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SPECIAL PAPER

Education as a right of all and the bicentennial of Brazilian independence

Educação, Direito de Todos e o Bicentenário da Independência

Educación, Derecho de Todos y el Bicentenario de la Independencia

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Abstract

The aim of this article, pertinent to commemoration of the bicentennial of the Independence of Brazil, is to examine the right to education in the light of Brazilian constitutions that were granted and proclaimed. For that purpose, based on maximization of the right to education proclaimed in the Constitution of 1988, we re-examine this right, along with the constitutional amendments that granted greater solidity to this right. A review of the previous constitutions shows that the right to education broadened under the constitutions proclaimed, so to speak, expanding inclusion. But in constitutions granted, inclusion gives way to retroactive and authoritarian instruments. Over time, democracy smooths over as the substrate of the proclaimed advances, and the right to education depends on greater democracy to become effective.

Keywords: right to education in Brazil. education and national constitutions. education as a right of all.

Resumo

Este artigo, a propósito da comemoração do bicentenário da Independência do Brasil, pretende examinar o direito à educação à luz das Constituições Nacionais, outorgadas e proclamadas. Para tanto, parte-se da maximização do direito à educação, proclamada na Constituição de 1988, para retomar a ela, inserindo as emendas constitucionais cujo teor deu mais solidez a esse direito. Ao passar pelas Constituições anteriores, verifica-se que o direito à educação foi se alargando nas Constituições proclamadas, vale dizer, ampliando a inclusão. Já em Constituições outorgadas, a inclusão cede o passo a dispositivos retroativos e autoritários. Sob a linha do tempo, plaina a democracia como substrato dos avanços proclamados, e o direito à educação depende de mais democracia para sua efetivação.

Palavras-chave: Direito à educação no Brasil. Educação e Constituições Nacionais. Educação como direitos de todos.

Resumen

Este artículo, a propósito de la conmemoración del Bicentenario de la Independencia de Brasil, pretende examinar el derecho a la educación a la luz de las Constituciones Nacionales, otorgadas y proclamadas. Para esto, se parte de la maximización del derecho a la educación, proclamada en la Constitución de 1988, para retomarla, incluyendo las enmiendas constitucionales cuyo contenido dio mayor solidez a ese derecho. Al pasar por las Constituciones anteriores, se verifica que el derecho a la educación se fue extendiendo en las Constituciones proclamadas, vale decir, ampliando la inclusión. Ya en Constituciones otorgadas, la inclusión cede el paso a dispositivos retroactivos y autoritarios. Sobre la línea del tiempo, nivela la democracia como sustrato de los avances proclamados, y el derecho a la educación depende de más democracia para su concreción.

Palabras-clave: Derecho a la educación en Brasil. Educación y Constituciones Nacionales. Educación como derecho de todos.

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1492, 1792, 1822, 1922
Dates. But what are dates?
Dates are the tips of icebergs.
[...]
But from whence comes the strength and the
resistance of these combinations of numbers?
1492, 1792, 1822, 1922

It comes from those hidden masses that dates are
indices.
It comes from the inextricable relation between the
occurrence that they establish with arithmetic
simplicity and the polyphony of social time, of
cultural time, of bodily time, that pulsates under the
surface divisions of events. (BOSI, 1992, p.19)

Remembrance of the bicentennial of the Independence of Brazil and of other marked events, such as 90 years since the *Manifesto dos Pioneiros da Educação Nova* (Declaration of the Pioneers of New Education) of 1932, the same number of years since the Electoral Code of 1932, and the centennial of the Week of Modern Art (*Semana de Arte Moderna*) of 1922, call us to examine the relationship between the **occurrence** and the **hidden masses** in the times indicated by the epigraph above, among which the time of education can be included.

Certainly, there are not and will not be a lack of portrayals that diverse analyses offer in magazines, books, and journal articles based on statistics and other extracts of varied natures.

The aim here is to once more identify this **inextricable relationship** between the reiterated affirmation of the expression **the right of all**, present in instruments of the legal order, and the sphere of applicability of this same expression. For that reason, this analysis arises from maximization of the right to education, proclaimed in the Constitution of 1988, to address it once more, passing (again) through the set of constitutions that preceded it, whether proclaimed or imposed.

Beginning with the foundation for **all** written in the right to education in the Constitution of 1988, we return to the past to examine the sphere of applicability of this **all**. This expression is also taken up in the constitutions before the one of 1988, beginning with the Imperial Constitution of 1824.

The Constitution of 1988

The Federal Constitution of 1988, in art. 205, defines education as a "right of all and duty of the State" (BRASIL, 1988). In the same article, there is a reference to "the full development of the person". We are faced with two concepts: **all** and **person**. What and who does **all** refer to*?* What and who does **person** refer to*?* Can **all** be considered the collective of persons*?* Does the **all** refer only to citizens and **person** refer to all human beings?

It is clear that whatever the response, the **all** and the collective of **persons** in this case appeal to **inclusive education**, without restrictions of any nature. For that reason, there is a connection between the person of the student and the citizen.

The term all is grammatically a plural indefinite pronoun, and it concerns an unspecified and undetermined set. Therefore, contrary to what may be supposed, it is not restricted to the universe of the male sex. It contains the idea of the maximum number, that is, a maximum sphere of applicability.

That means that the plural indefinite pronoun **all** is a **common** denominator, and the principle of formal logic can be applied to it through which the containment of an idea is in inverse ratio to its extension. Thus, the term **all** applies to people, to citizens, **regardless** of sex, race, color, religion, age, ethnicity, sexual orientation, and any other distinction whose difference comes to obstruct the exercise of fundamental rights and assurances. It can be understood that **all** has a generic dimension in the sense of encompassing all people in that in which they have in common.

In contrast, as the term is specified within the true diversity that exists, extension decreases and understanding of the elements present increases, because one draws ever nearer to the particular realities of each one.

That does not mean that in the future this wording may not provide visibility to specifications of these **all**. What is important here is that this **all** seems to apply, from the legal standpoint, to two of the foundations of our Republic laid out in art. 1, items II and III: **citizenship** and **the dignity of the human person.**

Another significant provision that reiterates the **all** in its maximum sphere of applicability is in art. 5 (BRASIL, 1988): "All are equal before the law, without distinction of any nature, ensuring Brazilians and foreigners residing in the country the inviolability of the fundamental rights foreseen therein." It is noteworthy that in the case of this article, there is the preposition **without** – "without distinction of any nature" (BRASIL, 1988) – before national laws, ensuring fundamental rights to Brazilians (**male and female**) and to f**oreigners residing in Brazil**.

Thus, the term **all** has a sense diametrically opposed to the excluding sense of **few**, of few that have access to and use of fundamental social assets and that, consequently, become a privilege. Privilege, as something private, is opposed to the universalist dimension of the right contained in the term **all**.

Furthermore, and not by chance, art. 4 of the constitution establishes as one of the **principles** of our republic, in item II (BRASIL, 1988), "the prevalence of human rights". Notably, human rights do not apply only to citizens. They apply to the **human person**, whose **dignity** from art. 1, III of the constitution constitutes one of the **fundamental objectives** established in item IV of art. 3: "promote the well-being of all, without prejudice of origin, race, sex, color, age, and any other forms of discrimination." (BRASIL, 1988). We are thus in the presence of a virtuous symbiosis between fundamental rights, recognized and made positive law in the supreme law of the land, and the human rights that recognize the **dignity of the human person**, regardless of connection with a constitutional system on a national level.

The 68 times the term **all** appears in the constitution mostly refers either to citizens or to human persons. By the **foundations, objectives,** and **principles** listed in the first articles of the constitution and by the **body of the constitution**, the **all** should be considered as a reference to **inclusion** in the constitutional rights and assurances.

Furthermore, the Preamble of the constitution can be presented, whose terms indicate a general sense of the text. Herein the **people's representatives** announce a constitution that is the basis for institution of "a Democratic State, dedicated to ensuring the exercise of social and individual rights, liberty, security, well-being, development, equality, and justice as supreme values of a fraternal, pluralistic, and unprejudiced society" (BRASIL, 1988).

As Ferrajoli instructs (2020, p.125) commenting on the Declaration of the Rights of Man and of the Citizen of 1789 of the French Revolution:

> **Homme et citoyen**, person and citizen, and citizenship, have formed since then, and in all Constitutions, including that of the Italians (and the **Brazilian – CRJC**), the two subjective *statuses* on which two different classes of fundamental rights depend: the rights of personhood, which correspond to all human beings as individuals or persons, and the **rights of citizenship**, which correspond exclusively to **citizens**. (author's emphasis) (free translation)

Or in the terms of Bovero (2002, p.130):

> We could say, in this respect, that if the rights of man (person) are properly universal, that is, are fitting to anyone as a person, the rights of citizenship are necessarily particular, as least as long as a universal, cosmopolitan citizenship is not instituted.

The adjective **common** draws near the pronoun **all** and appears in the constitution along with various nouns. Within our selected texts is article 210 with **common basic education** and, within a similar sense, article 225, "right to an ecologically balanced environment, an asset for the common use of people and essential for healthy quality of life" (BRASIL, 1988). It is true that education and the environment are **assets of common use**. In this sense, the **all** and the **common** converge with each other, but they are not the same thing.

Common is a generic concept that comprises a group, a class, and even a society. **Common** does not make a specification that encloses, that targets an individual, but rather encompasses **all the individuals** of that category. For its part, the pronoun **all** refers to each individual, being open to a specification, such that individuals can be considered in their **singularity**.

Thus, when the constitution establishes education in art. 6 as a **social right**, it is arranged as if directed to the **common**, that is to the subject *ut socius* and *ut civis,* components of a common genus, in this case, citizenship. And when art. 205 places it as a **right of all**, without discrimination, it touch on each **individual** within that individual's identity, that is, for the subject *ut singulus.* Underlying the singular individual, the political being, and the social being is the human person as the synthesis of these three components of the *humanus:* the singular, the political, and the social.

This **common denominator** carries with it one of the features of equality, as well as not ignoring the diversity that enriches the whole of the human person. Ferrajoli (2019, p.13) asks and answers. He asks "why the principle of equality?" and he answers: "because we are different, because we are equal". And he continues:

> In my mind, one should respond to these questions that the reasons are two and both apparently paradoxical. The first is that equality is stipulated **because we are different**, understanding "difference" in the sense of the diversity of personal identities. The second is that it is stipulated **because we are unequal**, understanding "inequality" in the sense of the diversity of material conditions of life. Equality is definitively stipulated because, in fact, we are different and unequal for guardianship of the differences and in opposition to the inequalities. (FERRAJOLI, 2019, p.13) (author's emphasis) (free translation)

This dialectical opposition of inequality and of diversity in the face of equality is present in our Constitution of 1988. As seen above, art. 3, item IV endorses diversity to safeguard it against all discriminations and prejudices. In contrast, the same art. 3 in the same item recognizes that we are unequal upon seeking the fundamental objective of "eradicating poverty and marginalization and reducing social and regional inequalities" (BRASIL, 1988). That means that the conditions of reproducing **poverty and marginalization** should be pulled out by the roots, that is, eliminated, and that inequality should be reduced so as to construct – as said in the Preamble – and establish a society "in social harmony and committed, on the domestic and international level, to peaceful solution of controversies" (BRASIL, 1988). And equality, as a reference, appears in the **Preamble** of the constitution and extends across the first two Titles (Articles) and respective chapters and articles of the Constitution.

Therefore, we are within a theory of citizenship (art. 1, II) that opens to the dignity of the human person (art. 1, III) and takes up work and private property as values in art. 1, IV. Private property, in order not to be based on possessive individualism, has the dimension of the **social function** of property as a counterpoint, as found in art. 5, XXIII and in art. 170, III.

The theory of citizenship can therefore take concrete and diverse forms, worked out through historical choices, having ensured certain common principles and rights, such as democracy as the form of organization of the society. As expressed by Chauí (2019):

> Democracy is the only society and the only political regime that considers conflict as legitimate. This, perhaps, is one of the originalities of democracy. For it seeks to institute these rights as such, laws, and requires that they be recognized and respected. Democracy is open to time, to newness; it is creation of newness.

And in regard to elections, the same author continues:

> Elections indicate that power is always empty, that the ruling authority occupies the position because of receiving a temporary mandate for that. Political subjects are not mere voters, but electors. We (electors) are sovereign. One can only give someone that which one has. Electing is to confirm oneself as sovereign to choose the temporary occupant of government. We have the power. That is sovereignty in democracy. (CHAUÍ, 2019)

And, at another point, the same author (2012) says that democracy is a:

> sociopolitical form that seeks to confront the difficulties indicated above by reconciling the principle of equality and of freedom and the real existence of inequalities, as well as the principle of the legitimacy of conflict and the existence of material contradictions, introducing for that purpose the idea of rights (economic, social, political, and cultural). Thanks to rights, the unequal achieve equality, entering in the political space to claim participation in existing rights and, above all, to create new rights. They are new not simply because they did not exist before, but because they are different from those that exist, since they make new political subjects arise, as citizens, who affirmed them and made them be recognized by the entire society. (CHAUÍ, 2012)

This formulation draws near the analysis of Rémond (1974, p. 49-50), who upon analyzing the 19th century in Europe instructs:

> The democratic idea maintains complex relationships with liberalism. And it is thus that it takes up the entire legacy of public liberties that had first been registered in the texts by liberalism. Far from withdrawing from these acquisitions, it affirms them and will give them even greater amplitude. [...] that which characterizes democracy in relation to liberalism, in first place, is universality, or if you prefer, equality. In effect, the democratic idea rejects distinctions, discriminations, all restrictions, even temporary ones. Whereas liberals use the language of the possible, invoking experience, realities, the impossibility of immediately putting the principles into practice, democrats oppose them with the principles and militate for their application.

This combination of education with the democratic theory of citizenship caused it to be surrounded by legal protection of various types in our Constitution of 1988. Compulsory education became a subjective public right, with funding placed in the constitution, with the obligation of a Law of Guidelines and Foundations (*Lei de Diretrizes e Bases*) and of a National Educational Plan (*Plano Nacional de Educação*). In addition, it is free and compulsory in the public system, with teaching being clad with a standard of quality and democratically managed.

At least in the legal order, the **all** and the **common** thus express **inclusion of a democratic nature**. At the same time, the modalities of teaching indicate recognition of diversity, whether for people in a situation of disability, for youth and adults, for rural education, or for placing value on Afro and indigenous cultures.

It should be noted, however, that in our history, legislative introduction of this **all**, as well as the **common** and **diverse**, has not always been registered in a universal manner and with respect, and even less was it carried out through public policies. Nevertheless, there has not been a lack of effort in the sense of expanding the right to education in the sphere of the legal order for there to be policies to make this right an effective action.

2. A brief historical background of exclusion/inclusion in Brazil and the right to education

2.1 The Constitution of Brazil in Independence

The presence of the **all** in our legislation as an independent nation is in the Imperial Constitution of 1824 in art. 179, XXXII, as the right of citizens *to primary and free instruction*. This article is under Title 8: **Of General Provisions and Protections of Civil and Political Rights of Brazilian Citizens (Disposições Gerais, e Garantias dos Direitos Civis, e Políticos dos Cidadãos Brasileiros)** (BRASIL, 1824). Art. 6 of the same part defines the subjects of citizenship as "citizens those that were born in Brazil, whether ingenuous or freed". (BRASIL, 1824) By ingenuous, it was understood at the time those that were born of free parents, who were considered native to Brazil. They were free *ex generatione*, that is, through the fact of having been born of free parents, as at that time, the principle of *partus sequitur ventrem* was in effect. If the womb is free, the birth is free; if the womb is captive (as absurd as may be), the birth is captive.

This principle of *partus sequitur ventrem* was odiously applied to those born of enslaved parents, especially of the enslaved womb of the enslaved mother. Thus, in flagrant violation of the liberal principles of the Constitution, not only did the gruesome institution of enslavement reign, but that principle was applicable to the enslaved mother, and consequently, her children were born slaves.[1]

The slaves were considered property of the free man and, as such, were not even held to be persons, except in the case of crimes in order to be judged, nor were they considered citizens. Therefore, the **all** (the citizens) for primary and free instruction did not include them.

And what was meant by the "freed"? Freed was said of the slave who was placed in freedom through a letter of emancipation, or who came to be free through a legal statute. The freed are the emancipated who, leaving the condition of slaves, recover that which could never have been expropriated from them: their freedom. The figure of the freed slave indirectly indicated the presence of slavery in the Constitution and in social relations. Even so, the freed continued being considered second-class citizens, since they were not granted the right to vote beyond municipal level elections. This is established in art. 94, II of the constitution. In this respect, in contrast with the **mass of active citizens** of art. 90, the freed were held to be passive citizens.

Although the (original) Constitution of 1824 does not refer to indigenous people, the Additional Act of 1834, in fact a constitutional amendment, deals with them in art. 11 as subject to **catechesis and to civilization.** The term civilization, by opposition, indicates that they are not civilized. If we take the term civilization as derived from **civis**, that is, citizen, they were also not considered citizens, but rather savages, in other words, inferior within what is called an evolutionary scale of civilization.

In addition to this group of passive citizens and those considered non-citizens for cultural reasons, women were impeded from voting. The Philippine Ordinances, a type of civil code adopted in Portugal and in its colonies, according to title 36 of book V, allowed the husband to physically punish his wife, though he could not use weapons for that purpose. This abominable provision was dropped in 1830 with the Criminal Code of Imperial Brazil.

Another indication of this is law no. 57 of June, 19, 1822; upon calling a constitutional and legislative assembly, even before Independence, art. 7 affirms: "The right to vote in local elections is provided to every married citizen and to everyone that is 20 years of age or older that is single and is not a *filho-família*."[2] (BRASIL, 1822). This person should be an "upright and honorable man, of good understanding, without any shade of suspicion and enmity to the cause of Brazil and with decent subsistence by employment, trade, or assets." (BRASIL, 1822a)

From this group of people, all "those that receive salaries or servant's pay in any manner"[3] were excluded from the electoral process, according to art. 8 (BRASIL, 1822a).

The Constitution, in article 91, upon naming who can and who cannot vote, does not even mention women, this exclusion being naturally obvious. The influence of the Napoleonic Code of 1804 may be suggested through which a woman is considered civilly incapable and, in the name of the patriarchal family, was deprived of various legal rights and was under the authority of her father and husband. Article 1124 of the Napoleonic Code reads as follows: "Persons restricted from legal rights are minors, married women, criminals, and the feeble-minded." (FRANCE, 1804)

[1] The law of free birth changed this principle. The law of 1871, law no. 2040, was approved with 61 votes in favor and 31 against. With it, the enslaved mother that gave birth would be seen as having a free womb and, consequently, the one born was also free (and not freed).

[2] *Filho-família* is an expression that indicates a minor in age and subject to paternal authority.

[3] The Constitution of 1824, however, will establish censitary suffrage, which depended on the person's income.

Besides them, the constitution in art. 8 suspends the exercise of political rights of persons with lack of physical or moral capacity. This includes people we currently designate as in a situation of disability. Likewise, convicts and exiled persons are excluded. In this respect, the analysis of Coutinho (1995, p.51) can be considered regarding the liberal regime:

> the Liberal State strongly restricts "political rights". Not so much in Locke, but in later liberals, such as Benjamin Constant, the idea explicitly arises that only property owners should have political rights – that is, the right to vote and to participate in the formation and activity of the government. Interestingly, already in this phase, the property owner is conceived without philosophical ambiguities: the property owner is one who has a certain volume of property and of goods and, therefore, is able to pay a certain amount of taxes. And it is in accordance with this that Kant divides citizens into "active" and "passive". All should have civil rights; but whereas active citizens should have political rights (be able to vote and be voted for), passive citizens were excluded from these rights. Among passive citizens, Kant includes dependents, who for him are all those who not being property owners do not have the ability of judgment themselves. Dependents for Kant are all women and all workers that depend on selling their labor to live.

Therefore, in the Brazilian Empire, exclusion was the rule; with such selectiveness, including here the abject institution of slavery, the question arises: **after all, who are these all?**

A clear example of this exclusionary selectiveness is the Couto Ferraz Reform of Decree no. 1331 A of 1854. It establishes for reform of primary and secondary education of the royal court, in article 69:

> Those who will not be admitted for enrollment, and will not be able to attend schools:
> §1: boys that suffer from contagious diseases.
> §2: those that have not been vaccinated.
> §3: slaves. (BRASIL, 1854)

This provision was replicated in various provincial laws of the Empire. To what extent could the liberty belonging to liberalism, sung in the Anthem of Independence, be for all in light of these exclusions? Does this situation conflict with the Anthem of Independence or does it consider as **children of the homeland**, of the **gracious Mother**, only one social segment?

> Children of the homeland can already
> Contently see the gracious Mother;
> Liberty has already shone
> On the horizon of Brazil. (BRASIL, 1822b)

From the legal perspective, this selectiveness in relation to slaves will **formally** be dropped only on 13 May, 1888. That means that the liberal statute in effect in the Empire only came to fit the origin of the term liberal, from Latin *liber = free*, after that date – a nominal formal freedom that until now has not been able to repair the consequences of so much exclusion of ownership of oneself, of goods, and of access to social goods.

2.2 The Constitution of the Republic

The Republic began in 1889 and with it, the federative, republican, and presidential system. With the abolition of slavery, which occurred in 1888, civil rights would foreseeably gain greater emphasis, given that the shift brought about with the Republic would cause us to pass from the condition of subjects to that of citizens. As highlighted by Bobbio (1992, p.61):

> The shift that I refer to, and that serves as a foundation for recognition of the rights of man, occurs when this recognition expands from the sphere of interpersonal economic relations to the relations of power between the prince and subjects, when what are known as subjective public rights that characterize the Rule of Law are born. It is with the birth of the Rule of Law that the final passage occurs from the perspective of the prince to the perspective of citizens.

With a high degree of optimism, the lyrics of the Anthem of the Republic, in one of its stanzas, draws near this shift, through which all come to be equal, even in an established legal manner (BRASIL, 1890a):

> We cannot believe that slaves, at another time,
> Existed in so noble a country
> Now the crimson flash of dawn
> Finds brothers, not hostile tyrants
> We are all the same! Toward the future
> We will know, together carrying
> Our august banner...

The Constitution of 1891, in Title IV (Of Brazilian Citizens) in Section I (Of the qualities of the Brazilian citizen) in art. 69, discusses who the Brazilian citizens are that, as we will see, enjoy civil and political rights. Regarding political rights, art. 70 determines that "citizens as of 21 years of age are voters, excluding beggars, the illiterate" (BRASIL, 1891), and others. Political rights are suspended in cases of **physical or moral disability**. There is here a repetition of art. 8 of the Constitution of the Empire. Persons in a situation of disability are born as citizens and hold civil rights, but there is temporary or permanent interruption of political rights.

From article 72 to 78, which is Section II (Declaration of Rights), there is a substantive listing of the civil rights, as in §2 of art. 72: "All are equal before the law." (BRASIL, 1891) This listing, which includes the secular nature of education (§6), free manifestation of thought (§12), free exercise of any moral, intellectual, and industrial profession (§24), and freedom of belief (§28), expresses the foundation of the Rule of Law. As indicated by Bobbio (1992, p.61): "Under the Rule of Law, the individual has, before the State, not only private rights, but also public rights. The Rule of Law is the governing rule of citizens."

These rights placed in positive law were far from being made effective, whether because of the heavy legacy of slavery, a patriarchal culture, or total absence of social rights.

In the case of former slaves, now in freedom, the inequality of their material conditions, abolition without agrarian reform, and cultural discrimination impaired the environment of access to primary education, and even more so, to secondary and higher education.

Women, in addition to being denied the exercise of voting, were held to be "relatively incapable for certain acts" (BRASIL, 1916) by the Civil Code of 1916, as in the case of married women (art. 6) or of the condemnable (art. 242), by which they could only exercise a profession with authorization of the husband. This cultural atmosphere associated with political restrictions limited their open access to school education.

The expectation of fulfillment of "liberty, liberty, open your wings over us*"* (BRASIL, 1890a), from the refrain of the Anthem of the Republic, was not made effective because the framework of exclusion was so overwhelming that it did not allow the required liberty. Thus, drawing once more on Bobbio (1992, p.89-90):

> as the figure of the Liberal State and Rule of Law was implemented, the idea that it was the task of the State to ensure the happiness of individuals was completely abandoned. Also in this case, the clearest and most enlightening word was expressed by Kant, who – in defense of the purely liberal State, whose goal is to allow that the liberty of each one can be expressed based on a universal rational law – rejected the eudaimonological State, a State that intended to include among its tasks that of making its subjects happy, since the true purpose of the State should only be to give its subjects enough freedom to allow each one of them to seek their own happiness in their own way.

Thus, the free education foreseen in the Constitution of the Empire for primary education does not appear in the Constitution of the First Republic. According to the spirit at the beginning of the Republic, the absence both of free education and of its compulsory nature would be of two routes. In the first, on the national level, the understanding prevails

> that socially protective measures went against the individualism of civil contract law under the market system. [...] To be protected was equivalent to not being a citizen, to fail to be one, or otherwise take part in vagrancy and indigence. (CURY, 2000, p.296)

Criminal law of 1890, Decree no. 847, specifies in art. 399: (BRASIL, 1890b)

> To fail to exercise a profession, trade, or any occupation to earn a living, not having means of subsistence and established residence in which to live; to provide for subsistence by means of an occupation prohibited by law, or that is manifestly offensive to morality and to good practice. Penalty of incarceration for fifteen to thirty days.

On the national level, it would be the *virtus* of the individual that would bring him to engage both in work and in education, including efforts to become a voter, especially in the case of illiterate persons. Therefore, to be a worker was a condition of citizenship, and lack of access to employment or work put the individual at risk of criminalization.

An aspect of inequality, originating from the generalized poverty during the First Republic, combined with a duality in education, can be seen in Decree no. 7566, of 1909, in its Explanatory Statement:

> Whereas: the constant increase in population of cities requires that the means of overcoming the ever increasing difficulties in the struggle for existence be eased for the proletariat classes; it is necessary not only to qualify the children of those not favored by fortune with indispensable technical and intellectual preparation, but to make them acquire fruitful work habits that will move them away from ignorant idleness, the school of vice and crime; and one of the first duties of the Government of the Republic is to train citizens useful to the Nation, it is decreed [...] (BRASIL, 1909).

The second route, in the light of federalism, left the task to the states, to the extent that they activated art. 78 of the Constitution in combination with art. 63. It should be understood that on the national level, the sole specific norm regarding education was its secular nature, stated in §6 of art. 72. Art. 78 did not exclude "other protections and rights not enumerated" (BRASIL, 1891).

The understanding of **all**, in this case, especially in regard to education, must pass through the state constitutions and/or through infractional laws related to education, the *all* understood as limited to the territories of the states. In any case, many of these state constitutions not only conferred free primary education, but also established it as compulsory. Observe, for example, the Constitution of Minas Gerais of 1891:

> Art. 3 - §6 – Primary education will be free and private education freely exercised.
> [...]
> Art. 30 – It belongs exclusively to Congress:
> [...]
> §5 – To legislate regarding higher and secondary education, which will be freely chosen in all degrees.
> [...]
> Art. 117. The law of organization of public instruction will establish:
> 1 The compulsory nature of learning under fitting conditions
> 2 Preference of the graduates for normal (teacher training) schools for investiture of the teaching profession;
> 3 Institution of educational funding;
> 4 Inspection. The State, in regard to private teaching establishments, only concerning hygiene, morality, and statistics. (MINAS GERAIS, 1891)[4]

Another example can be seen in law no. 88 of 1892 in the state of São Paulo, an infra-constitutional law subordinate to the Constitution of São Paulo of 1891. Elementary primary education went from 7 to 12 years of age. For entrance into middle school, in addition to other criteria, art. 21 foresaw for existing openings:

[4] São Paulo, Bahia, Goiás, and Santa Catarina also combined, in their Constitutions, free education and its compulsory nature.

> §1. – The students of the middle schools will pay a single annual enrollment fee of 50$000.
> §2. – In the middle schools there will be a number of free positions, equal to one tenth of the total number of students that the middle school can receive, directed to poor, intelligent, and hard-working boys who, in competitive examination, prove to be more skillful. (SÃO PAULO, 1891)

In addition to approval in admissions examination, the free one tenth of the total of all openings were to combine poverty with an aptitude for hard work (in the sense opposite to the already indicated possible **vagrancy** due to the limited number of work positions for persons more than 12 years old) and intelligence.

A reform of a federal nature sought to provide some support to spread primary education in the states. It was the last reform of the First Republic – Decree no. 16.782-A of 1925, known as the João Alvez/Rocha Vaz Reform. The salary of the teachers active in rural schools would be subsidized in part by the Union. The states would be responsible for providing housing, the school building, and teaching material, as well as complementing the rest of the salary.[5]

2.3 The Constitution of 1934

The Federal Constitution of 1934 desired to restore the Rule of Law on new foundations, whether in the electoral process or for ensuring new principles, resulted from a Constitutional Assembly called for that purpose. The rights of citizenship were consigned after the Titles (Articles) related to organization of the State.[6] Thus, this can be read both as a safeguarding of civil rights and of social rights, the latter inspired by the Constitution of Mexico of 1917 and by the Weimar Constitution of 1919[7].

> Art. 113 – The Constitution ensures the inviolability of rights concerning liberty, subsistence, individual safety, and security of property to Brazilians and to foreigners residing in the country in the following terms:
> 1) All are equal before the law. There will be no privileges or distinctions by reason of birth, sex, race, one's own profession or of one's parents, social class, wealth, religious beliefs, or political ideas. (BRASIL, 1934)

This article, in fact, indicates an obligation that repudiates privileges or distinctions moored to prejudices and discriminations of a varied nature. By the Electoral Code of 1932, women obtained the right to vote, in accordance with Decree no. 21.076. Art. 2 of this Code stated: "The citizen as of 21 years of age enrolled in the form of this Code has the right to vote, regardless of gender." (BRASIL, 1932).

[5] Here can be indicated an embryo of what would come to be FUNDEF in the Constitution of 1988 through constitutional amendment no. 14.

[6] This is a significant difference from the Federal Constitution of 1988. The Constitution of 1988 puts the organization of the State after the rights of citizenship. This precedence of rights can be read in such a way that the State is at the service of citizenship and not the contrary.

[7] Regarding the Weimar Constitution cf. Cury (1998).

Nevertheless, the Constitution of 1934 established the obligation to vote: "Art. 109 – Enrollment and voting are compulsory for men and for women when they exercise a paid public function." (BRASIL, 1934)

Note that the vote was not compulsory for all. And the voting age, unlike the Electoral Code, came to be 18 years. Illiterate persons continued to be impeded from voting. This same Constitution stipulates, now in light of the introduction of social rights:

> 34) All have the right of providing for their own subsistence and that of their family through honest labor. Public Authority should, in accordance with law, defend those who are indigent.
> [...]
> Art 115 – The economic order should be organized according to principles of Justice and the requirements of national life so as to allow a dignified existence to all. Within these limits, economic liberty is ensured. (BRASIL, 1934)

This dignified existence depends on principles of justice, including work, such that economic liberty has limits. These limits were established in art. 121: "The law will promote support for production and will establish labor conditions, in the city and on the land, with a view toward social protection of the worker and the economic interests of the country." (BRASIL, 1934)

In addition to the minimum wage/salary, other instruments can be highlighted **that aim at improving the conditions of the worker**, such as an eight-hour work day, weekly rest, annual vacation time, collective bargaining agreements, and letter *d* of §1 of art. 121: "d) prohibition of labor for those under 14 years of age; of night labor for those under 16; and, in unhealthy industries, labor for those under 18 years of age and for women." As Bobbio (1992, p.77) instructs:

> In a society in which only property owners had active citizenship, it was obvious that property rights would be established as the fundamental right; in the same way, it was also obvious that in the society of the countries of the first industrial revolution, when workers' movements came on the scene, the right to work would be established as a fundamental right. The demand of the right to work as a fundamental right – so fundamental that it came to be part of all contemporary Declarations of Rights…

However, in art. 138, within **support for the disadvantaged**, a term present in the Explanatory Statement of 1909 in establishment of trade apprentice schools, public authorities received the charge of encouraging **eugenic education**.[8]

Item XIV of art. 5 established that drawing up national education guidelines was under the exclusive competence of the Union. An expression appeared, hitherto unknown in the constitutions: **national education**. At the same time, §3 of this article made possible, in relation to item XIV, **supplementary or complementary state legislation**, through respect for

[8] Cf. Rocha (2018). It can be questioned to what extent the *right of all* could include at the same time, within it, a *eugenic education* that ended up excluding negroes and indigenous peoples, as well as people with disabilities, from a democratic education. Would there not reside therein an important barrier of these groups in being present in and participating in the formal institutions of democracy? Regarding this topic, cf. Lemgruber (2016).

federalism. Consequently, the constitution did not fail to establish a chapter of education with significant advances in relation to previous legislation.

> Art. 149 – Education is a right of all and should be provided by the family and by Public Authorities; the latter are to provide it to Brazilians and to foreigners residing in the country in such a way that it enables effective factors in the moral and economic life of the Nation, and develops in a Brazilian spirit, the awareness of human solidarity. (BRASIL, 1934)

At the same time, within the National Education Plan, which includes teaching of all degrees and branches, common and specialized, under the competence of the Union, one can read in art. 150, (the only) §: (BRASIL, 1934)

> a) free and compulsory full-time primary education, extended to adults;
> b) trend towards free education after primary education, in order to make it more accessible;
> c) freedom of teaching in all degrees and branches, observing the requirements of federal and state legislation;
> d) teaching, in private establishments, given in the native language, with the exception of foreign languages;
> e) limitation of enrollment according to the didactic capacity of the establishment and selection by means of intelligence and achievement tests, or by objective processes appropriate to the purpose of the course;
> f) recognition of private educational establishments only when they guarantee stability to their teachers, for the length of their adequate service, and fair pay.

Note the tension between letters **a** and **b**, with a clear tone of inclusion, and letter **e**, with a selective sense – on the one hand, **comprehensive** primary education and its extension to **adults** and, on the other hand, the formalization of the **entrance exam** as a true selective control at the entrance to what was then the first cycle of secondary education.[9]

Art. 42 of the aborted National Education Plan of 1936-37 can be cited as a reference of the limits of compulsory education:

> Art. 42 – Children are exempt from school attendance:
> a) when there is no public school within a three-kilometer radius of their home;
> b) when they suffer from a repulsive or contagious disease or manifest physical or mental incapacity.[10] (MES, 1949)

Although this Plan provided for compulsory attendance from 7 to 12 years old in art. 39, art. 44 provided that the duration of primary education could not be less than three years. Therefore, it stipulated 6 years, but opened the possibility of only 3 years.

[9] Cf. Abreu and Minhoto (2012).

[10] This final segment of letter **b** of the article is in conformity with the chapter called *Do Ensino Emendativo* whose content, in this Plan, deals with people with disabilities in stigmatizing terms.

Another article concerning the scarcity of schools is noteworthy: "Art. 48 – When great distances or low population prevent the foundation of fixed schools, teaching will be organized by correspondence or through an itinerant teacher." (MES, 1949)

Therefore, in the lines of text, more than between the lines, advancement in the framework can be seen and, at the same time, recognition of the limitation of the law in implementing policies for inclusion. Therefore, the *all* of art. 149, even within free and compulsory primary education, would not be *all*, either in federal constitutional legislation or in state laws and, as a consequence, also not in education policies.

Secularized education, another point of significant change in relation to the Constitution of the First Republic, is under tension from art. 153, which enables religious education as a subject to be offered in **public primary**, **secondary**, **professional**, and **normal** (teacher education) **schools**, under the auspices of being optional. The difference between this instrument and Decree no. 19.941 of 1931 that re-established religious education in public schools is that the latter did not include professional schools and, in offering this instruction, there was the restriction that it would not disrupt the schedule of classes for the other subjects of the course.

Despite the short period of the democratic regime, it is important to note that the states elaborated their state constitutions after 1934, considering the federative principle.[11]

2.4 The Constitution granted in 1937

With the coup of November 10, 1937, another element began to appear in these exclusion instruments. A type of Explanatory Statement of the Constitution that was granted contains an indication of the cause of social ills:

> Responding to the legitimate aspirations of the Brazilian people for political and social peace, who have been deeply disturbed by known factors of disorder, resulting from the aggravation of partisan disagreements, which a notorious demagogic propaganda seeks to denature into class struggle, and from radicalization of ideological conflicts, tending, by their natural development, to resolve themselves in violent terms, placing the Nation under the calamitous imminence of civil war. (BRASIL, 1937)

This reiteration that democratic advances, many of a social nature, would be under "Communist infiltration, which becomes more extensive and deeper day by day, demanding radical and permanent remedies" (BRAZIL, 1937), as that explanation continues, would give cover to the 1937-1945 dictatorship. But this justification would be part of an ever-present slogan when wanting to accuse anyone who thought differently from the **official story**. It is both a censorship established over books and teachers and persecution of those who dared transgress or attack what was considered the established order. A clear example of the first aspect is Decree-Law No. 1006, of 12/30/38. It imposes the conditions under which textbooks could be produced, imported, and used. Art. 3 establishes that,

[11] Check one of the few studies on the Constitutional Assembly and Constitution of 1935, in the case of Amazonas, in Pinheiro (2001).

> as of January 1, 1940, textbooks that do not have prior authorization granted by the Ministry of Education under the terms of this law cannot be adopted in the teaching of primary, normal, professional, and secondary schools throughout the Republic. (BRASIL, 1938)

Another example is the constant accusation directed at Anísio Teixeira, most assuredly a liberal democrat with an emphasis on social rights, of *communism*.

This situation was supported by the phatic text of the 1937 Constitution in which centralization in the Union practically reduced federalism to minor aspects of public administration. This is the case of item IX of art. 15: "to lay the foundations and determine the framework of national education, drawing up the guidelines that the physical, intellectual, and moral formation of childhood and youth must obey." (BRAZIL, 1937). This particular competence of the Union is articulated with item XXIV and item XXVI of art. 16, respectively, "guidelines for national education, and the organization, instruction, justice, and assurance of state police forces."[12] (BRAZIL, 1937). As art. 17 of this Constitution, which foresaw some form of delegation, was not carried forward in the creation of State Assemblies, this particular competence practically became exclusive.[13]

This Constitution contains, in addition to the provisions already mentioned, two chapters in which education appears: On the Family (*Da Família*) (art. 124-127) and On Education and Culture (*Da Educação e Cultura*) (art. 128-134). In these chapters, the subsidiary role of the State in the implementation of educational policies stands out, reserving an important role for private institutions, since it is up to the State to "overcome the deficiencies and gaps of private education", according to art. 125 (BRAZIL, 1937). And this subsidiary role is expressed in art. 127: "Destitute parents have the right to invoke the aid and protection of the State for the subsistence and education of their offspring." (BRASIL, 1937)

It is quite evident that the main current is private schools, filling the gaps they leave through the exercise of public welfare. This can be seen in Decree no. 3799/1941, creating the Assistance Service for Minors, in which art. 2 establishes:

> a) systematize and direct assistance services for disadvantaged minors and delinquents interned in official and private establishments;
> b) carry out social research and medical psycho-pedagogical examination of disadvantaged and delinquent minors;
> c) shelter minors, at the disposal of the Juvenile Court of the Federal District;

[12] The field of **police force instruction** is still open to further research, especially regarding the meaning of violence in terms of non-school education. See, for example, Art. 116 of Decree-Law no. 3864/1941 of the Military Statute: "For admission to training schools and courses for officers, in addition to the conditions of age, intellectual aptitude, moral repute, and physical capacity, the candidate must be a native Brazilian, and the conditions of the social and domestic environment (nationality, religion, political orientation, and the moral and professional conditions of the parents) may not conflict with the obligations and duties imposed on the military personnel, nor can they be susceptible to impeding perfect and spontaneous patriotic sentiment." (BRAZIL, 1941b) There is a specific chapter on military education, which includes art. 170: "Each superior is responsible for instructing and training his subordinates, taking care to improve their moral, civic, intellectual, and professional formation." (BRAZIL, 1941b)

[13] Regarding education in Minas Gerais under the New State (*Estado Novo*) and the initiatives taken by the state of Minas Gerais, cf. Peixoto, (2000; 2003).

> d) gather minors in suitable establishments in order to provide them with education, instruction, and somatopsychic treatment, until their departure;
> e) study the causes of child abandonment and delinquency for the guidance of public authorities;
> f) promote periodic publication of research results, studies, and statistics (BRASIL, 1941a).

The prevailing inequality in the country, the source of exclusion, instead of relying on redistributive policies, was combatted with a type of initiative that, according to Rizzini and Rizzini, (2004), was called the **school of crime**.

Social inequality will ensure the duplicity of school networks made so explicit in the Constitution and in the Explanatory Statement of the Capanema Reform regarding secondary education in 1942. It is important to compare both:

> Art. 129 – For children and youth who lack the necessary resources for education in private institutions, it is the duty of the nation, states, and municipalities to ensure, through the foundation of public educational institutions at all levels, the possibility of receiving an education suitable to their abilities, aptitudes, and vocational tendencies.
> Professional pre-vocational education **destined** to the less favored classes is, in terms of education, the first duty of the State. It is responsible for carrying out this duty, founding institutes of professional education and **subsidizing** those in the initiative of states, municipalities, and individuals or private and professional associations.
> It is the duty of industries and economic unions to create, in the sphere of their expertise, schools for apprentices, intended for the children of their workers or their associates. The law will regulate the fulfillment of this duty and the powers that the State will have over these schools, as well as the aids, facilities, and subsidies to be granted to them by Public Authority. (BRAZIL, 1937) (our emphasis)

Note the verb used and placed in bold print: **destined**; that is, the destiny reserved to the vulnerable classes is reserved to them as a predetermined end, as if it were the product of a natural law affirmed in the Constitution.

Another highlighted verb is **subsidize**. At least in the Constitution, the option is made for the principle of subsidiarity, which, in this case, has a strong private content. This principle is based on the idea that **things should be done by those who do them best**. And, if the private sector **acts and does things better**, the main actions in providing education should be attributed to it. This explains the content of Decree no. 4.244/1942:

> Conception of secondary education - The reform attributes secondary education with its fundamental purpose, which is the formation of adolescent personhood.
> It should be noted, however, that forming personhood, adapting human beings to the demands of society and socializing them, is the purpose of all types of education.

> And, since this is the general purpose of education, it is for that very reason the sole purpose of **primary education**, which is the basic and essential education, which is the **education for all**.
> However, from secondary education onwards, each branch of education is characterized by a specific purpose, which is added to that general purpose. What constitutes the specific character of secondary education is its function of forming adolescents in a solid general culture, marked by cultivation of a time of ancient humanities and of modern humanities, and of accentuating and elevating the patriotic consciousness and the humanistic consciousness within them.
> [...]
> Secondary education, however, is aimed more precisely at formation of a patriotic consciousness.
> This is because secondary education **is destined** for the preparation of **individuals who are leaders, that is, of men who will have to assume greater responsibilities within society and the nation, of men who are bearers of the spiritual concepts and attitudes that must be instilled in the masses, that must be made customary among the people**. It must therefore be a patriotic education par excellence, and patriotic in the highest sense of the word, that is, an education capable of giving adolescents an understanding of the historical continuity of the country, an understanding of the problems and needs, of the mission and ideals of the nation, as well as the dangers that accompany, surround, or threaten it; a teaching capable, moreover, of creating, in the spirit of new generations, the awareness of responsibility in face of the greatest values of the homeland, its independence, its order, its destiny. (BRAZIL, 1942) (our emphasis)

After primary education **for all**, in which the State collaborates, **in a principal** (primary education) **or subsidiary manner, to facilitate its execution or overcome the deficiencies and gaps in private education** (secondary education onwards), the duplicity of school networks has its continuation, molded by social inequality, assuring to **those destined** for secondary education the function of being the **thinking elite** to instill consensus in the **masses** regarding their destiny, especially in **pre-vocational education**.

Once again, the **all** are basically that (all), up to a certain point in the school process: primary education. Then there are those "who are more equal than the others". Instead of indicating the deeper causes of inequality in order to establish egalitarian policies, in redistribution of income and wealth, the double network takes the **destiny** of some and of others as a natural given to be ensured. There is already intense and robust research on the organic laws under the auspices of Gustavo Capanema.[14]

This historic progression, despite resistance, has configured an unequal, aporophobic, and discriminatory profile in which poor, black, and indigenous peoples and people with disabilities are deprived of their rights, repeatedly, including lack of a complete education for access to higher education. As a result, such social groups are not able to have access to institutional policy-making positions, outside of the usual exceptions.

[14] Cf. Horta (1994) and Bomeny (1999).

2.5 The Constitution of 1946

The 1946 Constitution returns to the **all** in art. 166 by emphasizing **education as a right of all**, with primary education being compulsory and free in the public system. At the same time, it makes the free nature of further studies conditional on "those who prove lack or insufficiency of resources." (BRAZIL, 1946) Educational assistance services *for the needy* would be mandatory for all education systems. Apprenticeship services became mandatory for companies that had workers that were minors, who had to be at least 14 years old.

The time between the 1946 Constitution and the 1964 civil-military coup reveals very significant tensions in education. Most of the provisions of the 1934 Constitution return, including linkage with a percentage of tax revenue, which did not exist in 1937.

Once again, federalism required state constitutions, in which the theme of school education was to be present.[15]

At first, the issue of federalism, in the way it was treated in the proposed bill of educational guidelines and foundations sent by the Dutra government and by Minister Clemente Mariani, occupied the debates, making centralization and decentralization the most important themes. Thus, on the one hand, with some adjustments, the organic laws of the *Estado Novo* continued to be in force; on the other hand, their compatibility with the 1946 Constitution indicated a continuity of the social structure in question, except for political change.

If questioning of the social structure was deepened in the reforms, the resistance to them made their appearance more explicit. There were advances in professional education with equivalence laws and in federalization of universities. In basic education – as we would say today – the legislative process of the law of educational guidelines and foundations vigorously resumed the tension between public and private. Not by chance, redesigning the *Manifesto dos Pioneiros da Educação Nova* of 1932, another *Manifesto* of 1959 contests the meaning of freedom of education as understood in Carlos Lacerda's replacement for project no. 2.222-A/1957 in November 1958. The reasons given by the parliamentarian were that he intended to return education to the Brazilian family. Hence the presentation of substitute no. 2222-B in January 1958.[16]

From negotiations in Parliament, finally, within the João Goulart/Tancredo Neves parliamentary government, law no. 4024/1961 emerges of the guidelines and foundations of national education. This law reiterates education as a right of all as a **right to education**, an expression that appears in art. 3. This article has a distinctive wording in its sections: (BRASIL, 1961)

> I – by the obligation of public authority and by the freedom of private initiative to provide education at all levels, in accordance with the law in force;
> II - by the obligation of the State to provide indispensable resources so that the family or, failing that, other members of society are relieved of the expenses of education when insufficiency of means is proven, so that equal opportunities are ensured to all.

On the one hand, public authority *is obliged* to offer education *at all levels*. This is unique wording, especially regarding higher education. On the other hand, the subsidiary character of the State in relation to family and society in providing for the expenses of education returns. This side, even though it foresees *equal opportunities for all*, does not fail to limit the

[15] Cf. Araújo (1998) and Cury (2018).

[16] Cf. Saviani (1973). In this book, there is a complete synopsis of the parliamentary proceedings, chronologically, of the educational bill of law since 1948. Cf., as well, Buffa (1979) and VillaLobos (1969).

obligation. Starting at age 7, compulsory primary education of 4-year duration, in art. 30, would have the following exemptions:

> Paragraph (1). The following are cases of exemption, in addition to others provided for by law:
> a) proven poverty status of the parent or guardian;
> b) lack of schools;
> c) enrollment closed;
> d) serious sickness or abnormality of the child. (BRASIL, 1961)

How is ensuring "equal opportunities for all" consistent with "proven poverty status of the parent"? Why the poverty of the parents and not of the family? How can equal opportunity *for all* be consistent with *lack of schools* or *enrollment closed*? Opportunity, even by its etymology, is the absence of obstacles. Moreover, there is art. 36:

> Art. 36. Admission to the first grade of the 1st cycle of high school courses depends on passing an entrance exam in which satisfactory primary education is shown, providing the student is eleven years old or will reach that age during the academic year. (BRASIL, 1961)

Defining this law as **half a victory, but a victory**, Anísio Teixeira expressed, as he had always done since the 1930s, the limits and obstacles for a democratic education, which was not a privilege but a right. If the privilege is denied and the right is admitted, the comprehensiveness of the latter is universal, hence the need for policies that open schools to everyone.

2.6 The Constitution of 1967 and the Constitutional Amendment of the Military Junta of 1969

The civil-military dictatorship, established in 1964, maintained a policy of socio-political domination in order to deepen a concentrationist economic model. However, the dictatorship also sought to become hegemonic through initiatives beyond censorship and salary limitations. In this sense, the 1946 Constitution was practically emptied out by the countless Institutional Acts of the dictatorship.

Institutional Act no. 4/1966 revoked the 1946 Constitution and determined the elaboration of another constitution in which "elaboration of constitutional law of the March 31, 1964 movement should also fit" (BRASIL, 1966). In the case of education, the 1967 Constitution continues to assert it as a right **for all** and extends free and compulsory primary education to eight years. Thus, if on the one hand, item II of art. 168 provides that "education from seven to fourteen years of age is mandatory for all and free in official primary education establishments" (BRASIL, 1967), on the other hand, item III maintains the tradition of limitations on further studies:

> official education after primary education will also be free for those who, demonstrating effective achievement, prove lack or insufficiency of resources. Whenever possible, Public Authority will replace the free system with the granting of scholarships, requiring subsequent reimbursement in the case of higher education. (BRASIL, 1967)

Problems increased because this Constitution did not maintain linking taxes to public funding for public education. It is paradoxical to expand education from 4 to 8 years and at the same time withdraw the link with public funding.

Limitations on rights already present in the 1967 Constitution increased with Constitutional Amendment no. 1 of 1969 from the military junta. It included the provisions of Institutional Act no. 05/1968, allowing closure of Congress and legislative assemblies and chambers, as well as suspension of political rights, allowing the death penalty **for cases of subversion**. Obviously, civil rights were also stifled. A paradox in this is registration of education as a **duty of the State**, which appears for the first time in constitutional texts. It also includes a return to tying 20% of resources to education, **only for municipalities**. This provision is not in the chapter on education.

3. Returning to the Constitution of 1988

Democratization, preceded by an unprecedented mobilization of civil society, advocates a socially just, economically balanced, and politically democratic society. The education chapter in the original version, altered by many constitutional amendments, *maximized* the field of applicability of access to free education. Much progress has been made in infra-constitutional laws with regard to access to education, to free education, and to the compulsory nature of education, configuring the field of equality and diversity.

The Federal Constitution of 1988 declares the right to education in art. 205, and compulsory education from four to seventeen years of age is consigned as a subjective public right. Offering openings for all (males and females) in the specific stages of this level of school education, except for day care centers, is a duty of the State. It is not, therefore, a voluntary act of the State.

The subjective public right is a prerogative of the citizen, in such a way that if someone is deprived access to an opening in the educational systems, that person will be affected by a profound denial of citizenship. If a person is on the verge of being deprived of such a right, it is up to the person or the family to demand that right; and in the case of repeated omission, to pursue legal options in the judiciary system. If necessary, support can be found in law no. 1.079/1950. Through it, public authorities whose actions violate the exercise of individual, political, and social rights are incriminated, and they can be denounced for neglect of duty. Education as a subjective public right was already postulated in 1932 in the writings of Pontes de Miranda.

This maximization gained legal expression with constitutional amendment no. 59/09 and its development in the current National Education Plan of law no. 13.005/2014 with its 20 goals and multiple strategies in reference to each goal.

Some constitutional amendments of great importance were imposed. A system of collaboration with regard to redistribution of dedicated resources was aimed at in three amendments, altering education articles in the Constitution. Amendment no. 14/96, which created the Fund for Maintenance and Development of Fundamental Education and for Valorization of Teaching (FUNDEF), sub-linked the resources for fundamental education (until then, the only mandatory step in the seven-to-fourteen-year age range) and for valorization of the teaching profession. This amendment was extended with amendment no. 53/2006, Fund for Maintenance and Development of Basic Education and for Valorization of Education Professionals (FUNDEB), which came to cover, with different percentages, all of basic education. Both were contained in the Transitional Constitutional Provisions Act, in art. 60.

A ten-year transience of FUNDEB was registered in the Transitory Provisions of the Constitution, and when this period expired, it brought uncertainty as to its continuity. Given the structuring nature that characterized both amendments, their absence would jeopardize an entire funding organization as of 1996. Thus, after pressure from civil societies identified with education and from organizations that bring together educational officials and the efforts of parliamentarians, Congress approved constitutional amendment no. 108/2020. It not only

placed FUNDEB permanently with the body of the constitution, in articles 158, 211, 212, and 212-A, and in articles 60 and 60-A of the Transitional Constitutional Provisions Act, but also introduced the demand for quality and equity in the new redistribution of investments as constant goals of the collaboration system from that point on.

Between the 2006 FUNDEB and what is now called the new FUNDEB, there is constitutional amendment no. 59/2009, which brought substantial changes to the concept of free, compulsory education, introduced the concept of a national education system, and determined the requirement of the national education plan.

Conclusion

In the light of the 1988 Constitution, with the new FUNDEB and its regulation by law no. 14.113/2020, and the National Education Plan, law no. 13.005/2014, the long, sometimes winding path of the right to education led to the maximization never before recorded in our history. This maximization makes equality, plurality, and diversity the fundamental presuppositions of this right.

This set of legislation is praiseworthy in an axiological approach that recognizes the complexity of reality and its multi-toned character and seeks to provide foundations and support in resolving educational problems detected.

The right to education encompasses both the citizen and the human person in the singular dimension of each one (*ut singulus*), typical of civil rights, reinforced by the subjective public right to education. Education empowers citizenship for participation in the political life of the country (*ut civils*). And as a part of society, education was proclaimed the first of the social rights (*ut socius*) by art. 6 of the Constitution. In addition to these dimensions, education is arranged to serve diffuse interests, as it has individual and collective benefits. Finally, it is included in the collective interests of certain specific groups, responding to the right to diversity.

The problem lies in the complexity of both reality and the set of norms related to the duty of the State and the right of the citizen. If the State lacks political capacity to effect legal determinations in regard to its duties, especially in the financing of education, as a pillar of the collaboration system, this will reduce the real scope of applicability of the right to education.

The SARS COV2 COVID-19 pandemic, which began in 2020, has intensified and has given visibility to very concrete problems in education, starting from the most mundane infrastructure, such as bathrooms and sinks, to the lack of digital communication and information technology devices in schools, contrary to the provisions of the National Education Plan. And the pandemic, due to press coverage, gave visibility to the constraints of many students' homes to which school was "transferred". As a result, not only was there a new form of duplicity in networks of access and of services, but also precariousness in the quality of the right to education was made explicit.

In addition to the pandemic, a federal executive elected in 2018, who busied himself with minor situations in education, did not rely on administrators within the area who took up the greater cause of education. In many cases, such managers acted with their backs turned to the educational situation and to the implementation of public policies in consonance with and derived from the legal order. This practice resulted in reduction in investments from early childhood education to graduate studies, inducing managerial scatteredness in important bodies of the organization of national education and reduction in the channels of participation of civil society.

The history of education has revealed the great discontinuity of State policies, which have been diminished and discontinuous through transitory government politics, as one of our historical ills. But not even the Rivadávia reform or the reforms of the dictatorship were as

deconstructive to national education as this policy of back-turning neglect of the federal executive that took office in 2019, a deconstruction exacerbated by the drama of the pandemic.

It remains to once more take up the catchphrase of the *Manifesto dos Pioneiros da Educação Nova*: national reconstruction involves educational reconstruction, now in the light of a very detailed X-ray of the situation that will require the implementation of what is stated in art. 5 of the National Education Plan (PNE): the "execution of the PNE and the fulfillment of its goals will be subject to continuous monitoring and periodical evaluations." (BRASIL, 2014)

That way, it will be possible for the right to education to find, in more detailed planning, ways of carrying out a proclamation as solemn as it is advanced, in which the **common** is the synthesis of **all** and of **each one**.

The commemorative dates that accumulate in 2022, such as the bicentennial of Independence, the 100th anniversary of the Week of Modern Art, and the 90th anniversary of the *Manifesto dos Pioneiros da Educação Nova* and of the Electoral Code, invite us to once more continue these trajectories from various angles in an effort towards reconstruction of the right to education and its qualitative realization.

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