

# **Education, republican right and duty**

## ***Educação, direito e dever republicano***

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DOI: <http://dx.doi.org/10.20435/231819822016104>

### **Abstract**

This article is part of a Masters research in progress and has as its object the Brazilian State facing the right to education. By means of a documental research, on the basis of the Federal Constitution of 1988, the Law of Guidelines and Bases 9.394/1996 and other documents aimed to discuss how this right has materialized throughout history. The results show that the right to education is a fundamental dimension of citizenship, which is related to a conception of the State and their form of government. This right extends beyond the idea of set of rules, guidelines and actions, because it is linked to the commitment of thinking a model other society with a division of wealth more fairly.

### **Key words**

Right to Education; the Federative Republic of Brazil; citizenship.

### **Resumo**

Este artigo é parte de uma pesquisa de mestrado em andamento e tem como objeto o Estado brasileiro frente ao direito à educação. Por meio de uma pesquisa documental, com base na Constituição Federal de 1988, Lei de Diretrizes e Bases 9.394/1996 e outros documentos buscou-se discutir como esse direito tem se materializado ao longo da história. Os resultados evidenciam que o direito à educação é dimensão fundamental da cidadania e está relacionado a uma concepção do Estado e sua forma de governo. Esse direito ultrapassa a ideia de conjunto de normas, diretrizes e ações, pois está vinculada ao compromisso de pensar outra sociedade, com divisão da riqueza mais justa e igualitária.

### **Palavras-chave**

Direito à Educação; República Federativa do Brasil; cidadania.

## **1 INTRODUCTION**

The historical formation of the Brazilian State despised the culture of indigenous nations who lived in its territory and imported a model of state and administration Napoleonic

bureaucratic, rational and centralizing. Thus, on the basis of rationalism, in legalism, in division of the European Union policy and in the historical relations of personal power was constituted the Brazilian State, based on patrimonial culture and enslaver, as social practice

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and policy, gained from the Portuguese State. This practice has consolidated representations and specific social forms of domination (order and obedience) which did not distinguish between the public sphere and the particular in political life and remain until today, even being contradictory to the current drawing of the Democratic State of Law and fundamental guarantees assigned to the Brazilian people (BIGARELLA, 2015).

And this power of domination, according to Coutinho (2006) is an essential dimension in relations of power of the capitalist society more complex called civil society (set of private relations between individuals of the same class). Thus, the civil society was constituted as a space power, hegemony, in which various projects of society, the economy, politics and culture are drawn.

It is emphasized, as the understanding of Weber (1999, p. 33), the term "domination is the probability of finding obedience to a rule of certain content, between certain appointed people". This concept is still according to the author, "[...] is intimately linked to the idea that he has the power, that is, the possibility of imposing their will on a social relation, even against resistances, whatever the foundation of these legitimacies".

Was the acceptance of this relationship of order and obedience (power) which facilitated to civil society put on in Brazilian policy direction of class, which state "[...] as an instrument to former a rationality political, cultural

and ethical of bourgeois order", since its independence in 1822 (MOTTA, 1995, p. 80). The fact that "[...]" ended up to establish not a rupture, but arrangements that enabled the emergence of a State that accommodating for, in its interior, the order paternalist, in force since the Colony (1500 to 1822) and the new order that if installed: the rational-legal" (BATISTA, 2007, p. 388).

This order has caused a small displacement of economic and political power of the Empire (1822 to 1889), for other political formations and social, basically to an elite or rural group, restricted to the intimate circle of the Emperor who was historically institute in civil society. These new formations, the fruit of the empire, also brought in its interior all vices absolutist created on the system, such as: the patronage, the colonialism, economic opportunism and ownership of the advantages of power; once that these do not have changed the structure of the State, but the political conjuncture, economic and social (FAORO, 2001).

This group has joined to conquer the power of the State and perpetuate their sovereignty economic, political and social. Gradually incorporated therein, its organization, its ideas, policies conceptions and social aspirations (FAORO, 2001). The construction of policies and educational systems Brazilians have followed the same political conceptions of this thought.

The Brazilian State was constituted as a substrate of liberal doctrine capitalist,

based on the laws of the Empire who sought to impose conservative values of Catholic inspiration, bureaucratic and capitalist, by means of arrangements that have enabled the accommodation between the different forms of domination materialized by clientelistic tradition and by forms of power, created by the imperial legal order that defended the strong control of the State in the economy and in the life of the people. The most significant changes made after the proclamation of the Republic of Brazil, on 15 November 1889, were buoyed by bourgeois liberal ideas present in European countries and also present in trade relations in the Brazilian State (FAORO, 2001).

However, these changes have happened without changing the socioeconomic structure Brazilian. Thus the state structure continued supported in large rural society, who brought in their culture the defense of the union of public and private spheres as a unique power, with strong traits of regime of slave labor and great acceptance of liberalism, which meant political freedom and commercial, for this class. These facts have favored the accommodation of the old structure economic, social, political and gave continuity to the role of the State as an efficient instrument of the dominant class, which has managed to make an arrangement between the political culture colonizing and liberalism mercantile (FAORO, 2001).

This another structure demanded new symbolic guidelines regarding

the social relations that were absorbed throughout history by the class dominated and brought social legitimization of the dominant class (MÉSZAROS, 2008). In virtue of this contradictory relationship dominated/dominant, the exploration process has been improved and it has created the consensus of the sale of labor without the need for recourse to direct coercion and without the need to break with the advantages of the culture of the imperial society. That very situation favored the liberalism to establish itself as a social system-political-economic, defender of total freedom of individuals (BIGARELLA, 2015).

The liberalism has established itself in the structure and basics doctrinarian of the Brazilian State, founded by the colonial elite that then it is appropriated, making it a private space. Thus, created a structural duality between labor and capital, this until today, in its constitution and in social relations. The existence of private property has defined and includes the work in the capital, constituting a relationship of social dependence between the individuals of two classes mediated by the market, but with powers and unequal forces (HOBSBAWM, 1995).

However, this relationship of social dependence denies the conception of individual freedom defended in liberal project of Adam Smith, who had such as foundations of individual freedoms of political liberalism were indicated in the work of Locke (2001), *Two Treatises*

of *Government*, from the XVIII century as negative freedom, seen that suffer interference (Coercion) from State and are located in a space in the margin of the State. This freedom followed by coercion can not be conceptualized of true freedom. For the author, true freedom requires the absence of coercion.

For Smith (1996) the State is for civil society and for economy; the individual is for freedom and for the free market; the free market is for economic growth and for the achievement of the individual and of society. Its role is to safeguard the rights and freedoms of citizens and should never interfere in the private business, because the free market will boost the economic progress and enrich the nation. Thus, human laws may not interfere in the laws of economics.

With the protection of private property, second Rousseau (2003) the State makes a good portion of society renounce part of their freedom in their favor. In virtue of this renunciation, the State, the way it is structured could not represent the general desire of every society (all). According to Hobsbawm (1995, p. 19), is this structure that creates two extreme realities the abundant luxury and the homeless's beggars; is the structure that keeps the capital that causes the exclusion and the neglect of social rights.

This way, the fundamental principle of the liberal state is in the division of society into classes (labor and capital) and, consequently, its first

function is to conserve and reproduce this division, ensuring the interests of class that dominates at the expense of another class. Throughout history the State won other forms and adapted to the new conditions of production and reproduction of capital and has created new social formations, but not new social classes (HOBSBAWM, 1995; IANNI, 1997).

The liberal State and the republican State have the same principles. However, according to Bresser-Pereira (2004, p. 131), the Republican is related to the capacity of the State to ensure civil, political and social rights and to protect the private control. Even for the author, the design of this form of State refers to the emergence of the rights and duties of republicans, since this is "[...] endowed with the legitimacy needed for taxing the citizens in order to finance collective actions decided democratically".

## 2 THE REPUBLIC AND DEMOCRACY

Since the appearance of the republican State, democratic governments are getting organized and/or reorganizing, not form one-dimensional, but as spiral, with advances and setbacks, especially in its public management models, whereas its objective was to strengthen the State for the economy and weaken it for the social public policies, thus, contradicting, its own genesis, which is related to the rights of republicans: civil, political and social rights, i.e. "[...] rights that

every citizen has the public heritage – the historical-cultural heritage, the environmental heritage, the economic heritage or *res publica* strict sense – be effectively public, i.e., of all and for all” (BRESSER-PEREIRA, 1997, p. 2).

In this way, a Republic should be understood by means of three elements: a) juristic: a generating entity of positive law; b) philosophy: a cultural phenomenon/political; c) sociological: a social phenomenon where there is integration of forces/socials stratus.

In Brazil, the first article of the Federal Constitution of 1988 (BRASIL, 1988), explains that the form of the State is the federalism and form of government is the Republic, an expression that is related to the idea of “thing of people and/or matter of people”. The Federative Republic of Brazil, has a President elected by the people and is formed by the indissoluble union of states, municipalities and the Federal District and is a Democratic State of Law, having as foundations the sovereignty, citizenship, the dignity of the human beings, the social values of labor and of free initiative, and political pluralism.

Thus, one of the major fundamental rights of Democratic State of Law is popular sovereignty, as noted above. This principle is about citizenship, the right to vote, the legitimacy of the popular power.

The Democratic State of Law requires popular sovereignty, in general deceitfully understood

as the expression of the vote. It argues the following: the state is democratic because there is a vote. Flagrant naivety, because the State can be undemocratic and take the vote. Napoleon I established a tyranny in France, from the end of the XVIII century, performing plebiscite and winning with huge majority of votes. The electoral consensus represents something elusive and society cannot stay on this, cannot establish on it the democratic legitimacy of the State, it is essential the social control of him. (VIEIRA, 2001, p. 14).

And, still, the popular sovereignty is prescribed in the 1988 Federal Constitution, first article, single paragraph, “all power comes from the people who carries through elected representatives or directly, in accordance with this Constitution”, reiterates that the government comes from the people.

Added to that, the Federation, as being the form of State, marked by the distribution of state power by the national territory, having as features the political decentralization, distribution of competences, absence of a right of secession, self-organization of the Member States, among others. Thus, when the Members States join together to form a Federal State there is the birth of a political system called of federalism.

The same fate, the State of Law summarizes the idea of the primacy of the law, the division of powers and

guarantee of individual and collective rights, and social, political or economic (BRAZIL, 1988, Art.5 and 6). Soon, forward on the first article, under examination, we see that the Democratic State of Law, which marks a significant change, i.e., the State has the mission and the duty to give effectiveness to the rights in the Federal Constitution of 1988, performing the dreamed citizenship, the dignity of the human being, among others, converging to the realization of the Social State, refer to analysis of Vieira (2001, p. 14):

Democracy is not a stage, it constitutes a process. The process by which the popular sovereignty will controlling and increasing the rights and duties is a lengthy process, involving very large forward within society. The more collective is the decision, the more democratic it is. Any concept of democracy, there are indeed several of them, it is important in increasing degree of collectivization of decisions. The more the general interest involves a set of decisions, the more democratic they are. The State and the government are suffering process of democratization or against democratization. The less collective interests, the fewer collectivization exists in decisions and, therefore, the more refinement exists in decisions, less democratic

or nothing democratic is the government.

Concerning the existing foundations in five sections of the first article of the Federal Constitution of 1988, as the sovereignty, citizenship, the dignity of the human being, the social values of the work and the free initiative and political pluralism, observe:

The *citizenship*, another important fundamental right is related with the legal recognition of the sense of belonging of the individual person as a member of a state society. This is based on the principle that “people are equal before the law and only before the law, because the citizenship consists in instrument created by capitalism to compensate the social inequality” means a situation in which some accumulate riches, accumulate properties, while others do not survive (VIEIRA, 2001, p. 11).

In summary, the citizenship is the legal, political and social rights recognitions and duties of citizens by the State. Thus, the citizen is one who have guaranteed rights in the form of law. Historically, the word ‘citizen’ opposes to the word “liege” (the one who obeys) and connects to the concept of society. Then there is no citizenship without guarantees of rights and without legal equality (VIEIRA, 2001, p. 12).

The first two submissions are related with the third, *the dignity of the human being*, which refers to the supreme value the moral and ethical, to all rights fundamental inherent in every man. The protection of the

individual inviolable is expressed in all legal statutes. The dignity of the human being refers to recognition of "[...] individual as limit and foundation of political aspects of the Republic" (CANOTILHO, 1998, p. 221).

The other two submissions are related with the organization of modern society: the social values of labor and the free enterprise and political pluralism. The *social values of labor* and *of free enterprise* relates to the system of the social-political-economic that defends the main characteristics of capitalism: the private property and full *freedom of individuals* to sell its labor force. This principle reveals the Brazilian Society divided into classes (labor and capital) and the social relation of dependence between the individuals of classes mediated by the market, but with powers and unequal forces (WOOD, 2003).

The *political pluralism* is a necessary condition for democracy. It seeks to ensure the broad popular participation in the country's political destinations, allowing the various groups of society to act to reduce capacity and to prevent State coordinating decisions that meet exclusively to the interests of the dominant class (WOOD, 2003).

The social participation contained in the constitutional text must be seized as an instrument for the construction and consolidation of citizenship, especially in the context of Brazilian public administration, of various forms of social interaction produced by human

beings, they become an instrument of consolidation and representation of the forms of consensus between conceptions of world and different societies (XAVIER, 1990; CURY, 2001).

This set of fundamentals emphasize the institutionalized character of the guarantee of rights, which are created by a democratic State, soon, democracy exists, when a group of people affirm themselves as citizens. The rights establish the republican state that only is concretized in conjunction of a civil society, aware of the principles of participatory democracy and/or deliberative (BOBBIO, 1988).

For Vieira (2001, p. 12) the concept of civil society represents legal equality and it is related to society of citizens:

The term civil means that the society is formed of citizen, understood as one who has rights and duties. By this time in which the word 'citizen' stands out, she opposes to the word "liege", that means the one that obeys. The theme related with civil society connects to the concept of citizen.

The concept of "citizen" is decoupled from connotation more collective and social rights. It is related to the individual who seeks to accomplish its natural desire: to improve their living conditions (BEHRIN, 1998). This vision, also, requires the other obligations, mainly, with the economic area which is prioritized at the expense of policy. It must have the strength to keep

the transnationalisation and accept guidelines established by external powers. Here, there is a “[...] separation between the political functions, the public sphere of the State and the private economic sphere”. This separation favors the replacement of instruments of political and social control, devalues two foundations of the Democratic State of Law, citizenship and political pluralism and overrating the market as social regulation, characterized by the production and consumption of material things and “[...] not by common meanings shared with society” (DUPAS, 2005, p. 36).

An economic system reveals the policy, social and economic forms that establishes the state organization. It establishes the type of property, the management of the economy, the processes of movement of goods, the consumption and levels of technological development and the division of labor, i.e., establishes the structural arrangement of the Brazilian society and its relationship with the global economic rules and its influence on the management model and choice of public policies, especially those which relate to compliance with social rights, including the educational area (WOOD, 2003).

Even when the constitutional text guarantees all citizens their rights, access to them is very much related to their social condition. This situation demonstrates that the State has two types of social support: one for the owners of means of production, another

for workers (ENGELS, 1984). This model of support is relating to economic system, once it is he, that regulates, as also regulates the work market and distribution of riches.

Brazil as the Federal Republic, has a drawing of the Democratic State of Law that establishes the rights and fundamental guarantees assigned to the Brazilian people. This means that the Federal Constitution of 1988, grants to individuals characteristics necessary for the exercise of citizenship, which implies in freedom, participation and equality (BRASIL, 1988, Art. 1, Art. 5).

These rights are historically ensured by the State in favor of the citizen. Education as a social rights, this capitalist society can be seen as one of the forms of distribution of the wealth produced by the working class, thus ensuring at least the order, freedom and minimally social justice. Education is a right that creates the possibility of division of power and wealth more fairly among social classes, soon, it can be said that education goes beyond a right of democratic State, is a historic right and republican.

### **3 EDUCATION AS A UNIVERSAL RIGHT**

The Constitutions of 1934 and the 1937 established the education as a universal right and obligation of public powers, but with an oriented design to national security, as a strategy for preparing policy against the communist ideology. Concerned about the security

of the country, the Brazilian State has normalized the educational sector and neglected the responsibility for the universalization of education. It was in these constitutional texts that were marked "[...] the first attempts of organization better systematized, based on scientific more conceptions regarding the methods and techniques of teaching, of organization of times and spaces; and rationality in system administration" (TALES, 2006, p. 4).

In 1961, the Law of Guidelines and Bases, nº 4.024/61, grounded in the liberal-democratic of the Federal Constitution of 1946, expanded the political and administrative autonomy to states and municipalities. To give answers the main demand of society, has ratified the right to education, as an important condition for the democratization of the United States of Brazil, as it was called the country at that time. Also created the federal and state systems of education and institutionalized the National and State Councils of Education, as organs of the direct administration of the Ministry of Education and Culture and state Secretariats for Education (TEIXEIRA, 2004; TALES, 2006).

This government has organized the power relations to support the strengthening of executive power, by deployment of a model of technical and rational administration that generated the centralization of power of decision, among the rank of the central government. Also, in the decade of 1970, the concentration of policy

decisions and administrative happened at the federal level. However, with the fiscal and economic crisis, inflation, the fall in productivity (attributed to the excessive labor costs), financial instability and stagnation caused by regulatory instruments and by social policies of the State have meant that this model may be surpassed by the neoliberal model; marked by Hobsbawm (1995, p.158) as the "theology of economic liberalism" which seeks to print a process of reorganization of the capital and of their ideological and political system of domination, who defends unconditionally the "complete freedom of the market".

In the face of this context, the Brazilian State sought to decentralize its administration to make it cheaper, and create new forms of relationship with civil society, which are related and reproduces, according to Hobsbawm (1995), Mészáros (2008), Ianni (1997), the mercantile-capitalist logic. Thus, when participating in the State, reinforce the cumulative process and the conflicts between social classes. The only way to resolve it will be "by the construction of an alternative radically different from the impulse of capital toward the imperialist/monopolistic globalization, in the spirit of the socialist project, embodied in a progressive movement of mass" (MÉSZÁROS, 2008, p. 25).

The Law nº. 5.692/71, sanctioned during the military period in fourth article, first paragraph, item II, which confirmed and expanded the normative and

bureaucratic character of the Education's Councils and gave them regulatory competence to organize the curricula of first and second grades and the adequacy of teaching to local peculiarities.

In the decade of 1980, proposals for the amendment of the policies for public management supporters in the defense of the collective management through the election of school leaders, on the participation of the Community in the constitution of the collective bodies and student and teacher (councils, Collegiate, Parents and teachers Association and student) to draw guild goals and objectives, in the attempt to create mechanisms for implementation of democratic management. Also, distinguished himself by magnification in meeting the demand of fundamental education and enabled the generalization of a pattern of management of public education, "built based on a particular meaning attributed to the binomial centralization/decentralization and consequently to the pedagogical autonomy and spent the democratization of the decision-making processes within the public school" (ADRIÃO, 2001, p. 47).

The years of 1985 were marked by a slow and continuous process of democratization of the country, political opening, optimism and simultaneous populism, including in "[...] the military macroeconomic populism that nobody knows how were suddenly populists [...]" (FIORI, 2001, p. 32). The mobilization of all the forces for the modernization of

the country was present, the economy diversified the imports and accelerate income concentration in the hands of a few. In this period, the political demonstrations, followed the path of the construction of democracy in all sectors of Brazilian society. But along with the ideas of democratization of the country remain the ideas of modernization and globalization of economic (VIEIRA, 2001).

According to Ianni (1997), Vieira (2001) and Saviani (1998) was in the decade of 1980, which evidenced the transformations in the productive processes based on a new technological base and new methods of management and organization productive. This process led to the globalization of the means of production and of the financial system. This has favored the hegemonic rearrangement of capitalism, justified in the modernization of public administration and the insertion of more modern technology.

In this way, the predominance of the discourse of modernization was inserted in the educational policy as a new concept of quality education. This concept was related to the logic of the market, the cost-benefit analysis, in this way, the school came to be evaluated by the economic indicators, efficiency and productivity, which gradually became key elements in the management of education (VIEIRA, 2001). This discourse of modernization permeated the discussions on the education policy and the right to education, now supported in the foundation signed by the Federal

Constitution of 1988, the participation and the popular sovereignty.

#### **4 EDUCATION: DEMOCRATIC RIGHT AND REPUBLICAN**

Education as a social rights, can be considered as one of the most significant rights that gives dimension of social, economic and policy changes associated with the modern world, or perhaps, paraphrasing Ianni (2011), this right can reflect the shadows which limit the relations and the distances between the present, the past and the changes in the concepts of work, of success, of tradition and modernity, since, education, this modern State or liberal has the mission to train workers to capitalism.

In this way this right is defended by all the political parties, both on the right and the left. The right with liberal philosophy, support the dual education, with distinct paths according to social class, dividing the subjects by antagonists workstations: the exploiters and the exploited, i.e., seek to maintain this right at the legal level, as a way of maintaining the capitalist on surplus value. It ended by reinforcing the liberal ideology, the social differences and the model in the structure of the dual Brazilian education, university training for richer and the training of labor technique for the poorest. Configuring a distancing between distinct social forces (SAVIANI, 1998).

The left parties, although often cannot be put them into practice,

defend the right to unique education, without pedagogical distinction, which by any chance will cause repetition/abandonment, failure and social exclusion. In this vision to education and a tool of citizenship, of class struggle and awareness of the functioning of the productive system (SAVIANI, 1998).

For this reason, this understanding implies in the understanding of the power of the State and as it contemplates and designs the social policies. As creates legal strategies, political economic and its own form of management to ensure the right to quality education for all. These strategies show in material terms, the decisions taken and the paths laid out, in relation to the interventions take during a specific mandate, of a particular government (VIEIRA, 2001).

The citizenship as a social practice, only manifests itself when they stimulate the citizens to learning from practice as active subjects. When the citizen is encouraged to act as "individual" limiting to reproduce in their political and social practice the same relations of production and consumption, it only guarantees the maintenance of power, political and administrative strategies of dominant nature and, inhibits the creation of new opportunities for social transformations in the direction of democratization of power relations. The liberal individualism, presents in the culture and education, emphasizes more independence, the autonomous morality than the compromise by social ideals (IANNI, 1997; NEVES, 1999).

It is important to remember, that the State of Law has its root in humanism, which proclaimed the idea that all the people living in the same policy community are equal before the law, that should ensure their universal rights and respecting their individual rights (VIEIRA, 2001; O'DONNELL, 1981). And, any right will only be able to achieve if it is sustained in the constitutional text.

For the protection of this right, the State must create standards and possibilities for enforcing such rights by the institutions, to not be interpreted as a concession of the Brazilian State, but, as a compromise/duty of Public Power. A State organ must position themselves on the basis of the Federal Constitution, state and organic laws, even if it has, as says Chauí (1995 p. 74-75) difficulty of representative organs is always to recognize the other "[...] as a subject of rights" and give up of social relations hierarchical, in which there is always "[...] a superior, who rules, and a lower, who obeys".

In Brazil, the Federal Constitution of 1988 expressed the right to education as a fundamental and, inserts in the social rights, Article 6:

Art. 6 The social rights are education, health, work, housing, leisure, security, social security, the protection of maternity and childcare, assistance to the destitute, in the form of this Constitution (wording given by the

Constitutional Amendment no. 26, 2000). (BRAZIL, 1988, p. 8).

In this text, the right to education was proclaimed "[...] as the first social right. This realization covers since the principles and rules of public administration until the guidelines governing the curricula of school education" (CURY, 2007, p. 484). Among these are the

[...] participation in which the citizen exercises the right to opine, contributing in the discussions, in the planning and construction of specific projects for each area of public administration. This participation provides the transparency of management of public resources, at the same time that allows the understanding of the implementation of each project, its limits and possibilities, popularizing both relations as the decisions taken" (OBARA, 2009, p. 59).

These rights are linked by the principle of the dignity of the human being, prescribed in Article 1, item III (Brazil, 1988), because of the agreement with the Minister of the Supreme Court of Justice, Rosa Weber (2012, s/p), "[...] it cannot deprive someone of their freedom and their dignity treating them as a thing, and not as a human person, what can be done not only through coercion, but also by intense and persistent violation of their basic rights". Thus, as education is a right of

the citizen and the State responsibility, when the State denies public education, free and quality to any citizen, is denying the participation of an elaborate form, systematic education, experience the educational function and social function present in the educational process. Moreover, it is in the guarantee of social rights that establishes the relationship between "State and Society".

This relationship is linked to the concept of citizenship, one of the principles laid down in Article 1, item II, of the Federal Constitution of 1988. The citizenship is the exercise of the rights and constitutional duties. The guarantee of social rights is a step of the conquest of citizenship rights: it is the Democratic State of Law in action. In accordance with the single paragraph that says: "All power comes from the people who carries through elected representatives [...]" (BRASIL, 1988).

The right to education is also expressed in the Law nº 8.069 of 13 July 1990, which treats of the Statute of the Child and Adolescent. This status defined in the single paragraph of Article 53: "The child and the adolescent have the right to education, aiming at the full development of their person, preparation for the exercise of citizenship and qualifying for the work, ensuring them":

- I - equal conditions for access to and remain in the school;
- II - right to be respected by their educators;
- III - right to contest evaluative conditions, and can appeal on

upper school instances;  
IV - right of organization and participation in student bodies;  
V - access to public and unpaid school next to his residence.  
Single Paragraph. It Is the right of parents or guardians have science of the pedagogical process, as well as participate in the definition of educational proposals. (BRASIL, 1990).

The right to education expressed in the Federal Constitution (1988) and in the Law of Guidelines and Bases, nº 9.394/1996), implies responsibility shared by all organs in delivering educational and the maintenance of basic education as a right, this implies an educational project to meet broader social needs, especially of those who have no voice or representative spaces.

In this way, it is essential that the State should take steps, make public policies, which give the minimum conditions for people to exercise their rights, not only private rights, but also public rights, materializing the Democratic State of Law. The exercise of rights implies the participation in decision-making processes, on transparency, advertising of acts of government, in the exercise of supervision of public power by society (CURY, 2005; 2006). Not only to guarantee access and permanence of all, but to guarantee quality education, because still according to Cury (2011, p. 45), "[...] being the school education a public service and universal purpose, it is in the public teaching that the offer of education

must be carefully managed to ensure that the equality before the law and equality of conditions and opportunities for all, without distinction". Only that, the educational rights will worth for the whole of society, as another form of democratic institutions and of valuing the sovereignty, with full respect for human rights and commitment to the process of political education of worker class, that had a starting point in their experiences (BIGARELLA, 2015).

So, it can be inferred that the protect action of education (Right) is related to its universal dimension (access and permanence in school, access to knowledge), which is linked to the concept of "democracy and citizenship" and the rule of law. In this way, occur the relations that are established between the conception of State and the policies that it implements, in a historic moment and in a determined society (BIGARELLA, 2015).

## **5 FINAL CONSIDERATIONS**

The recognition of citizenship has occurred historically through the recognition of social rights. The introduction of civil rights demarcates

the beginning of the Liberal Republican State and recognition the political and social rights defines the democracies, constructing a democratic environment based on law. But, all rights are human rights.

The right to education defined in Brazilian constitutions in the last two hundred years, was an achievement of citizenship, even that still has not extended to all citizens. This protecting action is related to the choice of conception of State and policies, in a historic moment and in a certain society.

But, the education can only be confirmed as a right if all who need it, be able to be part of a school, since the universal dimension (access and permanence in school, access to knowledge), is linked to the concept of democracy, citizenship and Democratic State of Law, which should create standards and possibilities for enforcing such rights by its institutions, that it is not interpreted as a State concession, but as a duty of public power and commitment of thinking an other model of society with more social justice and a fair, more egalitarian division of wealth and income.

## **REFERENCES**

- ADRIÃO, Theresa Maria de Freitas. *Autonomia monitoramento como eixo de mudança: padrões de gestão do ensino público paulista (1995-1998)*. 2001. Tese (Doutorado em Educação) – Universidade de São Paulo, São Paulo, SP, 2001.
- BATISTA, Neusa Chaves. A formação do Estado nacional brasileiro: implicações para a gestão das políticas públicas educacionais. *EcoS – Revista Científica*, São Paulo, v. 9, n. 2, p. 387-408, jul./dez. 2007.

- BEHRING, Elaine Rossetti. *Política social no capitalismo tardio*. São Paulo: Cortez, 1998.
- BIGARELLA, Nadia. *O papel do Conselho Estadual de Educação de Mato Grosso do Sul na definição de políticas para a gestão da educação básica (1999-2014)*. 2015. Tese (Doutorado em Educação) - Universidade Católica Dom Bosco, Campo Grande, MS, 2015.
- BOBBIO, Norberto. *Liberalismo e democracia*. São Paulo: Brasiliense, 1988.
- BRASIL. *Constituição (1934)*. Disponível em: <[http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao34.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao34.htm)>. Acesso em: 12 jun. 2014.
- \_\_\_\_\_. *Constituição (1946)*. Disponível em: <[http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao46.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao46.htm)>. Acesso em: 13 jun. 2014.
- \_\_\_\_\_. *Constituição (1988)*. Brasília, DF: Senado Federal, 1988.
- \_\_\_\_\_. *Constituição dos Estados Unidos do Brasil, de 10 de novembro de 1937*. Rio de Janeiro, 1937. Disponível em: <[http://www.planalto.gov.br/ccivil\\_037/Constituicao/Constituicao37.htm](http://www.planalto.gov.br/ccivil_037/Constituicao/Constituicao37.htm)>. Acesso em: 13 jun. 2014.
- \_\_\_\_\_. *Lei n. 4.024*, de 20 de dezembro de 1961. Fixa as Diretrizes e Bases da Educação Nacional. Brasília: Congresso Nacional, 1961.
- \_\_\_\_\_. Lei n. 9.394, de 20 de dezembro de 1996. Estabelece as Diretrizes e Bases da Educação Nacional. *Diário Oficial [da] República Federativa do Brasil*, Brasília, ano CXXXIV, n. 248, 23 dez. 1996.
- \_\_\_\_\_. Lei nº 8.069, de 13 de julho de 1990. Dispõe sobre o Estatuto da Criança e do Adolescente e dá outras providências. *Diário Oficial [da] República Federativa do Brasil*, Brasília, 16 jul. 1990. p. 13563. Disponível em: <[http://www.planalto.gov.br/ccivil\\_03/Leis/L8069.htm](http://www.planalto.gov.br/ccivil_03/Leis/L8069.htm)>. Acesso em: 22 jan. 2014.
- BRESSER-PEREIRA, Luiz Carlos. Cidadania e Res pública: a emergência dos direitos republicanos. *Revista de Filosofia Política, Nova Série*, Porto Alegre, RS, v. 1, p. 99-144, 1997.
- \_\_\_\_\_. O surgimento do Estado Republicano. *Revista Lua Nova*, 62, 131-150, 2004. Trabalho apresentado no III Simpósio Internacional sobre Justiça. Porto Alegre, 1-5 de setembro de 2003. Revisado em fevereiro de 2004.
- CANOTILHO, José Joaquim Gomes. *Direito Constitucional e Teoria da Constituição*. 3. ed. Coimbra: Almedina, 1998.
- CHAUÍ, Marilena. Cultura Política e política cultural. *Revista Estudos Avançados*, São Paulo, n. 23, p. 71-94, jan./abr. 1995. Disponível em <<http://www.scielo.br/pdf/ea/v9n23/v9n23a06.pdf>>. Acesso em: 25 out. 2011.
- COUTINHO, Carlos Nelson. *Intervenções: o marxismo na batalha das ideias*. São Paulo: Cortez, 2006
- CURY, Carlos Roberto Jamil. A gestão democrática na escola e o direito à educação. *RBPAE*, Porto Alegre, v. 23, n. 3, p. 483-495, set./dez. 2007.

- \_\_\_\_\_. Conselho de Educação: fundamentos e funções. *Revista Brasileira de Política e Administração da Educação (RBPAE)*, v. 22, n. 1, p. 1-184, jan./jul. 2006.
- \_\_\_\_\_. O princípio da gestão democrática na educação: gestão democrática da educação pública. In: MINISTÉRIO DA EDUCAÇÃO. *Gestão democrática da educação*. Brasília: MEC, out. 2005. (Boletim, 19).
- \_\_\_\_\_. Direito à educação: direito à igualdade, direito à diferença. *Cadernos de Pesquisa*, n. 116, jul. 2002.
- \_\_\_\_\_. O conselho nacional de educação e a gestão democrática. In: OLIVEIRA, D. A. (Org.). *Gestão democrática da educação*. 3. ed. Petrópolis, RJ: Vozes, 2001.
- \_\_\_\_\_. Os conselhos de educação e a gestão dos sistemas. In: FERREIRA, N. S.; AGUIAR, M. da S. (Org.). *Gestão da educação: impasses, perspectivas e compromissos*. 4. ed. São Paulo: Cortez, 2011.
- DUPAS, Gilberto. *Atores e poderes na nova ordem global: assimetrias, instabilidades e imperativos de legitimação*. São Paulo: Editora da UNESP, 2005.
- ENGELS, Friedrich. *A origem da família, da propriedade privada e do estado*. São Paulo: Civilização Brasileira, 1984.
- FAORO, Raymundo. *Os donos do poder: formação do patronato político brasileiro*. 3. ed. São Paulo: Globo, 2001.
- FIORI, J. L. *Brasil no espaço*. Petrópolis, RJ: Vozes, 2001.
- HOBSBAWM, Eric. *Era dos extremos: o breve século XX (1914-1991)*. São Paulo: Companhia das Letras, 1995.
- IANNI, Otávio. *A sociologia e o mundo moderno*. Rio de Janeiro: Civilização Brasileira, 2011.
- \_\_\_\_\_. *A era do globalismo*. 3. ed. Rio de Janeiro: Civilização Brasileira, 1997.
- LOCKE, John. *Cartas sobre a tolerância*. Tradução Anoar Aiex e E. Jacy Monteiro. São Paulo: Abril Cultural, 2001. (Coleção Os pensadores).
- MÉSZÁROS, István. *A educação para além do capital*. São Paulo: Boitempo, 2008.
- MOTTA, Ana Elizabete. *Cultura da crise eseguridade social*. São Paulo: Cortez, 1995.
- NEVES, Lúcia Maria Wanderley. *Educação e política no Brasil de hoje*. 2. ed. São Paulo: Cortez, 1999.
- O'DONNELL, Guillermo Alberto. Anotações para uma teoria do Estado. *Revista de Cultura e Política*, n. 4, p. 71- 82, 1981.
- OBARA, Elizabete Emiko E. *Política educacional para o ensino médio no estado de Mato Grosso do Sul*. 2009. Dissertação (Mestrado em Educação) – Universidade Católica Dom Bosco, Campo Grande, MS, 2009.
- ROUSSEAU, Jean-Jacques. *Do contrato social*. São Paulo: Martin Claret, 2003. (Coleção A Obra Prima de Cada Autor).

SAVIANI, Dermeval. *Escola e democracia: teoria da educação, curvatura da vara, onze teses sobre educação política*. Campinas, SP: Autores Associados, 1998.

SMITH, A. *A riqueza das nações: a investigação sobre a sua natureza e suas causas*. São Paulo: Abril, 1996.

TALES, R. M. *O papel dos conselhos de educação na formação dos sistemas educacionais brasileiros*. In: REUNIÃO ANUAL DA ANPED, 29., Caxambú, MG, 15-18 de outubro de 2006. Disponível em: <[www.anped.org.br/reunioes/24/P0522902106281.doc](http://www.anped.org.br/reunioes/24/P0522902106281.doc)>. Acesso em: 23 ago. 2013.

TEIXEIRA, Ana Helena G. Conselhos Municipais de Educação: autonomia e democratização de Ensino. *Cadernos de Pesquisa*, v. 34, n. 123, p. 691-708, set./dez. 2004

VIEIRA, Evaldo. A política e as bases do direito educacional. *Cadernos Cedes*, ano 21, n. 55, nov. 2001.

WEBER, Max. *Economia e sociedade: fundamentos de sociologia compreensiva*. Brasília: Ed.UnB, 1999. v. 1.

WEBER, Rosa. Constituição Comentada. Julgamento em 29/03/2012, Plenário. *DJE*, 12 nov. 2012. Disponível em: <<http://www.stf.jus.br/portal/constitucional/artigoBd.asp?item=4>> . Acesso em: 31 mar. 2014.

WOOD, E. M. *Democracia contra o capitalismo: a renovação do materialismo histórico*. São Paulo: Boitempo, 2003.

XAVIER, M. E. S. P. *Capitalismo e a escola no Brasil*. Campinas, SP: Papirus, 1990.

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**Recebido em dezembro de 2015.**

**Aprovado para publicação em março de 2016.**