RIGHTS AND THE WELFARE STATE

In contrast to the North American reference point, the concept of public policies undergoes a significant transformation in legal systems shaped by the development of welfare states. In these contexts, the term is no longer restricted to programmes designed to address specific problems, but is increasingly used to refer to a broad range of state actions associated with the implementation of rights.

This transformation is closely related to the expansion of social rights throughout the twentieth century. As rights concerning health, education, housing, and social assistance became formally recognised within constitutional frameworks, the role of the State was profoundly redefined. This development has been extensively analysed in the literature on welfare states, which highlights the growing centrality of social rights in shaping state action (Comparato, 1998). Public action was no longer limited to responding to specific situations. However, it extended to the continuous provision of services aimed at ensuring the universalisation of such rights (Mastrodi; Ifanger, 2019). The development of welfare states has frequently been analysed through the concepts of social citizenship and social rights institutionalisation (Marshall, 1996; Esping-Andersen, 1990).

The Brazilian legal framework provides a particularly clear illustration of this development. The Constitution of 1988 establishes a set of social rights whose promotion is not merely a political choice, but a constitutional duty. This perspective is compatible with theories that emphasise the normative force of constitutional rights and their binding character upon public authorities (Alexy, 2002; Abramovich; Courtis, 2002). These rights must be realised in a universal, continuous, and uninterrupted manner, which distinguishes them from the type of action typically associated with public policies in their original formulation.

The right to health provides a particularly illustrative example. Under Article 196 of the Brazilian Constitution, the Unified Health System (SUS) is not organised as a temporary programme designed to address a specific problem. Rather, it constitutes a permanent institutional arrangement through which the State fulfils a constitutional obligation that cannot be suspended merely because a particular objective has been achieved.

The contrast becomes clearer when compared to initiatives such as *Minha Casa, Minha Vida* (a governmental housing programme aimed at promoting access to housing and contributing to the fulfilment of the constitutional right to housing) and *Bolsa Família* (a governmental income-transfer programme directed at vulnerable families as a mechanism for poverty reduction and social protection), which, although closely associated with the fulfilment of constitutional social rights, are structured as governmental programmes directed at specific public objectives through defined institutional mechanisms, budgetary allocations and implementation strategies.

While *Minha Casa, Minha Vida* seeks to expand access to adequate housing and *Bolsa Família* aims to reduce poverty and improve living conditions through income transfers, both operate as programmatic interventions that may be redesigned, expanded, reduced or replaced according to governmental priorities and policy choices. By contrast, the constitutional duty to provide universal access to health services through the SUS persists independently of the success, failure or reformulation of particular governmental programmes.

Although all three initiatives are connected to the realisation of social rights, they illustrate distinct forms of state action and therefore challenge the assumption that every measure aimed at implementing constitutional rights should be analytically classified as a public policy in the same sense. This distinction is analytically relevant because it illustrates how constitutional obligations,

permanent institutional arrangements and governmental programmes may all contribute to the realisation of social rights while operating according to different legal and functional logics.

In this respect, it is important to recall that the Brazilian Constitution itself defines a set of fundamental objectives to be pursued by the State, including “the construction of a free, just and solidary society”, “national development”, “the eradication of poverty”, and “the promotion of the well-being of all” (Mastrodi; Ifanger, 2019, p. 10). These objectives require sustained and coordinated forms of state action, which cannot be reduced to contingent programmes subject to interruption.

This shift has important implications for the way in which the concept of public policies is used. In the Brazilian context, a wide range of state actions directed towards the promotion and guarantee of social rights is frequently described as public policies. However, this usage reflects a substantial expansion of the concept, which tends to obscure its original functional meaning. Similar concerns regarding conceptual imprecision have been raised in the literature, which frequently points to the lack of consensus in defining public policies (Frey, 2000).

From a functional perspective, this expansion introduces a conceptual difficulty. As discussed in the previous section, public policies, in the North American policy studies tradition, are structured as programmes organised around a defined cycle, oriented towards the resolution of specific problems, and dependent on the allocation of resources and subject to processes of evaluation, including structured mechanisms of monitoring and “ex post” assessment within public governance frameworks (Brasil, 2018).

The expansion of the concept of public policy in welfare-state constitutional systems is historically understandable. As redistributive action became increasingly important for the implementation of social rights, programmes designed for this purpose came to be incorporated into the language of public policy. However, these actions emerged within institutional contexts substantially different from those in which policy studies originally developed. In the North American tradition, public policies were predominantly associated with interventions aimed at addressing specific social and economic problems and promoting the conditions under which social and economic relations could develop. In welfare-state constitutional systems, by contrast, state action is frequently organised around the implementation of constitutionally recognised social

rights. This raises the question of whether conceptual frameworks originally developed in the former context remain adequate to explain the latter.

This distinction becomes clearer when analysed in light of the functions of state action. In the North American framework, public policies are primarily associated with intervention—particularly in the economic sphere—aimed at correcting specific distortions or restoring certain conditions. In the Brazilian context, however, the actions most commonly described as public policies are more closely related to the provision of public services, which must be continuous and universal in order to ensure the realisation of constitutional rights (Comparato, 1998; Marshall, 1996).

As a consequence, the question is not whether programmes implementing social rights may be described as public policies. In welfare-state constitutional systems they frequently are. The relevant issue is whether conceptual categories developed to explain governmental intervention in a liberal institutional context remain adequate to explain forms of state action whose primary function is the implementation of constitutionally recognised social rights.

This conceptual shift is further reinforced by the tendency to associate public policies with the promotion of rights as their primary purpose. As previously argued, however, public policies are better understood as instruments directed towards the achievement of state objectives, while the promotion of rights occurs as a consequence, and not as their defining function (Mastrodi; Ifanger, 2019).

The Brazilian approach developed in this article seeks to address this difficulty by reintroducing a distinction between these two dimensions. It recognises that public policies may contribute to the improvement or expansion of rights, but rejects the idea that their primary function is to promote or guarantee rights. Instead, public policies are understood as structured forms of state action directed towards specific objectives, operating within a broader framework defined by constitutional and legal norms.

Maintaining this distinction is essential for preserving both the conceptual clarity of the term “public policies” and the normative integrity of rights within the legal system.

4. CONCEPTUAL CONSEQUENCES AND ANALYTICAL LIMITS

The contrast established in the previous sections reveals that the concept of public policies operates under distinct structural logics depending on the institutional context in which it is applied. While the North American understanding emphasises programmatic intervention oriented towards the resolution of specific problems, the Brazilian usage expands the concept to encompass continuous forms of state action associated with the implementation of rights. This divergence produces a conceptual tension that requires closer examination.

From a functional perspective, the North American model defines public policies as structured programmes organised around a specific problem. Their formulation presupposes the identification of a concrete situation requiring intervention, its incorporation into the public agenda, and the design of a coordinated set of actions supported by allocated resources and subject to evaluation (Kingdon, 2014; Howlett; Ramesh; Perl, 2020). In this framework, public policies are intrinsically linked to temporality, as their existence depends on the objectives they are meant to achieve and on the assessment of their effectiveness.

By contrast, welfare-state constitutional systems increasingly associate public policies with programmes directed towards the implementation of constitutionally recognised social rights. As discussed in the previous section, this development substantially expands the scope of the concept and raises questions regarding the adequacy of categories originally developed to explain governmental intervention in a different institutional setting.

This difference is not merely terminological, but structural. In the first case, public policies correspond to programme-based interventions defined by their objectives, resources, and duration. This distinction is consistent with theoretical approaches that emphasise the normative foundation of rights as independent from administrative or programmatic action (Comparato, 1998). In the second, the term is used to describe forms of state action that are continuous, universal, and not subject to interruption. Treating both under the same conceptual category results in an overlap between two fundamentally distinct modes of state action.

The analytical consequence of this overlap is a loss of conceptual precision. If public policies are understood as any form of state action aimed at promoting rights, the concept ceases to designate a specific type of programme and becomes indistinguishable from broader categories

such as public service provision or the fulfilment of constitutional duties. In this sense, the expansion of the concept undermines its analytical usefulness.

This difficulty may also be understood from the perspective of interpretive policy analysis. Fischer argues that policy concepts are not neutral descriptions of reality, but categories through which public actors organise social experience and define the legitimate boundaries of governmental action. When concepts become excessively broad, their explanatory value is weakened, making it more difficult to distinguish between different institutional logics and forms of state intervention (Fischer, 2003).

At the same time, this conflation affects the understanding of rights. When their implementation is framed in terms of public policies, rights appear as outcomes dependent on contingent programmes of action. Similar concerns have been raised by authors who distinguish the normative status of rights from the contingent nature of governmental programmes and policy instruments (Alexy, 2002; Fredman, 2006). This interpretation reverses the relationship between normative structures and governmental action, subordinating rights to instruments that are, by definition, temporary and evaluable.

This inversion becomes particularly problematic when analysed in light of the functional distinctions within state activity. As indicated in the literature, public policies in the classical North American understanding are more closely associated with intervention, especially in the economic domain, where the State acts to correct distortions or to promote specific objectives (Mastrodi, 2024). By contrast, the implementation of social rights is more closely related to the provision of services that must be continuous and universal.

The failure to distinguish between these two functions leads to a conceptual ambiguity that is reflected in the typological classifications themselves. Categories such as distributive and redistributive policies are often treated as if they referred to the same type of phenomenon, when in fact they may correspond to structurally different forms of state action. As a result, typology alone is insufficient to resolve the conceptual problem.

Typological classifications depend upon the assumption that the phenomena being classified share a sufficiently coherent conceptual structure. As Stone argues, policy analysis is deeply affected by the way problems, causes and solutions are categorised. When analytically

distinct forms of state action are grouped under the same label, classification ceases to illuminate relevant differences and may instead obscure them (Stone, 2012)

For this reason, the central issue is not merely whether constitutional obligations should be distinguished from public policies. Such a distinction is relatively straightforward. The more significant question concerns the explanatory reach of the conceptual frameworks employed in policy studies. Categories originally developed to classify governmental intervention may not be sufficient to explain constitutional systems structured around permanent duties to realise social rights.

This analytical distinction provides the basis for a more precise understanding of the typological differences between distributive and redistributive policies. As will be discussed in the following section, these categories do not merely describe different types of intervention, but reflect distinct logics of state action, which cannot be fully understood without taking into account the structural differences identified here.

From a legal standpoint, this distinction may also be articulated in terms of different categories of public law. Distributive policies, typically associated with programmatic interventions aimed at correcting specific economic or social dysfunctions, may be more closely related to regulatory and economic law, insofar as they involve targeted state action in the organisation and adjustment of market conditions.

By contrast, redistributive actions linked to the implementation of social rights are more appropriately understood within the framework of administrative law, particularly in relation to the provision of public services, which must be continuous and universal. This correspondence reinforces the need to distinguish between these forms of state action not only at the level of policy analysis, but also within legal theory.

5. FINAL REMARKS: DISTRIBUTIVE AND REDISTRIBUTIVE LOGICS IN PUBLIC POLICIES

The conceptual tension identified in the previous section, particularly when articulated in terms of distinct categories of public law, can be more precisely understood through the typological distinction between distributive and redistributive policies, which reflect different logics of state

intervention and service provision. Rather than merely describing different forms of governmental action, this distinction provides a framework for clarifying the conceptual limits of public policies within legal theory.

The foregoing discussion suggests that the conceptual instability generated by the expansion of the notion of public policy creates additional difficulties for policy typologies originally developed in different institutional contexts. This issue becomes particularly apparent when analysing distributive and redistributive policy categories. Rather than asking whether these categories remain theoretically valid, the question is whether they continue to describe the same phenomena once public policies become associated with the permanent implementation of constitutional rights. The significance of this question lies in the possibility that concepts originally designed to classify governmental interventions may be applied to institutional arrangements that operate according to fundamentally different legal and political rationales.

In the North American framework, public policies are more appropriately understood within the logic of distributive policies. As previously discussed, they correspond to structured programmes of intervention aimed at addressing specific problems identified within the policy cycle. Their formulation presupposes the definition of a concrete situation requiring correction, its incorporation into the public agenda, and the allocation of resources directed towards its resolution.

Public policies, therefore, operate as programme-based interventions organised around clearly defined objectives. Their defining feature lies in their temporality: they are conceived as actions that begin in response to a specific problem and are expected to terminate once the conditions that justified their creation have been addressed. In their original formulation, they “have a beginning, a middle, and an end”, since they depend on the allocation of public resources and on the assessment of their results (Mastrodi; Ifanger, 2019, p. 11).

This structure reflects a logic of intervention and correction, typical of a model in which state action is justified by the need to restore or stabilise a given situation. Public policies, in this sense, do not aim at the universalisation of rights, but at the resolution of specific dysfunctions within an economic or social system.

By contrast, in the Brazilian context, the concept of public policies is more closely associated with the logic of redistributive policies. In this framework, the term is frequently used

to describe actions directed towards the implementation of social rights and the reduction of inequalities. However, as established in the previous sections, such actions differ structurally from the conception of public policies that emerged within classical North American policy studies.

The institutional demands associated with redistributive action are also substantially different. Evans (1995) demonstrates that sustained state intervention depends on administrative capacities that cannot be reduced to discrete policy programmes. The implementation of social rights commonly requires permanent bureaucratic structures, stable funding arrangements and enduring state-society relations. These characteristics differ significantly from temporary governmental interventions directed at addressing specific public problems.

Young's analysis of economic and social rights reinforces this distinction. Rather than operating solely through governmental programmes, social rights frequently depend upon constitutional structures, institutional guarantees and long-term processes of implementation and enforcement. Although public policies may contribute to the realisation of such rights, the rights themselves cannot be reduced to the programmes through which they are temporarily pursued (Young, 2012). This observation is particularly important in constitutional systems organised around social rights, where the legal obligation persists independently of the continuation, reformulation or replacement of particular governmental programmes.

Programmes implementing social rights may frequently be classified as redistributive policies within Lowi's framework. However, this classificatory solution does not necessarily resolve the conceptual problem examined in this article. Lowi's categories were originally developed to classify forms of governmental action within a liberal institutional context, in which public intervention was primarily directed towards correcting specific dysfunctions and promoting conditions under which social and economic relations could develop. Whether those same categories remain adequate to explain constitutional systems in which social rights constitute permanent objectives of state action is a different question.

From this perspective, the distinction between distributive and redistributive policies remains analytically useful, but its explanatory reach should not be overstated. While these categories may adequately describe forms of governmental action within the context in which they were originally developed, their application to welfare-state constitutional systems requires additional conceptual refinement.

Similar concerns have emerged in the literature on governance and institutional reform. Grindle argues that analytical frameworks developed in one political and developmental setting cannot be automatically transferred to another without adaptation. Andrews likewise warns against the uncritical transplantation of institutional models and analytical frameworks across institutional environments characterised by different political objectives, constitutional commitments and state capacities. These observations reinforce the argument advanced here that categories developed within liberal policy traditions may not fully explain constitutional orders organised around permanent social obligations and welfare-state commitments (Grindle, 2004; Andrews, 2013).

This clarification does not imply rejecting the broader use of the term in legal and political discourse. Rather, it highlights the need to distinguish between different meanings attributed to the concept, depending on the institutional framework in which it is employed. Without this distinction, the concept of public policies risks losing its analytical specificity, becoming an imprecise expression that obscures the structure and function of state action. This concern is consistent with broader discussions within policy studies regarding conceptual precision and the analytical boundaries of public policy as a field of inquiry (Peters, 2021; Howlett; Ramesh; Perl, 2020).

In legal terms, this distinction ultimately confirms the central argument developed in this article. Public policies, in their classical North American understanding, correspond to structured forms of programmatic intervention, typically associated with distributive logics and with the regulatory and economic functions of the State.

By contrast, actions directed towards the realisation of social rights, often described as redistributive, raise questions that cannot be fully resolved through categories originally developed to explain governmental intervention within a liberal institutional context. Their constitutional grounding and functional orientation require additional conceptual refinement, particularly when examined in connection with the continuous provision of public services within the framework of administrative law. Recognising this distinction makes it possible to preserve the analytical precision of the concept of public policies, while avoiding its conflation with broader forms of state action grounded in normative obligations.

6. CONCLUSION

This article has examined the concept of public policies from a conceptual and functional perspective, focusing on the divergence between its use in different institutional contexts. It began by identifying a widespread lack of precision in the use of the term, which is frequently employed as a general label for state action and, in many cases, as a mechanism for the promotion and guarantee of rights.

The analysis demonstrated that this usage rests on an implicit assumption: that public policies are intrinsically connected to the realisation of rights. By reconstructing the concept in its original North American context, it was shown that public policies are more accurately understood as structured programmes of intervention, organised around the resolution of specific problems and defined by their temporality, their dependence on allocated resources, and their subjection to evaluation.

In contrast, the examination of the Brazilian context revealed that the term has been expanded to encompass actions directed towards the implementation of social rights. These actions, however, are not structured as contingent programmes, but as continuous and universal obligations grounded in constitutional norms. Their persistence does neither depend on the success of a given policy, nor can they be interrupted without violating constitutional duties.

On this basis, the article supports the hypothesis advanced at the outset. The issue is not whether programmes implementing social rights may be described as public policies, nor whether many of them may be classified as redistributive policies within Lowi's framework. The central question concerns the adequacy of conceptual frameworks originally developed to explain governmental intervention in a liberal institutional setting when applied to constitutional systems organised around permanent duties to realise social rights.

The distinction between distributive and redistributive logics remains useful for describing forms of governmental action. However, welfare-state constitutional systems, particularly the Brazilian one, operate according to a different functional orientation. In the liberal framework that shaped the development of policy studies, rights tended to appear as indirect consequences of successful intervention. In constitutional systems structured around social rights, state intervention

is frequently justified by rights that are constitutionally defined in advance. This inversion raises questions that cannot be fully resolved through the classical categories of policy analysis.

The contribution of this article lies in drawing attention to this conceptual and institutional shift. Rather than rejecting the existing literature on public policies, it suggests that the expansion of the concept within welfare-state constitutionalism requires a reconsideration of the explanatory limits of theoretical frameworks originally developed in a different historical and institutional context. The purpose is therefore not to reject existing policy classifications, but to question whether they remain sufficient to explain forms of state action whose rationale differs from that of the institutional contexts in which those classifications were originally developed.

REFERENCES

- ABRAMOVICH, Víctor; COURTIS, Christian. **Los derechos sociales como derechos exigibles**. Madrid: Trotta, 2002.
- ALEXY, Robert. **A Theory of Constitutional Rights**. Translation by Julian Rivers. Oxford: Oxford University Press, 2002.
- ANDERSON, James E. **Public Policymaking: An Introduction**. 8th ed. Boston: Cengage Learning, 2015.
- ANDREWS, Matt. **The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions**. Cambridge: Cambridge University Press, 2013.
- BOBBIO, Norberto. **From Structure to Function: New Studies in the Theory of Law**. Cambridge: Polity Press, 2007.
- BRASIL. Casa Civil da Presidência da República; Instituto de Pesquisa Econômica Aplicada (IPEA). **Avaliação de políticas públicas: Guia prático de análise ex post**. Brasília: Casa Civil, IPEA, 2018.
- BUCCI, Maria Paula Dallari. Políticas públicas e direito administrativo. **Revista de Informação Legislativa**, v. 34, n. 133, p. 89–98, 1997. Available at: <https://www2.senado.leg.br/bdsf/item/id/198>. Accessed: 12 Aug.2026.
- COMPARATO, Fábio Konder. Ensaio sobre o juízo de constitucionalidade de políticas públicas. **Revista de Informação Legislativa**, v. 35, n. 138, p. 39–48, 1998. Available at: <https://www2.senado.leg.br/bdsf/item/id/364>. Accessed: 12 Aug.2026.
- DYE, Thomas R. **Understanding Public Policy**. 15th ed. Boston: Pearson, 2016.

ESPING-ANDERSEN, Gøsta. **The Three Worlds of Welfare Capitalism**. Princeton: Princeton University Press, 1990.

EVANS, Peter B. **Embedded Autonomy**: States and Industrial Transformation. Princeton: Princeton University Press, 1995.

FISCHER, Frank. **Reframing Public Policy**: Discursive Politics and Deliberative Practices. Oxford: Oxford University Press, 2003.

FREDMAN, Sandra. Human Rights Transformed: Positive Duties and Positive Rights. Oxford Legal Studies Research Paper No. 38/2006, **Public Law**, p. 498-520, 2006, Available at: <https://ssrn.com/abstract=923936>. Accessed: 12 Aug.2026.

FREY, Klaus. Políticas públicas: um debate conceitual e reflexões referentes à prática da análise de políticas públicas no Brasil. **Planejamento e Políticas Públicas**, n. 21, p. 211–259, 2000. Available at: <https://www.ipca.gov.br/ppp/index.php/PPP/article/view/89>. Accessed: 12 Aug.2026.

GRINDLE, Merilee S. Good Enough Governance: Poverty Reduction and Reform in Developing Countries. **Governance**, v. 17, n. 4, p. 525-548, 2004.

HÖFLING, Eloisa de Mattos. Estado e políticas (públicas) sociais. **Cadernos CEDES**, v. 21, n. 55, p. 30–41, 2001. Available at: <https://doi.org/10.1590/S0101-32622001000300003>. Accessed: 12 Aug.2026.

HOLMES, Stephen; SUNSTEIN, Cass. **The Cost of Rights: Why Liberty Depends on Taxes**. New York: W.W. Norton, 1999.

HOWLETT, Michael; RAMESH, M.; PERL, Anthony. **Studying Public Policy: Principles and Processes**. 4th ed. Toronto: Oxford University Press, 2020.

KINGDON, John W. **Agendas, Alternatives, and Public Policies**. 2nd ed. New York: Longman, 2014.

LASSANCE, Antonio. **Análise ex ante de políticas públicas: fundamentos teórico-conceituais e orientações metodológicas para a sua aplicação prática**. Brasília: IPEA, 2018.

LASSWELL, Harold D. The policy orientation. In: LERNER, Daniel; LASSWELL, Harold D. (eds.). **The Policy Sciences: Recent Developments in Scope and Method**. Stanford: Stanford University Press, p. 85-104, 1951. Available at https://archive.org/stream/in.ernet.dli.2015.187317/2015.187317.The-Policy-Sciences_djvu.txt. Accessed: 12 Aug.2026.

LOWI, Theodore J. Four systems of policy, politics and choice. **Public Administration Review**, v. 32, n. 4, p. 298–310, 1972. Available at: <https://doi.org/10.2307/974990>. Accessed: 12 Aug.2026.

MARSHALL, Thomas H. Citizenship and Social Class. In: MARSHALL, T. H.; BOTTOMORE, Tom. **Citizenship and Social Class**. Chicago: Pluto Classic (reimpr.), p. 3-51, 1996.

MASTRODI, Josué. Public policies: concept. In: SAYEG, Ricardo Hasson (ed.). **Enciclopédia Jurídica da PUC-SP: Direito Econômico**. São Paulo: PUC-SP, 2024. Available at: <https://enciclopediajuridica.pucsp.br/verbete/561/edicao-1/politicas-publicas:-conceito>.

Accessed: 12 Aug.2026.

MASTRODI, Josué; IFANGER, Fernanda Carolina de Araujo. Sobre o conceito de políticas públicas. **Revista de Direito Brasileira**, v. 24, n. 9, p. 5–18, 2019. Available at: <https://www.indexlaw.org/index.php/rdb/article/view/5702>. Accessed: 12 Aug.2026.

PETERS, B. Guy. **American Public Policy: Promise and Performance**. 12th ed. Thousand Oaks: CQ Press, 2021.

RIBEIRO, Daniela Menengoti; ANJOS, Luiz Sérgio Moreira dos. Desenvolvimento, políticas públicas e direitos humanos. **Revista de Direito Brasileira**, v. 1, n. 1, p. 291–310, 2011. Available at: <https://www.indexlaw.org/index.php/rdb>. Accessed: 12 Aug.2026.

SOUZA, Celina. Políticas públicas: uma revisão da literatura. **Sociologias**, v. 8, n. 16, p. 20–45, 2006. Available at: <https://doi.org/10.1590/S1517-45222006000200003>. Accessed: 12 Aug.2026.

STONE, Deborah. Policy Paradox: **The Art of Political Decision Making**. 3rd ed. New York: W. W. Norton, 2012.

VIANA, Ana Luiza. Abordagens metodológicas em políticas públicas. **Revista de Administração Pública**, v. 30, n. 2, p. 5–43, 1996. Available at <https://periodicos.fgv.br/rap/article/view/8095>. Accessed: 12 Aug.2026.

WILSON, James Q. **Political organizations: Updated Edition**. New Jersey: Princeton University Press, 1995.

YOUNG, Katharine G. **Constituting Economic and Social Rights**. Oxford: Oxford University Press, 2012.

Recebido em: 15/04/2026

Aprovado em: 26/08/2026

Editor geral: Dr. Marcelino Meleu