

SOCIAL POLICIES AND THE RIGHT TO EDUCATION

POLÍTICAS SOCIAIS E O DIREITO À EDUCAÇÃO

POLÍTICAS SOCIALES Y DERECHO A LA EDUCACIÓN

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ABSTRACT: In this article, through bibliographic and documentary research, the Right to Education in Brazil is analyzed, taking as a reference Social Policies and the Democratic State of Law, typical configuration of liberal democracy that has been installed in Latin America since the decade of 1990. The recognition and positivization of Social Rights in the Federal Constitution of 1988 resulted from a long process of social demands. However, from the socioeconomic and political-ideological context of the 1990s, Social Policy in Brazil suffered the impacts of the implementation of neoliberal policies for economic and social adjustments. Thus, it is understood that the recognition and proclamation of Education as a subjective public right in the Brazilian normative order, means the legal support for the realization of access to school, but, on the other hand, the non-realization of this right conceals the ideological political dimension that advocates Education in the market perspective.

KEYWORDS: Social policy. Educational policy. Right to education.

RESUMO: Neste artigo, por meio de pesquisa bibliográfica e documental, analisa-se o Direito à Educação, no Brasil, tomando como referência as Políticas Sociais e o Estado Democrático de Direito, típica configuração da democracia liberal que se instala na América Latina a partir da década de 1990. O reconhecimento e a positivização de Direitos Sociais na Constituição Federal de 1988 resultou de um longo processo de reivindicações sociais. Contudo, a partir do contexto socioeconômico e político-ideológico da década de 1990, a Política Social no Brasil sofreu os impactos da implementação das políticas neoliberais de ajustes econômicos e sociais. Desse modo, compreende-se que o reconhecimento e a proclamação da Educação como Direito público subjetivo no ordenamento normativo brasileiro significam o respaldo legal para a efetivação do acesso à escola, mas, por outro lado, a não efetivação desse direito dissimula a dimensão político-ideológica que preconiza a Educação na perspectiva mercadológica.

PALAVRAS-CHAVE: Política social. Política educacional. Direito à educação.

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RESUMEN: *En este artículo, a través de una investigación bibliográfica y documental, se analiza el Derecho a la Educación en Brasil, tomando como referencia las Políticas Sociales y el Estado de Derecho Democrático, configuración típica de la democracia liberal que se instala en América Latina desde de la década de 1990. El reconocimiento y positivización de los Derechos Sociales en la Constitución Federal de 1988 fue el resultado de un largo proceso de reivindicación social. Sin embargo, desde el contexto socioeconómico y político-ideológico de la década de 1990, la Política Social en Brasil sufrió los impactos de la implementación de políticas neoliberales de ajuste económico y social. Así, se entiende que el reconocimiento y proclamación de la Educación como un derecho público subjetivo en el orden normativo brasileño, significa el sustento legal para la realización del acceso a la escuela, pero, por otro lado, la no realización de este derecho oculta la dimensión política ideológica que aboga por la educación en la perspectiva del mercado.*

PALABRAS CLAVE: *Política social. Política educativa Derecho a la educación.*

Introduction

This article⁴ deals with the Right to Education from the analysis of Social Policies, considering the set of socioeconomic and political-ideological relations established under capitalism. It discusses the notion of a Democratic State of Law, a typical configuration of liberal democracy that has been installed in Latin America since the 1990s, to understand the relationship between Social Rights⁵ and Social Policies.

The proclamation of Social Rights, in this case, of Education, confirmed in the Federal Constitution of 1988, means the legal support for the effective access to school. However, the failure to implement this Right conceals the political-ideological dimension of Education in the market perspective. This implies considering the concepts of concentrated control of constitutionality, unconstitutionality, judicialization, as well as the differences between the concept of Education as a public service, public good and public law.

The Right to Education is the result of a demand expressed in the struggle of social movements, which resulted in the extension of the period of compulsory schooling and, therefore, free of charge. However, the Right to Education, although positive in the Brazilian normative order, suffered impacts and changes resulting from the implementation of neoliberal policy. Thus, it is important and necessary to be clear about the limits and possibilities of Social Policies under capitalism in guaranteeing and ensuring the effectiveness of Social Rights.

⁴ The article presents part of the studies developed in the Master's thesis in Education, entitled “*Contenção e Liberação na Política Educacional brasileira: tendências predominantes na política de Educação Infantil e do Ensino Fundamental (2006–2016)*” (Containment and Liberation in Brazilian Educational Policy: predominant trends in the Early Childhood and Elementary Education policy (2006–2016)).

⁵ Social rights were constitutionalized, first, in the Mexican Constitution of 1917; later, in the 1918 Russian Constitution; and, later, in the 1919 Weimar Constitution (ARAÚJO; CASSINI, 2017).

The article is organized in 3 sections, being: 1) Democratic rule of law and social policies, 2) Education: public service, public good and public law and 3) The right to education in the 1990s.

Democratic State of Law and Social Policies

Social Policy is typical of the capitalist system, which appears from the workers' mobilizations throughout the first industrial revolutions. It expresses the correlation of social forces that, on the one hand, represents the social conquests of class or class fractions, and on the other hand, constitutes state concessions for the control of the social and for the maintenance of the workforce. Social Policies, which are linked to Social Rights, are commonly expressed in the form of legal and political relations and, therefore, cannot be understood outside the context that produced them, since they express social relations of the socioeconomic and political-ideological context, instituted in plans, projects and documents (VIEIRA, 1992).

Regarding Social Policies, Vieira (2001) points out that, in Brazil, they can be understood from three periods: 1) as control of the policy (1930-1954); 2) as a control policy (1964-1988); and 3) Social Policy without social rights (after 1988). The first two periods retain the fragmentary, sectorial and emergency characteristics of Social Policy, based on the need to legitimize the government; on the third period, after 1988, at no time did Social Policy gain such acceptance in the Brazilian Constitutions as in the Federal Constitution of 1988.

The Federal Constitution of 1988 positivized a range of Social Rights, provided for in art. 6th, in *verbis*: “Art. 6th. Social rights are education, health, food, work, housing, transportation, leisure, security, social security, maternity and child protection, assistance to the destitute, in the form of this Constitution” (BRASIL, 1988, our translation)⁶.

However, these Rights are not fully implemented, or even regulated when they require specific regulation. The situation is made more complex by the fact that Social Rights suffered significant impacts from neoliberal policies in the period after 1995. Thus, in the current socioeconomic and political-ideological context, it is possible to see the willingness of governments and heads of state to carry out a social project aiming to expand the free market and the pattern of capital accumulation (PEREIRA; SILVA, 2018; VIEIRA, 2001).

In the relationship between the State and Social Policies, it should be noted that in the 1990s, especially in Latin America and Brazil, the State of Law or Democratic State of Law,

⁶ Housing was included in 2000, food in 2010 and transport in 2015.

typical of liberal democracy, was installed. In the formal sphere, the Democratic State is based on popular sovereignty, and “democratic” qualifies the State, and thus democracy permeates all the elements that constitute it, including those of a legal order. It is in this direction that the “democratic state of law does not mean the formal union of the concepts of democratic state and the rule of law, but of submission of the legal order in relation to democratic values and collective interests for the transformation of the *status quo*” (SILVEIRA, 2013, p. 372, our translation).

State of Law and Democracy are related to equal opportunities, according to individual capacities. Therefore, it means the right to participate in competition in the market, aiming to achieve social ascension, according to their capacity, effort, and interest. However, the Democratic State of law imposes the principle of popular sovereignty, which advocates the need for the legitimacy of the government and the state from the people (VIEIRA, 1992; 2001).

The Democratic Rule of Law is not only achieved by the legal-formal guarantee of the right expressed in national documents, such as the Constitutions, and in international texts, such as the Universal Declaration of Human Rights (1948) and the European Convention for the Protection of Rights of Men (1950–1952). It determines the protection of rights,

[...] formalizes and institutionalizes in the legal order and, mainly, demands the presence of directed and planned socioeconomic mechanisms in order to achieve the realization of these rights. Many State reasons have led to contradictions between the simple declaration of rights and freedoms and their real effectiveness (VIEIRA, 1992, p. 12, our translation).

The guarantee of fundamental rights and freedoms is the central point of the State of Law, whose most perfect and secure support is the democratic society. For this reason, and in view of the current economic order, in the legal-political sphere, there is the prevalence of liberal democracy, based on the liberal principles of individuality, freedom, property, equality and democracy. However, the 1988 Federal Constitution:

[...] establishes civil, political, and social rights. [...] The more restricted rights, existing within the concept of citizen, become many citizenship rights, become civil rights (individual guarantees), political rights (for example: of assembly, of expression of thought, voting, party organization) and then, in the 20th century, social rights (VIEIRA, 2001, p. 12-14, our translation).

On the other hand, democratic social participation can be considered, in the theory of the classic State, a blow to legitimacy since it is necessary to provide participation and thus create consent to legitimize it. For this reason, “[...] capitalism needed to incorporate democratic logic” (SANFELICE, 2006, p. 58-59, our translation).

In view of the increasing complexity in which legislation is drafted and, consequently, its changes, it is essential to apprehend the unfolding of Education as a Social Policy that expresses a government project under the responsibility of the State, positivized as the right of all who, however, has contradictory character, since

[...] at the same time that it asserts itself as a universal social policy (the expansion of schooling and the growth of the contingent of students served in public systems and networks, in most Latin American countries, is an indicator of this trend) it has also been guided by the logic of focusing (OLIVEIRA; DUARTE, 2005, p. 289, our translation).

The logic of focusing becomes complex when it incorporates and at the same time goes beyond of what the normative order has. The logic of focusing, inherent to the Brazilian Social Policy and, specifically, to the Educational Policy, indicates a process of Containment, since, at the same time that access to school education is expanded, certain social groups to be prioritized are defined, because access is not universal (GUERRA, 2020).

Public Policy can be understood as the State in action, implementing government projects, through projects and actions aimed at specific population contingents. The implementation and maintenance are the responsibility of the State, involving public agencies and sectors of society. In this logic, Social Policy determines a social protection pattern of redistribution of socially produced wealth in order to reduce social/structural inequalities (HÖFLING, 2001).

In the analysis of Social Policy, therefore, it is necessary to consider that Educational Law is not the simple exposition of Education legislation, but consists of an area of legal studies (VIEIRA, 2001) and, thus, reflecting on Education means addressing the notions of public service, public good and public law, as we shall see.

Education: public service, public good and public law

The notion of public service has its origin in classical liberalism, in the 18th century, and changes in the historical process of the development of capitalism and the formation and performance of the State. In classical liberalism, Education was already postulated as a public service in the sense of being an activity regulated by the State, however, not necessarily provided by the State, since the expenses would not necessarily be covered by public revenues (ARAÚJO; CASSINI, 2017).

The concept of public service is related to the reduction of inequalities, linked to the institution of the State of Social Welfare which, due to its interventionist characteristic,

constitutionalized Social Rights and assumed new functions, particularly related to the satisfaction of basic needs. From the origin of Social Rights and the new activities of the State, the public service is understood as a way of acting to guarantee rights (ARAÚJO; CASSINI, 2017).

The concept of public service is modified according to the historical moment and, in Brazil, the process of transforming the concept of public service in the legal system initially excluded a portion of the population with the Consolidation of Labor Laws (CLT, Portuguese initials), being that “[...] the working class was subordinated by the Getulist State, which took over the process of incorporating and controlling the movements of the working class, as well as promoting the nationalization of capitalist production relations” (ARAÚJO; CASSINI, 2017, p. 565, our translation).

Therefore, with regard to activities of a political nature, the law defines which activities are considered to be public services. Therefore, it is a complex issue to assess which is the appropriate concept to be adopted, since the legislation uses the concept sometimes in the broad sense, sometimes in the restricted sense. Education as a public good encompasses the ideas of citizenship, gratuity, obligation and duty of the State as a regulator; it is a public service open to private initiative with legal protection. In this sense, the mistake is made in using the term public good as a synonym for common good, in which:

In administrative law, public goods constitute the public domain, which encompasses both movable and immovable property belonging to state entities, or which are assigned to the provision of a public service. The common good, on the other hand, is the well-being of the people in general, expressed in all forms of meeting community needs, which includes material or immaterial demands and vital needs of the community (ARAÚJO; CASSINI, 2017, p. 572, our translation).

In the 1988 Federal Constitution and LDB 9394/1996, compulsory basic education is conceived as a subjective public right. However, the subjective public law is limited in the specific regulation, the Law of Directives and Bases of National Education (LDB) - no. 9,394/1996; in it, subjective public law is circumscribed “[...] to compulsory education, within the limits established by the State, with its mode of action constituted as a political option ordered by the principle of the reserve of the possible” (ARAÚJO; CASSINI, 2017, p. 570, our translation). In the original wording of LDB N° 9.394 / 1996, *in verbis*:

Art. 5 Access to basic education is a subjective public right, and any citizen, group of citizens, community association, union organization, class entity or other legally constituted, and, even, the Public Prosecutor's Office, can call on

the Public Power to demand it (BRASIL, 1996, authors' highlights, our translation).

This article was modified, in 2013, by Law no. 12,796/2013, which established, *in verbis*:

Art. 5 **Access to compulsory basic education** is a subjective public right, and any citizen, group of citizens, community association, union organization, class entity or other legally constituted and, even, the Public Prosecutor, can call on the public power to demand it (BRASIL, 1996, authors' highlights, our translation).

Law no. 12,796/2013 expanded the subjective public law, specifically because it is linked to what the Federal Constitution of 1988 proposes, which provides in Art. 208, item I, *in verbis* “compulsory and free basic education from 4 (four) to 17 (seventeen) years of age, including its free offer for all those who did not have access to it at their own age” (BRASIL, 1988, our translation). In the same direction, Art. 208, paragraph 1, *in verbis*: “Access to compulsory and free education is a subjective public right” (BRASIL, 1988, our translation) and Art. 208, paragraph 2, *in verbis*: “The non-offering of mandatory education by the Public Power, or its irregular offer, is the responsibility of the competent authority” (BRASIL, 1988, our translation). The theory of the reserve of the possible originates from the German jurisprudence that was based on the argument of the reserve of the possible when it decided on the limit of places in public universities, under the allegation that there were limitations to meet the demands related, mainly, the financial capacity of State. What is observed is the mistake of transferring legal theories developed in highly capitalized countries, which had the experience of the State of Social Welfare, to countries like Brazil. However, in the Brazilian case, the Federal Constitution of 1988 recognized and inserted a range of social rights, or fundamental rights, and, thus, conditioned the realization of rights to the existence of State resources, which meant relativizing their universality (ARAÚJO; CASSINI, 2017; SILVEIRA, 2013).

Among the possible interpretations, in the case of the 1988 Federal Constitution, in which Education has already been recognized as a subjective public right, the reserve of the possible cannot prevail to remove the responsibility of the State. The same occurs in relation to Early Childhood Education, in the age group of the Nursery, which, despite being outside the limits of the obligation, integrates the existential minimum, and there is an unjustified justification to limit or exclude the right (SARLET; FIGUEIREDO, 2008; ROCHA; ARANDA; CUNHA, 2018).

When the subjective public rights characteristic of the State of law are born, the individual starts to have not only private rights, but also public rights, characteristic of the “State of the citizens” (BOBBIO, 2004). Thus, a new form of political relationship emerges, Education as a recognized right and

[...] positivized, within a Democratic State of Law, has a long way to go behind it. From the instruction of the first letters in the Empire, reserved only for citizens, to primary education for four years in the states of the Old Republic, from compulsory and free primary education in the 1934 Constitution to its extension to eight years in 1967, breaking down the exam barrier of admission, we come to subjective public law [...] (CURY, 2008, p. 295, our translation).

The socioeconomic and political-ideological context of the 1990s, with the establishment of the State of Democratic Law, provided the proclamation of Social Rights, particularly with the promulgation of the 1988 Federal Constitution and, at the same time, intensified the reforms oriented, notably, by the World Bank, synchronized with neoliberal policies. Therefore, Educational Policies express in part the correlation of forces between the proclamation of Social Rights and its dismantling through the logic of commodification.

In the Right to Education, some of the concepts in the legal field related to concentrated control of constitutionality, unconstitutionality and the judicialization of Public Policies stand out. For the understanding of the Brazilian normative order, it is pointed out that

[...] public policies have an inherent connection with law, notably constitutional law, insofar as they refer to a set of normative goals and programs, generally conveyed by law or provisional measure, which have the objective of realizing the social and fundamental rights guaranteed in the 1988 Constitution of the Federative Republic of Brazil (BRADBURY, 2013, p. 16, our translation).

After a long process of drafting and voting, the 1988 Federal Constitution enshrined individual and social rights and largely innovated the concentrated control of constitutionality in the country:

[...] significantly extending the legitimacy for the filing of a direct action of unconstitutionality, allowing its filing by the President of the Republic, Tables of the Federal Senate, Chamber of Deputies and Legislative Assemblies of States, Governor of State, Federal Council of the Order of Lawyers from Brazil, political party with representation in the National Congress and union confederation or national class entity, as per article 103 of the current Federal Constitution (VAINER, 2010, p. 189).

In the course of analyzing legal concepts, those of unconstitutionality and constitutionality designate concepts of relationship. It is observed that

Unconstitutionality is a legal concept that designates two distinct but related realities. From the perspective of the normative relationship, unconstitutionality is the relationship of non-conformity of a legal act with the constitutional parameter to which it is submitted. For this reason, Jorge Miranda stated that constitutionality and “unconstitutionality designate concepts of relationship: the relationship that is established between one thing - the Constitution - and another thing - a behavior - that is or is not in conformity, that fits or does not fit in its meaning, which has its base in it or not”. But this concept is not to be confused with the penalty of unconstitutionality, “which is the consequence established by the Constitution for its violation: the measure prescribed by the order for its restoration, the evolution of the addiction towards constitutional health”. Finally, repeal is the succession of rules over time, determined by the legislator's political choice. Its consequence is not the invalidation of the revoked rule, but the immediate suppression of the effectiveness of past legislation (LAURENTIIS, 2017, p. 204, our translation).

In view of the judicial organization in Brazil, with the objective of guaranteeing fundamental rights, among them Education, it is the institutional task of the Judiciary to ensure respect for what is provided for in the Federal Constitution of 1988 and, thus, for the realization of fundamental rights, materialized mainly through Social Policies. The Judiciary, through its broad access and through the control of constitutionality, can, and must, verify if the Executive's goals and programs, conveyed through the laws, are in line with what is established in guidelines and in the Constitutional Principles (BRADBURY, 2013).

In these circumstances, the phenomenon of Judicialization of Public Policies, which is increasingly common, is inserted. Public Policies in areas such as, for example, Health and Education, which were the exclusive responsibility of the Executive and Legislative, are being taken to the Judiciary, through legal actions, as a way of implementing and adapting them to the constitutional guidelines. And this is because the Judiciary, through the control of constitutionality, must guarantee the integrity of individual and collective rights, recognized and guaranteed in the Federal Constitution of 1988, as highlighted (BRADBURY, 2013).

The constitutional right to education in the 1990s

The development of the State in the post-World War II era generated changes in the scope of Law and Justice, mainly with regard to the constitutional consecration of social and economic rights. From the 1970s to the beginning of the 1980s, reforms guided by the neoliberal perspective produced the State's lack of responsibility in promoting Social Policies, aggravating

inequalities and, thus, there was an increase in the demand for Rights, through the Judiciary, that started to be activated to put in effect the legislation. In this socioeconomic and political-ideological context, the actuation of the Judiciary expresses, in part, the dismantling of Social Rights (SILVEIRA, 2011).

In this complex relationship, the judicialization of Education is, to a large extent, the expression that, although made positive by the constitutional text as a fundamental right, the Right to Education is not yet in fact guaranteed to all, that is why the Judiciary Power is activated in order to ensure its effectiveness. It is in this sense that parents can be held legally responsible for the omission and, the State, administratively, for noncompliance with the rule. The judicialization of the Right to Education is based on the possibility of demanding compliance with the right, through judicial channels (ROCHA; ARANDA; CUNHA, 2018).

Appealing to the judiciary is an appeal process after informal attempts have ended. Conditions such as democracy, formal recognition of rights, knowledge of judicial means and failure to meet social demands are some of the conditions that lead to judicialization. This is how Education as a subjective public law created the situation in which there must be schools for all and subjects have the right to request educational provision from the State, with noncompliance with the norm resulting in the accountability of the competent authority, as Article 208, paragraphs 1 and 2 of the 1988 Federal Constitution (VIEIRA, 2001).

Since the country's re-democratization, particularly with the promulgation of the 1988 Federal Constitution, the Judiciary has assumed the role of ensuring the enforcement of constitutional rights and principles, and there have been several judicial decisions by the Superior Courts linked to Basic Education, such as, for example, in relation to places in Nursery and Pre-school for children up to five years old (BRADBURY, 2013). However, Silveira (2013) questions about the use of individual instruments in demanding Education as a Social Law. The issue is in relation to meeting individual demands that may privilege those who have access to the Judiciary, that is, it is questioned whether this would be a fair process, since other subjects also await the realization of the same right by the Public Power and do not appeal to the Judiciary.

The reform of Basic Education, starting in 1990, was instrumentalized in order to guarantee aspects of State reform, which incorporated a new way of managing Education, adapting it to the laws of the market. The reforms prescribed by the International Organizations are associated with the construction of a favorable consensus to the market, according to which the neoliberal State must create the conditions for an effective system of competition, in the economic and social scope. That is why the broad constitutionalization of Social Rights was

not supported in the formulation of Social Policies, which made its implementation difficult, making it necessary to request it in court.

The production of Educational Policy documents, which respond to international policies and decisions, starting in the 1990s, was assumed as part of supranational diplomatic relations. As of the 1990s, in this way, the neoliberal reforms implemented in Brazil were also translated, through privatizations in public basic education, in which the commercial advances that stimulated the privatization processes within the public education systems intensified. Similarly,

[...] within the scope of educational management, beliefs and trust in the means of automation, instrumental rationality and meritocracy flourished, supported by large-scale evaluations, indicators that measure student performance, disregarding the conditions imposed by the limitations of public funding that affect directly the conditions of teaching work and the infrastructure of public schools and universities (PEREIRA; SILVA, 2018, p. 531, our translation).

The individual is no longer related to society, but to the market and, thus, social rights, such as education, are treated as market services. Thus, from the 1990s onwards, state actions have been oriented from the perspective of public-private partnerships⁷ and the State does not expand the service through public policies, but fragments Social Policies into focused policies (FRIGOTTO, 2011) .

The hegemony of capitalist social relations is the result of complex and significant changes engendered by the productive process and, as a result, in the content and forms of the work process. The reforms advocated through structural and sectorial adjustments demand legal and institutional changes that, under the leadership of the World Bank in the Brazilian political agenda, occur both in Brazilian Education and in Latin America and in the process of restructuring and opening up the economy (DOURADO, 2002).

The World Bank, when prioritizing Basic Education at school, restricts the learning of basic cognitive skills justified by the discourse of the centrality of knowledge. In this way, the reduction of the formation process is configured to a vision of instrumental rationality which adheres to the neoliberal premises of Education, restricted to the knowledge historically produced and accumulated (DOURADO, 2002).

In this sense, in the 1990s the notion of Basic Education priority gave way to the notion of “Centrality of Basic Education”, which meant the emphasis on Elementary Education

⁷ Regarding public-private partnerships, we suggest reading Falabella, Pires and Peroni (2019).

(FIGUEIREDO, 2005). However, it must also be remembered that one of the advances in the Federal Constitution of 1988, in relation to the previous ones, is to be the first in the history of Brazil to refer to the guarantees of the fulfillment of the State's duties in relation to the offer of Early Childhood Education (MOREIRA; LARA, 2012). This is how, after the promulgation of the 1988 Federal Constitution and the approval of LDB no. 9,394/1996, Early Childhood Education was constituted in a normative order as the right of the child and the first stage of Basic Education. Regarding this advance in relation to early childhood education, Paschoal (2019, p. 657, our translation) states that: "The approval of the Federal Constitution (1988) made it possible to overcome the care function, which was hitherto present in the institutions of child care by the pedagogical function".

It is in this process that the interference in the Curricular Policies expresses the neoliberal alignment intensified by the reforms. To exemplify, the National Common Curricular Base - BNCC responds, in part, to the requirements of the current world economic order and the international agreements signed by Brazil. Likewise, BNCC's General Competencies are related to the curricular reformulations of the 1990s (GONÇALVES, 2020), which aim at subjective training for the job market.

It is in a scenario of international competitiveness that Brazil was adjusted to the policies of International Organizations. The 1990s represented a period of intense production by International Education Bodies, particularly for Early Childhood Education and Elementary Education, focused on meeting the basic educational needs of groups in situations of social vulnerability, aiming to offer the minimum conditions for survival (SHIROMA; MORAES; EVANGELISTA, 2011; OLIVEIRA; DUARTE, 2005).

The Right to Education, therefore, is related to two movements of Educational Policy developed after the 1990s. The first concerns the recognition of Social Rights historically constituted and made positive in the Federal Constitution of 1988; the second is related to the socioeconomic and political-ideological context of the implementation of neoliberal policies that have had severe impacts on Brazilian education.

Final considerations

The Right to Education is related to Educational Law, an area of legal studies. Therefore, Public Policies are linked to the field of Law, notably Constitutional Law, based on the concepts of concentrated control of constitutionality; unconstitutionality; and the judicialization of

Public Policies, as well as on the differences between the concept of Education as a public service, public good and public law.

Social Policy, which is commonly expressed in the form of legal and political relations, consists of government strategies that express the social tensions of the socioeconomic and political-ideological context in which they are inserted. Social Policies, which are generally linked to Social Rights, gained notoriety as of the Federal Constitution of 1988, however these Rights, although positivized, have suffered constant attacks through changes in legislation from the neoliberal reforms, initiated in the decade 1990.

The proclamation of Social Rights, particularly of Education, proclaimed and confirmed, means legal support for effective access to school. On the other hand, the failure to enforce this right, as well as the logic of the commercialization of Education, restrict access to school to a significant population contingent. The restriction of access to school hides the political-ideological dimension when advocating Education in the market perspective.

The recognition of the Right to Education, in Brazil, responds to the process of recognition of Rights and, at the same time, suffers the impacts of neoliberal adjustments. However, despite the limitations of the Democratic State of Law, as well as objections in relation to the realization of the Right to Education, it is necessary to act in the defense of democratic society. In the same way, it is essential to defend access to public schools as a space for the transmission and assimilation of scientific knowledge.

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