

THE “ESCOLA SEM PARTIDO (NON-PARTISAN SCHOOL)” MOVEMENT STANDPOINTS

OS PARTIDOS DA “ESCOLA SEM PARTIDO”

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ABSTRACT

The article aims to discuss critically the points of view (standpoints) present in the “Escola Sem Partido (non-partisan school)” movement, from the content analysis of its draft bill, proposed by the movement, and federal bills which reproduce it. Under the perspective of the International Human Rights law, it deconstructs its legal arguments – which serve to support friend-enemy type political action, as proposed by Carl Schmitt: State neutrality; primacy of the private on the educational public and denial of the educational freedom and pluralism.

Keywords: “Escola sem partido (non-partisan school)” ; Education; Politics; International Human Rights Law.

RESUMO

O artigo tem por objetivo debater criticamente os pontos de vista (partidos) presentes no movimento “Escola Sem Partido”, a partir da análise de conteúdo do anteprojeto de lei, proposto pelo movimento, e de projetos de lei federal que o retomam. À luz do Direito Internacional dos Direitos Humanos, desconstrói seus argumentos jurídicos – os quais servem para amparar ação política do tipo amigo-inimigo, tal como proposta por Carl Schmitt: neutralidade do Estado; primazia do privado sobre o público educacional e negação da liberdade e pluralismo educacional.

Palavras-chave: “Escola sem partido”; Educação; Política; Direito Internacional dos Direitos Humanos.

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INTRODUCTION

Several bills are in process in legislative chambers of the country, that aim to change the principles and guidelines of education, inspired by the “Escola Sem Partido (non-partisan school)” movement.

“Escola Sem Partido (non-partisan school)”, as it is read on its institutional website (www.escolasempartido.org), is an association created to give visibility to the “serious problem” that reaches the Brazilian education. However, it is not dedicated to the analysis of factors such as lack of public investments in the sector, lack of minimum conditions of teaching and learning in schools, non-valuation of education professionals, etc. It is not referred to issues such as the high number of functional illiterates among the population aged 15 years or more – around 18%¹ – or the result of the national high school evaluation, according to the Basic Education Development Index (IDEB)²: from zero to ten, the index obtained in 2015 was 3.7³.

The “very serious” problem it addresses is “the instrumentalisation of teaching for political, ideological and partisan purposes,” denouncing an “organized army of militants disguised as teachers” who, “On the pretext of transmitting to students a ‘critical view’ of reality (...) take advantage of the freedom of teaching and the secret curtain of classrooms to impinge on them their own vision of the world”⁴.

The scenario to be opposed and the *enemy* to be combated are not precisely defined. In the nebulous spectrum that forms them, it is highlighted the “left winger” and the “left wing indoctrination” – it is said: the “hand that swings the cradle of Brazilian education” – carried out by the “militant teachers” who act to “hammer left wing ideas in the students’ heads”. Diverse world perspectives and fields of social and political action are confused in a monolithic block:

¹ BRASIL. MINISTÉRIO DA EDUCAÇÃO. *Relatório Educação Para Todos no Brasil (2000-2015)*. Preliminary version. Brasília, 2014, p. 14.

² The Index of Basic Education Development (Ibed) “is an indicator of educational quality that combines performance information in standardized exams (Prova Brasil or Saeb) – obtained by the students at the end of the teaching stages (4th and 8th grades of elementary education and 3rd grade high school) – with information about school performance (approval)” (BRASIL. INSTITUTO NACIONAL DE PESQUISAS EDUCACIONAIS “ANÍSIO TEIXEIRA” – INEP. *Nota Técnica. Índice de Desenvolvimento da Educação Básica (Ideb)*. Available at: <http://download.inep.gov.br/educacao_basica/portaal_ideb/o_que_e_o_ideb/Nota_Tecnica_n1_concepcaoIDEB.pdf>. Access on 11/23/2017.

³ BRASIL. INSTITUTO NACIONAL DE PESQUISAS EDUCACIONAIS “ANÍSIO TEIXEIRA” (INEP). *IDEB. Resultados e metas*. Available at: <<http://ideb.inep.gov.br/resultado/resultado/resultadoBrasil.seam?cid=789135>>. Access on 11/23/2017.

⁴ ASSOCIAÇÃO ESCOLA SEM PARTIDO. *Quem somos*. Available at: <<http://www.escolasempartido.org/quem-somos>>. Access on 05/30/2018.

In Brazil, those who promote political-ideological indoctrination in the classroom, in a systematic and organized way, with theoretical (Gramsci, Althusser, Freire, Saviani, etc.), political (left wing governments and parties, PT in front) bureaucratic (MEC and secretaries of education), editorial (textbook industry) and labour union support is the left winger⁵.

It also belongs to the “left winger” the “gender ideology”, combat against which appears to legitimize LGBT phobia and the defence of a “biological identity of sex” as the only accepted form of affective and sexual expression of human individuality.

The “sem partido (non-partisan)” has gained followers. The draft bill, accompanied by justification, elaborated by the Association, has been reproduced almost entirely in legislative bills in process in the country. According to a survey of the Collective *Teachers against the Escola Sem Partido (non-partisan school)*, legislative assemblies from fifteen states and chambers of about fifty cities discuss bills with this content⁶. One has already become state law (in 7.800 / 2016), in Alagoas, suspended by the Federal Supreme Court, in a monocratic decision of the Minister Roberto Barroso, in Direct Action of Unconstitutionality (in 5.537). In this article, two bills debated in the National Congress are highlighted, one in the Chamber of Deputies (no. 867/2015) – attached to No. 7,180 / 2014 –, another in the Federal Senate (no. 193/2016), withdrawn by the author, Senator Magno Malta, on 11/21/2017.

The latter, by the way, was the subject of popular consultation, promoted by the Senate, on its institutional website (www12.senado.leg.br). Out of 410,754 people that opined, 48.7% (199,920) expressed favorable support for the bill.

The thorough analysis of the “sem partido (non-partisan)” discourse reveals under the cover (and flag) of the absence of a standpoint – and, therefore, of the non-political nature and neutrality of the movement – the beginning of an eminently political dispute. Denying the performance and the political point of view, it curiously makes politics in the extreme sense of the term, along the line of Carl Schmitt’s reflection, in *The concept of the political*: politics as the space of differentiation between friend and enemy, to characterize the extreme degree of intensity of a union / disunity between human groups⁷, which is not

⁵ ASSOCIAÇÃO ESCOLA SEM PARTIDO. *A doutrinação é um problema grave na educação brasileira? Por quê?* Available at: <<http://www.escolasempartido.org/faq>>. Access on 05/30/2018.

⁶ PROFESSORES CONTRA O ESCOLA SEM PARTIDO. *Panorama da escola sem partido no país*. 2017. Available at: <<https://professorescontraoescolasempartido.wordpress.com/vigilando-os-projetos-de-lei/>>. Access on 11/23/2017.

⁷ SCHMITT, Carl. *O conceito do político*. Trad. G. Carvalho. Belo Horizonte: Del Rey, 2008, p. 27 e 28.

subject to a dialogued solution. The political opposition, therefore, explains, is “the most intense and extreme, and every concrete dichotomy is the more political the closer it gets to the extreme point, the grouping of the friend-enemy type⁸”.

In this Schmittian political struggle, the “sem partido (non-partisan)” standpoint can be withdrawn from the proposed legislative bill. It is based on assumed *State neutrality* and defends the *prevalence of (particular) interests, conceptions and private values on the public educational space*. This, in order to empty the educational freedom and the pluralism of ideas, from the affirmation of freedom.

In order to justify it legally, it stands out, in the justifications, an isolated reference to the American Convention on Human Rights, specifically to the Article 12.4, according to which “Parents and, where appropriate, guardians, have the right that their children or pupils receive the religious and moral education that is in accordance with their own convictions.”

In this scenario, the aim of this article is to reflect critically on the legal point of view (standpoint) present in the political action of the “Escola Sem Partido (non-partisan school)”. This, in methodological terms, through the *analysis of the discourse*⁹, focusing specifically on the contents, explicit and hidden, of the draft bill and of the justification, presented by the “Escola Sem Partido (non-partisan school)” and the bills that take them back in the Chamber of Deputies and the Federal Senate.

Beginning with the brief presentation of the legislative bills, in its fundamental points to the present reflection (i), the political and legal framework of the “Escola Sem Partido (non-partisan school)” is proposed, identifying here similarities with Schmittian concepts. (ii) It is passed through the deconstruction of the “sem partido (non-partisan)” program, when it comes to the fallacy of the State political neutrality (iii) and to the (non) prevalence of the private in the public educational space (iv). To do so, it is used an expanded concept of politics, referred to the processes of conformation of the public space, solutions of common problems and formation of the State will, and understood, therefore, as an inseparable moment of law. In addition, it is based on the International Human Rights Law, incorporated into the Brazilian legislation, raised by the movement itself. Finally, it is discussed the legal content of educational freedom, distorted by the “sem partido (non-partisan)” (v).

⁸ Ibid., p. 31.

⁹ BARDIN, Laurence. *Análise de conteúdo*. São Paulo: Editions 70, 2011.

DEVELOPMENT**The Draft Bill and the Federal Bills.**

The draft bill¹⁰ proposed by the Association “Escola Sem Partido (non-partisan school)” is initially dedicated to the principles governing education, providing, as such, in Art. 1:

- I – political, ideological and religious neutrality of the State;
- II – pluralism of ideas in the academic environment;
- III – freedom of conscience and belief;
- IV – freedom to teach and learn;
- V – recognition of the learner vulnerability as the weakest part of the learning relationship;
- VI – education and information regarding the included rights in their freedom of conscience and belief;
- VII – parents right to have their children receive moral education that is in accordance with their own beliefs.

The single paragraph ends the statement, bringing the prohibition of the “gender ideology” application:

The Public Power will not interfere in the sexual orientation of the students nor will allow any practice capable of compromising or directing the natural development of their personality, in harmony with the respective biological identity of sex, being prohibited, especially, the application of the postulates of the gender ideology.

In Article 2, it is prohibited, in classroom, “the practice of political and ideological indoctrination and, according to the principle affirmed in the subsection VII above, the “placement of content or the performance of activities of a religious or moral nature which may conflict with the convictions of the parents and those responsible for the students”.

Article 3 transmits the principles and prohibitions of previous devices in the duties of the teacher:

Art. 3º In the exercise of his functions, the teacher:

- I – shall not take advantage of the students’ captive audience to promote their own ideological, religious, moral, political, and partisan interests, opinions, conceptions or preferences;

¹⁰ ASSOCIAÇÃO ESCOLA SEM PARTIDO. *Anteprojeto de lei estadual e minuta de justificativa*. Available at: <<http://escolasempartido.org/sindrome-de-estocolmo-categoria/484-anteprojeto-de-lei-estadual-e-minuta-de-justificativa>>. Access on 11/14/2017.

II – shall not favor, hinder and constrain students on account of their political, ideological, moral or religious beliefs, or their lack;

III – shall not make political-party propaganda in the classroom nor shall incite students to participate in demonstrations, public acts and marches;

IV – in dealing with political, socio-cultural and economic issues, shall fairly present the main versions, theories, opinions and perspectives competing with them;

V – shall respect the right of parents to have their children receive moral education that is in accordance with their own beliefs;

VI – shall not allow the guaranteed rights in the previous items to be violated by the action of students or third parties in the classroom.

In order to ensure the “education” of the students in relation to these educational duties, Art. 4º, § 1, the placement in classrooms, teachers’ rooms and other places of the school, of posters that, under the title, in capital letter, “teacher’s duties” reproduces the provisions of Article 3, transcribed above.

The bills in the National Congress, which propose the institution of the “Programa Escola Sem Partido (non-partisan school movement), repeat the above-mentioned essay with minor distinctions.

In the Chamber of Deputies, Bill no. 867/2015, authored by Federal Deputy, Izalci (PSDB/DF). In its disposition on educational principles, in Article 2, it emphasizes the freedom to learn, understood as “specific projection in the field of education, freedom of conscience”, thus moving away from the incidence of the constitutional principle of freedom to teach¹¹. It does not prohibit, in a single paragraph, “gender ideology”, keeping, however, in the following article (Article 3), the general prohibition of political and ideological indoctrination and the propagation of content in conflict with religious or moral convictions of the parents. The teachers’ duties, with minimal textual differences, are in Article 4, the obligation to place posters stating them, in Article 5.

Currently, the Bill is linked to the Bill no. 7,180 / 2014. More succinctly, it merely adds to Article 3 of the Law of Guidelines and Bases (No. 9.394 / 1996), as an educational principle, “respect for the convictions of the student, his parents or guardians, having the *values of family order precedence on school education in the aspects related to moral, sexual and religious education*, which is prohibited the transversality or subliminal techniques in teaching these subjects” (emphasis added).

¹¹ It provides: “Art. 2. The national education shall comply with the following principles: (...) III – freedom to learn, as a specific projection, in the field of education, freedom of conscience; IV – freedom of belief ...”.

In the Senate, it was debated the Bill nº 193/2016, authored by Senator Magno Malta. After the Report with vote for rejection, in the Committee on Education, Culture and Sport, the subject was withdrawn from the proceedings, by the author, on 11/21/2017. In them, educational principles, as proposed by the “sem partido (non-partisan)” are listed in Article 2, faithful to the single paragraph of the draft bill, prohibiting the Public Power to immerse itself in the sexual choice of students and to apply postulates of “gender ideology”. The teacher’s duties are in the Article 5. Article 3 provides the placement of posters in schools, however, missing in the Bill, the annex with its sayings.

The justification¹² for the implementation of the program presented by the Association, together with its draft bill, and transcribed in the bills, in the National Congress, traces conjecture that marks the *enemy* figure:

It is a notorious fact that teachers and writers of teaching materials have been using their classes and their works to try to obtain students’ adherence to certain political and ideological currents to cause them to adopt judgment standards and moral conduct – especially sexual moral – incompatible with those taught to them by their parents or guardians.

The “notorious fact” allows neglecting any explanation and substantiation of what is spoken, leaving obscure “political and ideological currents”, “judgment standards and moral conduct,” the “sexual moral” that congregate the denounced enemies. No qualitative or quantitative data, results of scientific researches or evaluations conducted by the Government and organizations dedicated to education are brought to substantiate the complaint. It is enough to say that it is a reality “known by direct experience of all those who have passed through the educational system in the last 20 or 30 years”.

Hence the need to adopt “effective measures to prevent the practice of political and ideological indoctrination in schools” and, it is emphasized, “the usurpation of the parents’ right that their children receive moral education that is in accordance with their own convictions”, whose protection appears in the form of educational principle and teacher’s duty.

To justify its point of view, it mentions the American Convention on Human Rights:

13 – With regard to moral education, referred to in Article 2, VII, of the bill, the American Convention on Human Rights, in force in Brazil, establishes in its Article 12 that “parents have the right to have their children receive religious and moral education that is in accordance with their own convictions”;

¹² ASSOCIAÇÃO ESCOLA SEM PARTIDO, Op. cit.

14 – Well, if it is up to parents to decide what their children should learn about morality, neither the government nor the school nor teachers have the right to use the classroom to deal with moral content that has not been previously approved by students’ parents;

15 – Finally, a state that defines itself as a secular – and therefore must be neutral in relation to all religions – cannot use the educational system to promote a certain morality, since morality is in principle, inseparable from religion (www.escolasempartido.org).

The Chamber bill no. 7,180 / 2014 – in which there is no express reference to the “sem partido (non-partisan)” – also seeks justification in the Article 12.4 of the Pact of San Jose of Costa Rica. In the explanation of the summary, it affirms to include among the principles of education respect for the convictions of the student, his parents or guardians, “giving precedence to family values about school education in aspects related to moral, sexual and religious education”, to adapt our legislation to the Convention. In the justification, it argues:

(...) the school, the school curriculum and the pedagogical work carried out by teachers in the classroom should not fall into the field of the personal convictions and family values of the students of basic education. These are subjects to be treated in the private sphere, in which each family fulfils the role that the Constitution itself grants to participate in the education of its members.

The political and legal conceptual framework of the “Escola Sem Partido (non-partisan school)”

From the “Escola Sem Partido (non-partisan school)” discourse, brought in the texts of the Bills, complemented by their Justifications and also by the available information on the Association’s website, it is extracted, as anticipated, hidden under the flag of the impartiality and the combat to the political indoctrination, an eminently political practice.

Politics, here, again, carried out in the sense presented by Carl Schmitt, in the work *The concept of the political*, and, therefore, understood as the ambience of the most extreme opposition that there may be, the friend-enemy type:

(...) the political has to reside in his own extreme differentiations, to which all political action can be attributed in its specific sense. Let us suppose that in the moral sphere the extreme differentiations are good and bad; in aesthetic, beautiful and ugly; in economic, useful and harmful or, for example, profitable and unprofitable (...) The specifically political differentiation to which political actions and motivations can be related is the differentiation between friend and enemy¹³.

¹³ SCHMITT, Carl, op. cit, p. 27.

Any of these differentiations, religious, moral, economic, etc., complements the author, “transforms into a political opposition when it is strong enough to effectively gather human beings among friends and enemies¹⁴.”

As for the enemy, it is the other, the unknown that does not integrate – nor it can – the “us”:

(...) for its essence, it is enough that it be, in a particularly intense sense, something existentially different and unknown, so that, in extreme case, conflicts with it are possible, which cannot be decided either by a general normalization undertaken in advance, nor through the judgment of a third party “not involved” and, therefore, “impartial”¹⁵.

Hence the impossibility of composition, of mutual understanding and the hate discourse as the only possible communication. Hence the real possibility of combat. Schmitt speaks of war, the extreme fulfilment of enmity, “ontic denial of another being”¹⁶.

In the present case, the enemy, the other unknown (and, in this perspective, little explained and understood) is composed of a nebulous set of diverse and not infrequently contradictory perspectives and actions grouped in the monolithic block entitled “left wing”. The figure of the teacher takes a particular note, supposed member of an “organized army” of militants practicing political and ideological indoctrination in the classroom.

The policy of the “sem partido (non-partisan)”, *inside* the State that would still preserve some unity, is revealed, more properly, in one of its *secondary concepts* mentioned by Schmitt. Preserving the intense antagonism that characterizes it, the term is used linguistically to mark the adversary and thus to “disqualify him or denounce him as ‘political’, in order to impose yourself on him as apolitical”, in a sense “purely” scientific, moral, legal, etc.¹⁷.

To sum up, the opposition stands out, it marks the “internal enemy”, to be fought in view of an “adequate” education. One acts politically, under the apolitical linguistic appearance, or more properly, “sem partido (non-partisan)”.

All this, within the unsurpassable theoretical unsustainability of a movement that cannot apply to itself, as emphasized by Ana Elisa Spaolonzi Q. Assis. Behind the non-partisan facade, in fact, there are standpoints and purposes, addressing their real objectives on “the weakening of progressive positions, or “left-wing” to use an ordinary and overly general expression”¹⁸.

¹⁴ Ibid., p. 39.

¹⁵ Ibid., p. 28.

¹⁶ Ibid., p. 34-35.

¹⁷ Ibid., p. 33.

¹⁸ ASSIS, Ana Elisa Spaolonzi Queiroz. Escola sem partido: projeto sem sustância. *Revista Exitus*, v. 8, 2018, p. 27-28.

In this conflict, the “Escola Sem Partido (non-partisan school)” can be legally rebuilt at main moments.

First, the affirmation of *State neutrality* principle, which inaugurates the article referring to the principles to be met by national education.

Second, ending the mentioned statement and, then, renewed in the bill No 7.180 / 2014, the *prevalence of the private on the public educational space* principle. Supported by the State neutrality, it is based on the International Human Rights Law (American Convention) and affirmed in the right of parents that children receive religious and moral education according to their convictions and in the obligation of teachers to respect it.

Third, justified by previous moments, under the discourse of freedom, the elimination of freedom and educational pluralism.

The fallacy of State Political Neutrality

It was seen, the first principle to be met by national education, provided by the Program, is the *State political, ideological and religious neutrality*.

As a corollary of the distinction, typical of the republic, between State and Church, the secularism imposes itself constitutionally on the first. It is forbidden for federal entities “to establish religious cults or churches, to finance them, to hinder their operation or to maintain with them or their representatives, relations of dependence or alliance, except in the form of law, collaboration of public interest” (Article 19 , subsection I, Federal Constitution).

It is imposed to the Government, in short, the position of *religious neutrality* – not affected by reference to *God* in the Preamble – guaranteeing to everybody the religious freedom, not interfering in the religious organizations, nor adopting hostile or preferential posture in relation to any creed¹⁹.

However, the same is not true in relation to political choices. This, even when, untied the term of the Schmittian understanding, *politics* being broadly understood as the space, highly conflictual – but not for that unconstrained for dialogue and understanding – of struggle for recognition of pretensions, decision-making in relation to matters that concern the social group and, therefore, of formation of the will of the State. Being effective in the “game of conflicts unleashed in the conformation of the public scene, in its maintenance and transformation”,²⁰ the discourse is admitted and the composition of forces, without that the non-negation of the other have to mean the annulment itself.

¹⁹ SARLET, Ingo Wolfgang et al. *Curso de direito constitucional*. 5. ed. São Paulo: Saraiva, 2016, p. 515.

²⁰ FELTRAN, Gabriel. S. Crime e castigo na cidade: os repertórios da justiça e a questão do homicídio nas periferias de São Paulo. *Caderno CRH*, Salvador, v. 23, n. 58, 2010, p. 60.

Taking politics in this sense, it is in its close correlation with the Law that the State (of Law) arises and is constituted, impregnated with options and standpoints. And, constituted, it remains thus in the realization and permanent revision of its project.

For example, as in the inaugural article of the Constitution of 1988 several standpoints are taken. That of the republican form of government, that of the federative state, that of democratic government. Moreover, it is also chosen as the foundations of the Democratic State of Law the citizenship, human dignity, social values of work, free initiative, everything in the very difficult attempt to reconcile (unlikely) the capitalist economic system and the valuation of the human.

This is supported by the affirmation of a vigorous system of fundamental human rights. Individual rights of freedom, political rights of participation, social, economic and cultural rights, transindividual rights. The constitutional text therefore incorporates a whole set of rights affirmed by the International Human Rights Law.

Among them, the International Covenant on Civil and Political Rights (promulgated by Federal Decree 592/1992) and Social, Economic and Cultural Rights (promulgated by Federal Decree 591/1992), documents that, adopted at a General Assembly Session of the UN in 1966, are part of, with the Universal Declaration of Human Rights, the main axis of the global system for the protection of human rights. Within the extension of the inter-American system, it is worth referring to the 1969 American Convention on Human Rights (promulgated by Federal Decree 678/1992), specifically dealing with civil and political rights, as well as the “Protocol of San Salvador”, additional to the 1988 Convention (promulgated by Federal Decree No. 3 321/1999), which deals with economic, social and cultural rights. They are part of the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man adopted at the Bogota Conference in 1948, the pillars of the protection of human rights in the American continent.

They, the human rights, are also standpoints taken, among many other experiential possibilities. They are only said to be universal and, to that extent, neutral, when viewed from a strictly partial point of view, the Occidental. They are “Occidental Universal Human Rights”²¹.

They are standpoints that we take, again. There is no neutrality in affirming the State of law, the democracy and the human rights. They are options referring to the directions of society.

²¹ SOUSA SANTOS, Boaventura de. *A gramática do tempo. Para uma nova cultura política*. São Paulo: Cortez, 2006, p. 463.

The close correlation between politics and law remains, moreover, as stated, in all government decisions taken in the State of Law.

Using the social philosophy of Jürgen Habermas, the political-governmental system, comprising the structure composed of the Executive, Legislature and Judiciary, acts in the social regulation and institutional solution of conflicts, by the *medium* of law²². Law and politics are therefore merged into a “process for solving problems (...) in order to plan the regulation of conflict and the pursuit of collective ends”²³.

As an organ holding state political power, supported by a series of constitutional options, the Government will never be neutral too. Neither it, nor the right by it produced and applied.

Even the “impartiality” especially required for the organs of the Judiciary must be understood under this perspective and, thus, mitigated. The judge should only be impartial in a way that he does not make his affective and axiological preferences prevail, in favor of one of the parties of the process, to the detriment of the rules of the democratic game. His impartiality must, therefore, make effective the standpoints and the political choices of the legal system.

It is true, mentioned political aspect inherent in the Constitution, the Law, the State and its branches and institutions, becomes neutralized, within the extension of the legal dogmatic. Celso D. de Albuquerque Mello affirms, the law “masks politics with a ‘technique’ that is said scientific and neutral. The jurists who apply and explain domestic law forget that science is not neutral because it is always done by someone and is aimed to some purpose”. Quoting Raucent, he continues: “Ignoring the political dimension of law is to foolishly overlook one of its most important aspects (...) The law is a work of politics, it represents the expression of the wills of those who count politically”²⁴.

There is, in fact, no politically neutral State, “the relativistic State that nothing else distinguishes, the empty content State”, using, once again, Schmitt’s words²⁵.

The masking of politics, ignoring the standpoints taken, in the constitution and in the exercise of political power and, therefore, in the production of law, does not withstand a critical analysis. It contradicts itself. Functioning as an ideology, its insertion as a fundamental principle of education (the State political

²² CABRAL, Guilherme Perez. *Educação para a democracia no Brasil: fundamentação filosófica a partir de John Dewey e Jürgen Habermas*. São Paulo: Alameda, 2017, p. 234.

²³ HABERMAS, Jürgen. *Direito e democracia: entre facticidade e validade*. Trad. Flávio B. Siebenichler. Rio de Janeiro: Tempo Brasileiro, 2011, v. II, p. 45.

²⁴ MELLO, Celso. D. Albuquerque. A norma jurídica no direito internacional público. In: FERAZ, Sérgio (Coord.). *A norma jurídica*. Rio de Janeiro: Freitas Bastos, 1980, p. 255.

²⁵ SCHMITT, Carl, op. cit., p. 104.

neutrality) – as a “sem partido (non-partisan)” proposal – that one does indeed produce “ideological indoctrination” that the “sem partido (non-partisan)” by principle, claim to combat.

The misconception of the prevalence of the private on the public educational space

The State political-ideological *pseudoneutrality*, then, substantiates the proposal of the “sem partido (non-partisan)” of the prevalence of private interests and values in the public educational space, identified with the Article 12.4 of the American Convention on Human Rights. Neither in this point the project “Escola Sem Partido (non-partisan school)” is sustained.

Education is a public matter: a public good, of which achievement, with quality, results from a “shared social mission”, in which the “civil society, teachers and educators, the private sector, communities, families, young people and children” play a fundamental role, under the central responsibility of the State, to which is imposed, in addition, “to establish and regulate set rules and standards”²⁶. The school, in this perspective, is a public space, acting as a place of preparation for joining social life, for that, it has to recognize the plurality and the difference. Everything, finally, to operate according to the ends, principles, guidelines and bases that are imposed on it in the extension of the Democratic State of Law.

Under the Federal Constitution, education has very precise objectives. From a multiplicity of possibilities, it has chosen some, to the detriment of others. It has selected. It has taken a standpoint. They are provided in the final part of Article 205 of the constitutional text. It aims to the full development of the person, in his or her individuality and identity; to his or her qualification for the world of work; and, finally, to the preparation for the exercise of his or her citizenship.

The statement, in this way, reproduces – as the Constitution made in relation to human rights in general – the International Human Rights Law, highlighting, here, the Article 13.1 of the International Covenant on Economic, Social and Cultural Rights and the Article 13.2 of the Protocol of San Salvador.

They emphasize the goal of “the full development of the human personality and the sense of its dignity”, providing, moreover, the empowerment of all people for effective participation in a free society (the American Treaty categorically affirms “a democratic and pluralist society”).

²⁶ ORGANIZAÇÃO DAS NAÇÕES UNIDAS PARA A EDUCAÇÃO, A CIÊNCIA E A CULTURA (UNESCO). *Educação 2030. Declaração de Incheon e Marco de Ação para a implementação do Objetivo de Desenvolvimento Sustentável 4*. Brasília: UNESCO, 2016, p. 28. Available at: <<http://unesdoc.unesco.org/images/0024/002432/243278POR.pdf>>. Access on 01/10/2018.

The Constitution does not explicitly mention other objectives brought by these international documents: the strengthening of the respect for the human rights and, to it closely related, the favouring to “understanding, tolerance and friendship among all nations and among all racial, ethnic or religious groups”; and the promotion of peacekeeping activities.

However, it is about objectives that, absolutely, cannot be forgotten when analysing Brazilian education, based on a systematic reading of the legal and constitutional system and, according to the Human Rights Treaties ratified by the country, the international one²⁷.

For this reason, the education, understood as a “human right and an indispensable means for the realization of other rights”, must always be oriented towards this broad set of objectives, regardless of who provides it. This is what the Committee on Economic, Social and Cultural Rights, responsible for the effectiveness of the International Covenant observes in its General Comment n° 13: “The States agree that all education, whether public or private, in school or out-of-school, shall be oriented to purposes and objectives defined in paragraph 01 of Article 13”²⁸.

Oriented in that way, the education becomes effective for the benefit of a person and of the full development of his or her identity and dignity. And it becomes effective, in addition, for the benefit of the society as a whole.

It is distinguished, on the one hand, the pretension of the individual, socially recognized, from being educated. On the other hand, the pretension of the society in general, in view of its own development, that its citizens, to some extent have some degree of education. The formation of the individual, able to participate effectively in social life, while updating his or her own potentialities, enabling him or her to exercise other rights, promotes the development of the State and the achievement of its fundamental objectives²⁹.

Therefore, the great attention given to education in the International Human Rights Law and in the Federal Constitution, identified, is reproduced, as a *public* matter. Public because it is recognized, from the perspective of the members of society, its social importance. According to John Dewey’s reflection, because its consequences are projected significantly on the social group, for the good or for the evil, it is a demand of the social group itself to have it systematically under care³⁰.

²⁷ CABRAL, Guilherme Perez, op. cit., p. 65.

²⁸ ORGANIZAÇÃO DAS NAÇÕES UNIDAS (ONU). *Recopilación de las observaciones generales y recomendaciones generales adoptadas por organos creados em virtud de tratados de derechos humanos*. 2004, p. 79. Available at: <http://www.prr4.mpf.gov.br/pesquisaPauloLeivas/arquivos/Observacoes_Gerais_ONU.pdf>. Access on 11/11/2017.

²⁹ CABRAL, Guilherme Perez, op. cit., p. 67.

³⁰ DEWEY, John. *The public and its problems*. Swallow Press/Ohio University Press/Athens, 1991, p. 15.

As a public activity, it is, therefore, oriented to those objectives, affirmed conventionally and constitutionally. For its effectiveness, the general rules, guidelines and bases of the national education and other rules issued by the educational systems of the federative entities are set. They prevail over the private interests of particular groups and individuals, not the opposite.

It is under this perspective that Article 13.4 of the Additional Protocol of San Salvador, guaranteeing the parents the right to choose the type of education to be given to their children, establishes that such right must be in accordance with principles established in the conventional statement itself and with the domestic legislation of each country.

This is the scenario in which the provision of the American Convention, so highlighted by the “sem partido (non-partisan)”, must be interpreted.

The provision of Article 12.4, specifically, refers to freedom of religion. In the division socially drawn between the public and the private – again with Dewey, as the consequences of interaction are circumscribed or spread beyond those directly involved in it³¹ – the statement deals with an important aspect of the sphere of private life, affirming the right of parents that their children receive religious and moral education that is in accordance with their own beliefs.

Important aspect, but not absolute. Brought into the public space of education, it requires its harmonization with Art. 13.4. It is, in short, a limited right, the exercise of which does not contradict its ends and the normative set that defines it.

This is the direction of Luís Roberto Barroso demonstration, in the decision of the Federal Supreme Court that suspends the Alagoas law in 7.800 / 2016. The Minister said that the Protocol of San Salvador, recognizing the right of parents to choose the type of education that shall be given to their children, in the form of the American Convention, limits it in the extension of the education, to which is not allowed not to observe “the other principles considered in the Protocol” and that, consequently, it must be “able to the full development of the human personality, to the participation in a democratic society, to the promotion of ideological pluralism and fundamental freedoms”. He concludes:

In all evidence, parents cannot intend to limit the information universe of their children or impose on the school that does not convey any content with which they disagree. This type of measure (...) means preventing young people from accessing entire domains of life, in clear violation of pluralism and their right to learn³².

³¹ Ibid., p. 12.

³² BRASIL. Supremo Tribunal Federal. *Medida Cautelar na Ação direta de inconstitucionalidade nº 5.537*. Brasília/DF, march, 21, 2017. Available at: <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=4991079>>. Access on 06/01/2018.

The Committee on Economic, Social and Cultural Rights is reproduced, therefore, without mentioning it. Regarding *acceptability*, one of the fundamental characteristics of education, it clarifies, in General Comment n°13, that “The form and substance of education, including curriculum and teaching methods, must be acceptable (for example, relevant, culturally appropriate and of good quality) to students and, when appropriate, to parents. Nevertheless, it states: “This point is subject to the educational objectives mentioned in paragraph 1 of article 13 and the minimum standards that the State approves in matters of teaching”³³.

A different conclusion, under the perspective of the “sem partido (non-partisan) would have incompatible consequences with the purposes of education and its effectiveness in a democratic culture and in a culture of respect for human rights. It would, ultimately, deny the education, as outlined in international and internal normative texts.

Due to the fact that, valuing beliefs, the values and the private interests – the familiar “moral” viewpoint – to the detriment of those assumed in the public space, the “Escola Sem Partido (non-partisan school) would even submit itself, including, to the family (de)formation of the child in the parents’ prejudices and fascist, racist, homophobic and misogynist positions. The school attitude towards disrespect, discrimination among students, motivated by skin colour, sexual preference, gender or any physical or psychological characteristic, would have to be the neutrality. It could not “take a standpoint” in favour of the legal system.

Educational freedom

The prevalence of the private on the educational public implies, therefore, the denial of educational freedom and, one aspect of it, of the pluralism of ideas in the school environment. The “sem partido (non-partisan)” legislative bill ultimately reaffirms such principles, of constitutional hierarchy, to refuse them.

For educational freedom, it is understood, under the terms of Article 206, subsection II of the Federal Constitution, “freedom to learn, teach, research and disseminate the thought, the art and the knowledge”. It meets with the “pluralism of ideas and pedagogical conceptions”, provided in the following subsection.

According to the transcribed statement, it is raised to constitutional principle of education, encompassing a set of specific freedoms, among which, freedom of production and revision of knowledge, through *research (freedom to research)*; the freedom of transmission, of knowledge, through the activity of *teaching (freedom to teach)*; and the freedom to search and to learn knowledge, in *learning processes (freedom to learn)*³⁴.

³³ ONU, op. cit., p. 80.

³⁴ CABRAL, Guilherme Perez. A inconstitucionalidade da empresa educacional no Brasil. *Revista Educação em Perspectiva*, Viçosa, UFV, v. 8, n. 3, set./dez. 2017, p. 352.

In addition, two fundamental spheres are distinguished in their exercise. First, *free educational initiative*, that is, the freedom of the individual to maintain an establishment and provide education. It is expressly recognized, among the principles of education, in Article 206, subsection III, final part, which establishes the “coexistence of public and private educational establishments. Article 209 also states that “Teaching is free to private initiative, provided that the following conditions are met: I – compliance with the general rules of national education; II – authorization and evaluation of quality by the Public Power”. In Article 13.4 of the International Covenant it appears as follows:

Nothing in this article shall be interpreted as restricting the freedom of individuals and entities to establish and direct educational institutions, provided that the principles stated in paragraph 1 of this Article are respected and that such institutions comply with the minimum standards prescribed by the State.

Second, what is called *freedom to educate (or academic)* understood as the prerogative given to teachers and to the school community in general to organize, direct and make effective the educational process, in an environment of plurality and respect for difference, in the public or private school³⁵.

Regarding the latter, it is important to mention, specifically thought for higher education, the “Contributions to the creation of a declaration on academic freedom”, created by UNESCO, at the International Congress on Education for Human Rights and Democracy (Montreal, 1993).

The document values and protects said freedom, as “an essential precondition for the functions of education, research, administration and services entrusted to universities and higher education institutions”. However, this does not rule out the provision of limits to its exercise, which, according to Article 07, “implies great responsibilities towards society”³⁶.

Hence, the statement continues, “Nothing in this Declaration shall be interpreted as admitting that any member of the academic community engages in any activity or carries out actions aimed to the destruction of the human rights of third parties.” And it ends: “The research, the teaching, the collection and the exchange of information shall be conducted in accordance with ethical and professional standards in accordance with international human rights rules”³⁷.

³⁵ Ibid., p. 352.

³⁶ ORGANIZAÇÃO DAS NAÇÕES UNIDAS PARA A EDUCAÇÃO, A CIÊNCIA E A CULTURA (UNESCO). *Human rights teaching*. Vol. VIII. The International Congress on Education for Human Rights and Democracy. Paris: UNESCO, 1993, p. 22 e 24. Available at: <<http://unesdoc.unesco.org/images/0016/001610/161096eo.pdf>>. Access on 01/10/2018.

³⁷ Ibid., p. 24.

In the “Escola Sem Partido (non-partisan school)”, such a concept of freedom is lost. From the precedence of family values over the public educational space is emanated, firstly, the accentuation of aspect of freedom of *learning*, strangling that of *teaching*. In reality, it is valued the freedom of *not learning* subjects that diverge from private beliefs and values, meeting with the teaching duty of not teaching them.

As the UN pointed out in a communication addressed to the country, questioning the above-mentioned federal bills, the lack of definition and the absence of minimum parameters for the determination of what is “political and ideological indoctrination” allows that any educational practice, any educational speech, in the classroom, be thus considered and, as such, condemned. This way, the educational freedom is eliminated, making the school “an extension of the domestic environment rather than an educational institution that provides new knowledge”³⁸.

Secondly, it is observed that, in what is preserved, “sem partido (non-partisan)” freedom is not possessed by the student. It is a right of the parents to circumscription and conformation, to their universe of moral and religious convictions, of their children’s spectrum of experiential possibilities of development

It is, therefore, a hermeneutic that empties the freedom of any meaning, eliminating the plurality of ideas in the school space. It is not the student free to learn, nor the teacher to teach. The education remains distorted by the impositions, the student, coming from the private / family sphere.

The educational freedom, which we can see from the constitutional text and from the International Human Rights Law, we have seen, is not that. It does not mean wide and unrestricted prevalence of the private over the public. Neither is it important to emphasize, the imposition of a state morality. Neither emptying with state or family imposition, nor absolute freedom.

It is built up and reconstructed dialectically in teaching-learning processes which, if they are oriented to full and free development of personality, are also, in accordance with the current political-legal system, to the preparation of the person for the effective participation in a democratic society and in a culture of respect for human rights.

The education, says Becker, in dialogue with Adorno, is an “equipping oneself to orient oneself in the world”, simultaneously *adaptation and resistance*. The ability to orient oneself in the world, he says, “is unthinkable without

³⁸ ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Alto Comissariado de Direitos Humanos. *Comunicado OL BRA 04/2017*. Genebra, 2017, p. 05. Available at: <<http://www.ohchr.org/Documents/Issues/Opinion/Legislation/OLBrazilEducation.pdf>> Access on: 01/08/2017.

adaptations,” which, however, cannot lead to the denial of individuality³⁹. Hence the aspect of freedom to be preserved, to resist, without denying the “adaptive” component to the performance of social functions.

The spaces of educational freedom, of teaching, and of student, of learning, consolidate and affirm themselves, meeting – but also confronting, disputing terrain with – with the limitations imposed on them by the political and legal system.

It is not a about very large spaces, it is true. On the contrary. The “standpoints” taken and contents established by the legal system – including the educational freedom itself – must be observed by the school. The teacher cannot evade complying with the set of educational regulations, beginning with the Constitution and International Human Rights Treaties, passing through the general rules of education, guidelines and compulsory curricular components, until the rules and programmatic contents of school are reached. The student cannot refuse them. There is no freedom for that.

This does not prevent, students and teachers, from valuing the aspect of *resistance*, from the permanent updating, improvement and reconstruction of the Democratic State of Law, presenting and discussing content critically, questioning and identifying the contradictions of scientific truths and consensus, re-examining “the assumptions, world views and power relations in official discourses”⁴⁰, always revealing the maximum possible of points of view and experiential fields to the student.

The criticism, definitely, does not mean disrespect. Positioning, taking standpoint before the history, the science and the lived reality do not either. It is inherent to the human being and inseparable from the educational role, therefore.

What it cannot do is disrespect, attempt against personal integrity, exclude, not recognize the other in his or her dignity. As for the reasoned criticism, even of the foundations of education, of teacher authority, of the State, of the Constitution, of the justice and morality of certain fundamental human rights – opening students’ perspectives on how they are constituted, the objectives to what it has been provided, etc. – does not mean, absolutely, disrespect them⁴¹.

³⁹ ADORNO, Theodor. *Educação e emancipação*. Trad. W. Leo Maar. 4. ed. Rio de Janeiro: Paz e terra, 2006, p. 144.

⁴⁰ ORGANIZAÇÃO DAS NAÇÕES UNIDAS PARA A EDUCAÇÃO, A CIÊNCIA E A CULTURA (UNESCO). *Educação para a cidadania global: preparando alunos para os desafios do século XXI*. Brasília: Brasília: UNESCO, 2015, p. 16. Available at: <<http://unesdoc.unesco.org/images/0023/002343/234311por.pdf>>. Access on 01/10/2018.

⁴¹ At this point, it is revealed very questionable the decision of the Chief Justice of the Supreme Federal Court, Carmen Lucia, in a monocratic decision that suspended a norm of the National Examination of the Secondary School – ENEM 2017 announcement, according to which it

If the scope is, effectively, the full development and preparation for the effective participation in the society, more than a freedom, a critical education, full of taken and substantiated standpoints, ensuring plurality of ideas, there is a *normative* sense. Teachers and students *must* undertake it.

FINAL CONSIDERATIONS

Calling oneself “sem partido (non-partisan)” means ultimately to take a standpoint. The statement, in short, is semantically and theoretically unsustainable⁴². What is extracted from the reading of bills and justifications of the movement is, under the discourse of neutrality, a political position regarding the functioning of the school. A standpoint that ultimately deprives it as a public space.

To denounce the other, the adversary, as a political, partisan, serves, to the “sem partido (non-partisan)”, to disqualify him. Political, “partisan” is the enemy, block that brings together everything that does not fit the “us”, the friend. They call it left-wing.

It stands out, anyway, as the main enemy, the teacher. More precisely, the teacher willing to exercise his or her duties and educational freedom, in accordance with the precepts of the Democratic State of Law and fundamental human rights.

The movement tries to rise itself above the enemy as apolitical, in a “purely legal” sense, as if the political legal was not. Its standpoint, we have seen and rejected, is composed under the postulates of State political pseudoneutrality and the mistaken prevalence of the private on the public educational space: a private that only defines itself, in a prejudiced and shallow way, in extreme opposition

would be given a grade zero to the essay that disrespected the human rights. It writes: “(...) although the announcement norm under discussion is intended to combat what would be a bad exercise of the freedom of expression of thought by the candidate, there seems to be an abstract and generic ablation of this right. The compliance with the Constitution of the Republic imposes, in its very basis, full respect for human rights, contradicted by racism, prejudice, intolerance, among other unacceptable practices in a democracy and strongly adverse to the current legal system. But we do not combat social intolerance with greater state intolerance ... We do not guarantee fundamental rights by eliminating some of them in order to prevent anyone from opposing by the word against what to someone else seems to be instigation or injury” (BRASIL. Supremo Tribunal Federal. *Medida Cautelar na Suspensão de Liminar nº 1.127/DF*. Brasília/DF, November, 04, 2017. Available at: <<http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=5303118>>. Access on 01/06/2018). If, in fact, the application of the norm would demand more objective criteria, avoiding the “gag” opposed by the Minister; on the other hand, the criticism, by the student, was not impeded by the statement. Respectful and reasoned criticism did not fit into the normative hypothesis. For the protection of “freedom of expression”, the decision removed the sanction for disrespect for human rights in evaluation of school performance. It left, therefore, alluded freedom without any limit. The young man in formation, the lesson remained: in the exercise of this human right he can disrespect those of others.

⁴² ASSIS, Ana Elisa Spaolonzi Queiroz, op. cit., p. 27.

to the enemy, to the nebulous “Left-wing indoctrination”, to the “gender ideology”, etc. In addition, it ends up restricting educational freedom and pluralism in the school environment. It denies it by affirming it, confused with freedom of religion, extracted from an isolated reading of the provisions of the American Convention on Human Rights.

The fragility of the “sem partido (non-partisan)” discourse, however, does not allow the negligence in relation to the movement and its actions. It demands the active debate and combat, taking standpoints, showing them and its theoretical fragility. This, in the public spaces and in the channels of political discussion, understood the politics, in short, not as a field of extreme confrontation, but as an environment that, although highly conflictual, still admits the discourse, the understanding, alternative to the violence of the ontic negation of the other.

As for these public and eminently political spaces, with different standpoints, we are composed of the media and social networks, the various governmental spheres, the Executive, the Legislature and the Judiciary, and, highlighted, here, the school.

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