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Commentary on Articles XXV and XXVI of the Universal Declaration of Human Rights

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Article XXV of the Declaration of Human Rights is an instrument for enabling and realising fundamental rights – social rights – health, food, housing, social security, welfare and social security. These rights are inherent to the human condition, that man has the right to have rights, humanity and dignity.

Education, as the author recounts, faces great challenges today, as it is embedded in a troubled society that is economically strong but socially poor. Children are out of school, young people are stratified in university, and have not evolved in their goals. Educators need to be educated, methods and programmes need to be reviewed, and teachers need to abandon imported models and return to the classroom for graduation.

It is necessary to bring education and universities into the modern age, to have a basic strategy for scientific and technological development that is in perfect harmony with and subordinate to social objectives.

The education of the economy and economists is necessary. This means abandoning ingrained prejudices, rigid premises, and contempt for ethical concerns, and making education a priority.

Education is needed in power. Politics and politicians must be educated for democracy and for the future. A nation with the size and social crisis of Brazil must consolidate its basic principles: sovereignty, freedom, justice, efficiency.

Without democracy, there is no modernity. Without education, there is no development. A democratic and developed country cannot be created without education being extended to all - it is a way of eliminating social exclusion - the second abolition.

A democratic country does not need great minds in science and technology as much as it needs an enlightened, educated people. The conscious educator is the instrument for young people to seek the path of knowledge.

Today, we need a democratic education, based on the union of educators themselves, moving forward in a cohesive and organised manner in the search for an educational model suited to the Brazilian reality. Many basic proposals need to be put forward. That is our task. It is an arduous, gigantic and stimulating task for us, educators, students and civil servants: to build a new education system for the construction of a new society. We need to be aware that it is only through education that human beings evolve and, consequently, society and the law. Education is one of the conditions for the pursuit of economic, social and political development in a society - a condition for restoring the value of human beings as an end in themselves. This is expressed in Article XXV of the Declaration of Human Rights:

Article XXV. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Mothers and children are entitled to special care and assistance.

All children, whether born in or out of wedlock, have the right to equal social protection.

Lima[2], commenting on Article XXV of the Universal Declaration of Human Rights, emphasises that the expression ‘standard of living’ used in the Declaration represents the position that the individual occupies in society as an essential element of his human condition (of humanity) and of the exercise of both his rights and his duties. The author asserts that the expression ‘standard of living’ does not refer to utility value; it is not something superfluous, but essential to the human condition, for a decent and dignified life, for the satisfaction of intellectual, spiritual and moral needs.

Hence the importance of the pursuit of social development, which represents the set of conditions that make men dignified and respected for their material and moral values. It is about giving men the conditions to live with dignity, to be able to civilise themselves, which means improving the standard of living in an egalitarian way, and not as we see today: on the one hand, men endowed with an exacerbated selfishness, marked by wealth and individualism, and on the other, men in a state of total misery, scourged by poverty, deprived of any material or moral goods. This means that we are faced with two antagonistic positions, when everyone has been given the right to enjoy all the riches of the earth. This does not mean that men cannot acquire wealth; they should do so, but they must not forget the principle of solidarity.

From the above, we can see the importance of the discourse on human rights and the foundations of social rights based on the articles of the Declaration of Human Rights.

With regard to the function of social welfare, it means that man has the right to obtain, through the State, the absolute rights to health, education, social security, welfare and social security, the inherent right of the human condition to live with dignity, with what is essential to him, with what is useful to him by virtue of human nature itself.

In this opinion, it is important to address Brazil's position in the international human rights protection system.

According to Amaral Júnior and Perrone-Moisés, "the Universal Declaration of Human Rights was the most important achievement of that first phase of the system's construction.

Related to the legal provisions of the United Nations Charter, the Declaration, adopted in 1948 without any negative votes (eight abstentions), represented the translation, in concrete terms, of the obligations assumed therein, despite the non-binding nature of the declaration, the solemn and almost unanimous nature of its adoption, and the frequent and indisputable reiteration of the essential axioms that all States are obliged to respect. Furthermore, by adopting the Declaration, the United Nations proclaimed that human rights were a legitimate matter of international concern and, as such, could not be considered a matter of exclusive national competence within the meaning of Article 2, paragraph 7, of the Charter.[3]

The Universal Declaration of Human Rights is the instrument for the viability and realisation of fundamental rights within a context of universality. These rights represent individual freedoms in their conception of the value of justice. It is the historical document of man's conquest of his natural right - freedom.

In this sense, what is the concept of freedom?[4]

Political freedom can be conceptualised as that which guarantees citizens the choice of form of government, of their own ruler, of the form of the state, of the legal system, in short, the form of their social contract. This means that man in the civic state always has the possibility of choice.

For Abbagnano, *'a type of government is not free simply because it has been chosen by the citizens, but if, within certain limits, it allows them to exercise continuous choice, in the sense of the possibility of maintaining, modifying or eliminating it'*[5].

The law is the form of definition and organisation of freedom, because it delimits the spheres of action of individuals, different social groups and the State, in order to allow social coexistence and the harmonious and reciprocal development of freedoms.

For Vidal Neto[6], freedom is not a simple idea. It has different meanings, but initially it states that it is the condition of those who are not slaves, who are not obliged to do or refrain from doing something. It is the condition by which man does not belong to any master and can act. Man chooses his behaviour for himself. Freedom is identified with the feeling of independence. The author refers to three meanings of freedom:

Freedom is the exemption from a need, that is, liberation from impositions beyond our control. Free is the one who can act autonomously or independently in relation to external pressures.

Freedom is also an effective power of action, because we have the appropriate means to make our decision effective. It adds something to independence, turning it into an effective capacity. It is not enough to allow a person to read in order to make them free to read; they must know how to read and have books at their disposal.

In this sense, it is worth noting that human beings, endowed with intelligence and reason, can think freely, without interference from others, from outsiders, because they are in their inner world.

For Lafer[7], one of the basic axes of Arendt's thinking is the theme of freedom, which she sees as a form of action that occurs in the plurality of the public space of speech and action, as the fruit of the original creativity of each human being.

Freedom is also autonomy of choice, which is not contradictory to independence and effective capacity, but rather complements them. It means the power to do and not to do something, choosing or preferring between several possible means or several objects of action. Referring to active political life and social coexistence, it means participation in collective decisions, choosing those who will decide or determining the content of decisions.

As a consequence of these values, man is placed in a position of an individual with the right to have rights that rest on the foundation of human dignity. It is man in a vision of social, individual and collective rights.

After guaranteeing human rights in the vital sphere of the person in the domestic sphere (motherhood, childhood, standard of living, disability, etc.) and at work, the document goes on to address the issue of education in the following terms:

"Art. XXVI — Every man has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available to all, as shall higher education, on the basis of merit."

Education as a social right - this is the norm we find enshrined in Article 6 of the historic 1988 Charter. Social rights include education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute.

Society is constantly evolving, and gone are the days when constitutional charters merely enunciated the simple absolutist power of kings and the classic division of powers (executive, legislative, judicial, and moderator). With the economic, social and cultural evolution of peoples, which occurred unevenly in different regions of the globe, constitutions emerged with more expressive and defining content on political rights and individual freedoms and guarantees, characterising the first liberal states.

With the historic emergence of the Universal Declaration of Human Rights in 1948, peoples began to enshrine social rights in their constitutions.

Social rights are included among fundamental human rights as a direct consequence of the rights to equality and freedom. In reality, they are understood as positive benefits that the modern state provides, directly or indirectly, to the people, especially the weakest and, in general, the most numerous, in order to reduce social inequalities and offer opportunities to an increasing number of citizens.

José Afonso da Silva (1995:277) aptly states that social rights 'are valid as prerequisites for the enjoyment of individual rights insofar as they create material conditions more conducive to the achievement of real equality, which, in turn, provides conditions more compatible with the effective exercise of freedom'. [8]

Education in Brazil is enshrined at the constitutional level (Art. 6) as one of the social rights, under the heading 'Fundamental Rights and Guarantees' and the chapter 'Social Rights', but the constitutional foundations of education are defined in detail in the title 'On the Social Order' and, more specifically, in section I, 'On Education,' which is included in Chapter II, 'On Education, Culture, and Sport.'

By ensuring education as a right for all, the State created a constitutional duty to provide it and also defined the family as responsible for its provision, with the collaboration of society, thus promoting, in return, the right to effectively interfere in the educational process.

With regard to the fundamental right to education, the Constitution defines, in Article 22, XXIV, that the power to legislate on the matter is exclusively vested in the Union, in relation to 'guidelines and foundations of national education'. This means that general laws on Brazilian education, which define guidelines and establish foundations, can only be drafted exclusively by the Union.

The shared jurisdiction over the matter at the level of the Union, the states, the Federal District and the municipalities, as established by the constitutional legislator in Article 23, V, is defined as 'providing the means of access to culture, education and science.'

The competence to legislate on education at the level of the Union, the States, the Federal District and the Municipalities is defined in Article 24, IX, of the Constitution: 'education, culture, teaching and sport'.

To ensure that the freedom to legislate does not cause conflicts between the entities of the federation, it is necessary for the legislator in each sphere to respect the hierarchy of laws, observing the Higher Law. Therefore, a state law cannot contradict a federal law, just as federal and state laws cannot contradict a constitutional provision. The constitutional system, in Article 34, item VII, paragraph 'e,' and Article 35, item III, provides for intervention in the states and municipalities with regard to education.

This is provided for in Article 34, VII, 'y':

'The Union shall not intervene in the states or the federal district, except for: (...) 'e) application of the minimum required income from state taxes, including that from transfers, to the maintenance and development of education." Article 35, III: 'The State shall not intervene in its municipalities, nor shall the Union intervene in municipalities

located in the Federal Territory, except when: III - The minimum required municipal revenue has not been applied to the maintenance and development of education.'

The rule seeks to prevent state and municipal authorities from violating the constitutional provision and any other provision relating to resources for education.

With regard to municipalities, the Constitution enshrines the precept (Art. 30, VI) of 'maintaining, with the technical and financial cooperation of the Union and the State, programmes of preschool and fundamental education'.

Thus, responsibility for preschool and fundamental education, by constitutional mandate, lies primarily with the municipalities, with technical and financial support from the Union and the State.

The 1988 Constitution, improving the provisions relating to education, inserted, in the field of the National Tax System (Article 150), close to the institution of taxes for non-profit educational institutions.

Article 150 of the Constitution deals with constitutional prohibitions on the power to tax and, specifically in subsection VI, establishes immunities in relation to taxation institutions, in order to guarantee respect for fundamental rights and guarantees, such as social rights in relation to education.

This is provided for in Article 150, VI, 'c', § 4 of the Constitution:

Without prejudice to other guarantees afforded to taxpayers, the Union, the States, the Federal District, and the Municipalities are prohibited from: VI - imposing taxes on: c) the assets, income, or services of political parties, including their foundations, workers' unions, educational institutions, and non-profit social welfare institutions, provided that the requirements of the law are met; § 4 The prohibitions expressed in subsection VI, paragraphs 6 and c, cover only the assets, rents and services related to the purposes of the aforementioned entities.

From a legal standpoint, it is important to note that this constitutional prohibition does not mean tax exemption, as it may appear, but rather true tax immunity. As Elias de Oliveira Motta (1997: 163) teaches:

"Professor Puentes de Miranda clarifies in this regard that: The State, here, does not exempt; the State cannot levy taxes. In the exemption, the tax debt does not arise because the tax law made an exception: by making it, it merely explains what would have to be understood with it or without it. The legal rule of exemption is an exceptional right, which places the person outside the scope of the law (subjective exemption), or (objective exemption), which - without that legal rule - would be within its scope. The legal rule of immunity is a legal rule at the level of the rules of competence of public authorities - it hinders legislative activity in the field of taxation, removing from the body that creates taxes any competence to impose them in this case. There is a quality of the person or the property that stands against the State; the act of taxation would be contrary to law and could therefore give rise not only to declaratory judgments of the non-existence of the legal relationship of taxation, or of the very impossibility of its

existence, but also to judgments condemning the State for the damage caused by taxation. [9]

The 1988 Constitution attributes to the State, in matters of education, scientific and technological research and development, as provided for in Article 218 of the Constitution:

"The State shall promote and encourage scientific development, research and technological training. § 1º Basic scientific research shall receive priority treatment from the State, in view of the public good and the progress of science. § 2 Technological research shall be directed primarily towards solving Brazilian problems and developing the national and regional productive system. § 3 The State shall support the training of human resources in the areas of science, research and technology, and shall grant those engaged in these areas special working conditions and resources. § 4 The law shall support and encourage companies that invest in research, the creation of technology appropriate to the country, the training and improvement of their human resources, and the implementation of remuneration systems that ensure employees, regardless of their salary, a share in the economic benefits resulting from the productivity of their work. § 5º The states and the Federal District are authorised to allocate part of their budgetary revenues to public entities that promote education and scientific and technological research.

The Constitution adequately regulates education in Article 205: ‘Education, a right of all and a duty of the State and the family, shall be promoted and encouraged with the collaboration of society, seeking the full development of the individual, their preparation for the exercise of citizenship and their qualification for work*’.*

Based on this constitutional precept, we can understand that education is the path to overcoming the greatest social problem currently experienced in our country: the eradication of poverty and social exclusion.

On this subject, former Minister of Education Cristovam Buarque (1999: 57) aptly states that:

"If the best indicator of poverty is the abandonment of children, poor, without schooling, on the streets or at work, or without fake schools, the first path to eradicating poverty lies in education for all children in quality schools. To achieve this, only nine measures would be sufficient, at a cost of R$ 16.43 billion, equivalent to 1.8% of GDP, 5.7% of the revenue of the three units of the Federation. In 2005, considering a substantial increase in the number and remuneration of teachers, these values would rise to R$ 27.53 billion, equivalent to 2.9% of GDP, 9.1% of revenue, assuming a growth rate of 2.5% per year in the National Product, and maintaining the same ratio between revenue and product. These are the gross costs of the programme to eradicate poverty by eliminating exclusion among children; discounting the fiscal return that occurs in all economic expenditures, the net cost is 31% cheaper. [10]

At this point, we can affirm that education is linked to integral democracy.

On the subject of integral democracy, Leonardo Boff (2000: 79) clarifies the meaning and delimits the scope of this fundamental value that must be lived in all areas of human life, as well as making clear the importance of investing in education.

On integral education, Boff writes:

"Integral education is a permanent pedagogical process that encompasses all citizens in their various dimensions and aims to educate them in the exercise of ever greater full power, both in the sphere of their subjectivity and in that of their social relations. Without this exercise of solidarity and cooperative power, there will be no integral democracy or person-centred development, which is the only truly sustainable form of development. (...) It is based on what St. Francis and Mao Tse-tung already taught: you learn by doing. Practice, therefore, is the original source of learning and human knowledge, since human beings are, by their very nature, practical beings. They do not have existence as a given, but as a fact, as a task that requires constant construction. Having no specialised organ, they must continually construct themselves and their habitat through cultural, social, spiritual and technical practice"[11].

According to the author, comprehensive education trains and shapes human beings to foster open, sociocosmic democracy and development that guarantees a sustainable society. This was the path followed by countries that are now at the forefront of technological progress and guarantee the sustainability of their social processes, such as European nations, the United States, Japan and Korea, which invested heavily in education.

Regarding the importance of investment in education, the author concludes:

"Investing in education is to inaugurate the greatest revolution that can be achieved in history, the revolution of consciousness that opens up to the world, to its complexity and to the challenges of organisation that it presents. Investing in education is to establish the autonomy of a people and guarantee the permanent foundations for its recovery in the face of crises that can shake or destabilise it, such as Germany and Japan in the Second World War, which, because of the level of education of their people, defeated and humiliated, rose from the ruins. Investing in education is investing in the social and spiritual quality of life of the people. Investing in education is investing in a skilled workforce. Investing in education is guaranteeing greater productivity. The Brazilian state has never promoted an educational revolution. It is historically hostage to the property-owning elites who need to keep the people in ignorance and uncultured in order to hide the perversity of their social project, to reproduce their privileges and perpetuate themselves in power" [12].

It can be concluded that the integral formation of the human person in the educational process is the primary objective highlighted by the constitutional legislator in the Constitution. The expression ‘full development’ logically includes the political and social development of the student, which will open the doors to economic success (job qualifications, productivity, social and spiritual quality of life) and true conscious participation in the political life of the State.

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[2] LIMA, Alceu de Amoroso. *Os direitos do homem e o homem sem direitos*. Rio de Janeiro: Francisco Alves, 1974, pp. 132-5.

[3] AMARAL JR., Alberto do and PERRONE-MOISÉS, Cláudia (eds.). Apud: SABÓIA, Gilberto Vergne. *O cinquentenário da Declaração Universal dos Direitos do Homem,* São Paulo: Editora da Universidade de São Paulo, 1999, p. 223.

In the same context, it is important to refer to the issue of globalisation and human rights. In this context, Flavia Piovesan, in a footnote in her article ‘Global human rights, international justice and Brazil’, states: "The process of economic globalisation has been guided by rules dictated in the so-called Washington Consensus, which is the

result of a seminar held in 1990, bringing together the US State Department, the finance ministries of the other G7 countries and the presidents of the twenty largest international banks (such as the International Monetary Fund and the World Bank). The Washington Consensus became synonymous with neoliberal economic measures aimed at reforming and stabilising emerging economies, notably in Latin America. Its platform is neoliberalism (through the reduction of public spending), the flexibilisation of labour relations, fiscal discipline to eliminate public deficits, tax reform and the opening of the market to foreign trade. This consensus encourages the transnationalisation of markets and the privatisation of the state, condemning progressive taxation and social spending in favour of monetary austerity. Research shows that the process of economic globalisation has exacerbated the economic and structural dualism of Latin American reality, with an increase in social inequalities and unemployment, deepening the marks of absolute poverty and social exclusion.

And, furthermore, with regard to sovereignty: "In this regard, the statement by the Secretary-General of the United Nations at the end of 1992 stands out: 'Although respect for the sovereignty and integrity of the state is a central issue, it is undeniable that the old doctrine of exclusive and absolute sovereignty no longer applies and that this sovereignty was never absolute, as it was then conceived theoretically. One of the greatest intellectual demands of our time is to rethink the question of sovereignty [...]. Emphasising the rights of individuals and the rights of peoples is a dimension of universal sovereignty, which resides in all humanity and allows peoples to participate legitimately in matters affecting the world as a whole. And a movement that is increasingly finding expression in the gradual expansion of international law' (BOUTROS-GHALI, “Empowering the United Nations”, *Foreign Affairs*, v. 89, 1992-1993, p. 98-9. Apud: HENKEIN et. al. *International Law – Cases and Materials*, p. 18).

According to J. A. Lindgren Alves: “With its accession to the two UN International Covenants, as well as to the Pact of San José within the OAS, in 1992, and having previously ratified all the significant international legal instruments on the subject, Brazil has already fulfilled practically all the external formalities necessary for its integration into the international human rights protection system. Internally, on the other hand, the guarantees of the broad rights enshrined in the 1988 Constitution, which are not subject to amendment and are even extended to others derived from treaties to which the country is now a party, ensure the willingness of the Brazilian democratic state to comply fully with the international obligations it has undertaken" (Os direitos humanos como tema global. São Paulo: Perspectiva – Fundação Alexandre de Gusmão, 1994, p. 108).

Kathiryn Sikkink observes: "The doctrine of international protection of human rights is one of the most powerful critiques of sovereignty, as it is traditionally conceived, and the practice of international human rights law and international human rights policy presents concrete examples of a renewed understanding of the scope of sovereignty [...] human rights policy and practice have contributed to a gradual, significant and probably irresistible transformation of sovereignty in the modern world" (quoted from Alberto do Amaral Júnior, op. cit., note 24, p. 244).

On the contrary, José Francisco Rezek states: "The now frequent proposition of the individual as a subject of international law seeks to be based on the assertion that certain international norms create rights for ordinary people or impose duties on them. It should

be remembered, however, that individuals – unlike States and organisations – are not involved, in their own right, in the production of the international body of law, nor do they have any direct and immediate relationship with that body of law. There are many international texts aimed at protecting individuals. However, flora and fauna are also protected by international law, without this implying that they have been granted legal personality. It is true that individuals and companies already enjoy legal personality under domestic law, and that this could have an impact at the international level insofar as the law of persons would not be limited to protecting them, but would also attribute rights and duties to them - which is unthinkable in the case of legally protected but depersonalised things, such as forests and submarine cables. (*Direito Internacional Público*. São Paulo: Saraiva, 1989, p. 158-9). For Celso Ribeiro Bastos and Ives Gandra da Silva Martins: "The rule continues to be to deny the individual the status of international subject. The mediation of the State is also necessary for the individual's claim to resonate internationally. However, it is very true that, as in most cases it is the State itself that is responsible for these injuries, the possible claims arising from them do not find a natural channel through which to flow. They die within the State itself" (Comments on the Brazilian Constitution. São Paulo: Saraiva, v. 1, p. 453). This article argues, however, that 'the individual is an effective subject of international law. The entry of the individual as a new actor on the international stage can be seen especially when petitions and communications are sent to international bodies, denouncing the violation of internationally guaranteed rights.'

[4] ABBAGNANO, Nicola, op. cit., p. 604. "This term, freedom, has three fundamental meanings, corresponding to three concepts that have overlapped throughout its history and which can be characterised as follows: 1st freedom as self-determination or self-causality, according to which freedom is the absence of conditions and limits; 2nd freedom as necessity, which is based on the same concept as the previous one, self-determination, but attributed to the totality to which man belongs (world, substance and state); 3rd freedom as possibility or choice, according to which freedom is limited and conditioned, that is, finite. The forms that freedom takes in various fields, such as metaphysical freedom, moral freedom, political freedom, economic freedom, etc., do not constitute different concepts. Metaphysical, moral, political, economic, etc. disputes surrounding freedom are referred to by the three concepts in question, to which, therefore, the specific forms of freedom on which these disputes focus can be referred."

[5] Ibid., p. 613.

[6] VIDAL NETO, Pedro. *Estado de direito, direitos individuais e direitos sociais***.** São Paulo, LTr, 1979, p. 512.

[7] LAFER. Celso. *Hannah Arendt. Pensamento, persuasão e poder.* São Paulo: Paz e Terra, 2003, p. 47.

[8] SILVA, José Afonso da. *Curso de Direito Constitucional Positivo***.** 10th ed. São Paulo: Malheiros. 1995.

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[12] Ibid., pp. 83-84.