

# COMMENTS ON ARTICLES XXV AND XXVI OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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## Introduction

Article XXV of the Universal Declaration of Human Rights serves as an instrument for the viability and realization of fundamental rights – social rights – such as health, nutrition, housing, social security, and social welfare. These rights are inherent to the human condition, affirming the entitlement of individuals to have rights, humanity, and dignity.

As the author notes<sup>2</sup>, education in contemporary times faces significant challenges, as it is situated within a tumultuous society that is economically robust but socially impoverished. Children are excluded from schools, and young people are stratified in universities that have not evolved in their purposes. Educators need to be educated, methods and programs must be reconsidered, and teachers need to move away from imported models and return to the classroom, back to the basics of education.

It is necessary to bring education and the university into modernity, establishing a fundamental point of scientific and technological development strategy in perfect harmony and subordination to social objectives.

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The education of the economy and economists is required. This means abandoning ingrained prejudices, the rigidity of assumptions, and the disregard for ethical concerns, making education a priority.

Education in power is necessary. Politics and politicians will have to be educated for democracy and the future. A nation with the size and social crisis of Brazil must consolidate its basic principles: **sovereignty, freedom, justice, and 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 everyone – it is a way to overcome social exclusion – the second abolition.

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

Today, a democratic education is needed, starting from the union of educators themselves, moving cohesively and organized towards the search for an educational model suitable for the Brazilian reality. Many foundational proposals need to be presented. This is the task that falls to us. It is a daunting, gigantic, and stimulating task for us, educators, students, and staff: to build a new education for the construction of a new society. There needs to be an awareness that only through education does humanity evolve, and consequently, society and law. **Education is one of the conditions for the pursuit of economic, social, and political development of a society-** a condition to restore the value of man as an end in himself.

This is expressed in Article XXV of the Universal Declaration of Human Rights:

Article XXV. Every human being has the right to a standard of living capable of ensuring for oneself and one's family health and well-being, including food, housing, medical care, and indispensable social services, as well as the right to security in the event of unemployment, illness, disability, widowhood, old age, or other cases of loss of means of subsistence in circumstances beyond one's control.

Motherhood and childhood are entitled to special care and assistance.

All children, whether born in or out of wedlock, are entitled to equal social protection.

Lima<sup>3</sup>, in commenting on Article XXV of the Universal Declaration of Human Rights, emphasizes that the expression "standard of living" used in the Declaration represents the position that the individual occupies in society as an essential element of their human condition and the exercise of both their rights and duties. The author asserts that the term "standard of living" does not refer to utility value<sup>4</sup>; 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 pursuing social development, which represents the set of conditions that make individuals worthy and respected for their material and moral values. It is about providing conditions for humans to live with dignity, to be able to civilize themselves, which means improving the standard of living equally, and not as seen today: on the one hand, individuals endowed with excessive selfishness, marked by wealth, individualistic behavior, and, on the other hand, individuals in a condition of total misery, affliction, poverty – devoid of any material and moral goods. This means that we are facing two antagonistic positions when everyone has been given the right to enjoy all the riches of the earth. This does not mean that individuals cannot acquire their wealth; they should do so, but they should not forget the principle of solidarity.

From the above, the importance of discourse on human rights and the foundations of social rights from the articles of the Universal Declaration of Human Rights is highlighted.

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<sup>3</sup>LIMA, Alceu de Amoroso. **The Rights of Man and Man Without Rights**. Rio de Janeiro: Francisco Alves, 1974, pp. 132-5.

<sup>4</sup>In this context, one might ask: **what would be the utility value?** Nicola Abbagnano. **Dictionary of Philosophy**. São Paulo: Martins Fontes, 1998. He states: "Bethan defined utility as the property of an object by virtue of which it tends to produce benefit, advantage, pleasure, well-being, or happiness (*Introduction to the Principles of Morals, 1789, I, I*). According to Hobbes, Spinoza identified rational human behavior with the pursuit of the useful: reason, not demanding anything contrary to nature, requires, above all, that each person love and seek what is useful to them and that it be so. Among many useful and desirable things, the most important are those that are suitable for human nature; therefore, the most important of all is the preservation of man, in his own person and in that of others" (op. cit., p. 986).

Regarding the **function of social provision**, it means that individuals have the right to obtain, through the State, absolute rights to health, education, social security, social welfare, an immanent right to the human condition, for individuals to live with dignity, with what is essential, with what is useful due to 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 this first phase of system construction. Associated with the legal provisions of the UN Charter, the Declaration, approved in 1948, without negative votes (eight abstentions), represented the concrete translation of the obligations assumed in it, despite the non-directly binding nature of the declaration, the solemn and almost unanimous character of its approval, and the frequent and undisputed reiteration of the essential axioms that all states are obliged to respect. On the other hand, by approving 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, in the sense of Article 2, paragraph 7 of the Charter"<sup>5</sup>.

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<sup>5</sup> AMARAL JR., Alberto do and PERRONE-MOISÉS, Cláudia (orgs.). Cited in: SABÓIA, Gilberto Vergne. **The Fiftieth Anniversary of the Universal Declaration of Human Rights**, São Paulo: University of São Paulo Press, 1999, p. 223.

In the same context, it is important to allude to the issue of globalization and human rights. In this context, Flavia Piovesan, in a footnote in her article "Global Human Rights, International Justice, and Brazil," declares: "The process of economic globalization 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 United States Department of State, the finance ministries of the other Group of Seven countries, and the presidents of the twenty largest international banks (such as the International Monetary Fund and the World Bank). The Washington Consensus has become synonymous with neoliberal economic measures aimed at the reform and stabilization of emerging economies, notably in Latin America. It is based on neoliberalism (through the reduction of public expenses), the flexibilization of labor relations, fiscal discipline to eliminate the public deficit, tax reform, and the opening of the market to foreign trade. This consensus encourages the transnationalization of markets and the privatization of the state, condemning progressive taxes and social spending in favor of monetary austerity. Research shows that the process of economic globalization has exacerbated the economic and structural dualism of the Latin American reality, with an increase in social inequalities and unemployment, deepening the marks of absolute poverty and social exclusion." And, regarding sovereignty: "In this regard, the statement of 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

The Universal Declaration of Human Rights is the instrument for enabling and realizing 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 humanity's achievement of its natural right – freedom.

In this sense, what is the conception of freedom?<sup>6</sup>

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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 theoretically conceived. One of the greatest intellectual demands of our time is to rethink the issue of sovereignty [...]. Emphasizing the rights of individuals and the rights of peoples is a dimension of universal sovereignty, which resides in all of humanity and allows peoples legitimate involvement in issues that affect the world as a whole. And a movement that, increasingly, finds expression in the gradual expansion of International Law" (BOUTROS-GHALI, *Empowering the United Nations, Foreign Affairs*, v. 89, 1992-1993, p. 98-9. Cited in: HENKEIN et. al. *International Law – Cases and Materials*, p. 18).

According to J. A. Lindgren Alves: "With the accession to the two UN International Covenants, as well as the pact of San Jose within the OAS, in 1992, and having previously ratified all significant international legal instruments on the matter, **Brazil** has already practically fulfilled all external formalities necessary for its integration into the international human rights protection system. Internally, on the other hand, the guarantees to the broad rights **enshrined in the 1988 Constitution**, not subject to amendments and, furthermore, extended to others resulting from treaties to which the country is now a party, ensure the commitment of the Brazilian democratic state to fully comply with the international obligations it has contracted" (Human rights as a global theme. São Paulo: Perspectiva – Alexandre de Gusmão Foundation, 1994, p. 108)..

Kathryn Sikkink observes: "The doctrine of international protection of human rights is one of the most powerful critiques of sovereignty, the way it is traditionally conceived, and the practice of International Human Rights Law and international human rights politics 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 by Alberto do Amaral Júnior, op. cit., note 24, p. 244)..

In contrast, José Francisco Rezek states: "The proposition, now frequent, of the individual as a subject of the law of nations seeks to be based on the assertion that certain international norms create rights for ordinary people or impose duties on them. However, it must be remembered that individuals – unlike states and organizations – do not involve themselves, on their own account, in the production of international normative corpus, nor do they have any direct and immediate relationship with this body of norms. Many international texts are aimed at protecting the individual. However, flora and fauna are also the object of protection by rules of the law of nations, without it being intended to attribute legal personality to them. It is true that individuals and companies already have legal personality domestically, and that this virtue could reverberate internationally insofar as the law of nations has not been limited to protecting them, but has gone so far as to attribute to them the status of holders of rights and duties – which is unthinkable in the case of legally protected but depersonalized things, such as forests and submarine cables" (**Public International Law**. São Paulo: Saraiva, 1989, p. 158-9). For Celso Ribeiro Bastos and Ives Gandra da Silva Martins: "The rule still continues to deny the individual the status of an international subject. The mediation of the State is still necessary for the individual's plea to resonate internationally. Now, it is true that as in most cases, it is the state itself that is the perpetrator of these injuries, the possible complaints arising from them do not find a natural channel to flow into. They die within the state itself" (**Comments on the Constitution of Brazil**. São Paulo: Saraiva, v. 1, p. 453 This article, however, argues 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 evidenced, especially when forwarding petitions and communications to international instances, denouncing the violation of internationally guaranteed rights."

<sup>6</sup> ABBAGNANO, Nicola, op. cit., p. 604. "This term, **freedom**, has three fundamental meanings, corresponding to three conceptions that have overlapped throughout its history and can be characterized as

Political freedom can be conceptualized as ensuring citizens the choice of the form of government, their own rulers, the form of the state, the legal system, in short, the form of their Social Contract. This means that individuals in the civic state have the possibility of always choosing.

According to Abbagnano, "*a type of government is not free simply because it has been chosen by citizens, but if, within certain limits, it allows them continuous possibilities of choice, in the sense of the possibility to maintain it, modify it, or eliminate it.*"<sup>7</sup>.

Law is the form of defining and organizing freedom because it delimits the action circles of individuals to different social groups and the state, allowing social coexistence and the harmonious and reciprocal development of freedoms.

According to Vidal Neto<sup>8</sup>, freedom is not a simple idea. It encompasses different meanings, but initially, it states that it is the condition of someone who is not a slave, who is not constrained to do or not do something. It is the condition in which man does not belong to any master and can act. Man chooses his behavior for himself. Freedom is identified with the feeling of independence. The author refers to three meanings of freedom:

Freedom is the exemption from necessity, meaning liberation from impositions external to our will. Free is the one who can act with autonomy or independence in relation to external pressures. Freedom is also an effective power of action because we have suitable means to give effectiveness to our decision. It adds something to independence, making it an effective capacity. It is not enough for a man to be allowed to read to make him free to read; he must know how to read and have books at his disposal.

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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 attributing it 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 disputes, etc., concerning freedom are denominated by the three concepts in question, to which, therefore, the specific forms of freedom on which these disputes focus can be referred."

<sup>7</sup> Ibid, p. 613.

<sup>8</sup> VIDAL NETO, Pedro. **Rule of law, individual rights, and social rights.**São Paulo. LTr, 1979, p. 512.

In this sense, it is worth noting that man, endowed with intelligence and reason, can think freely, without interference from others, from external influences, as he is in his inner world.

According to Lafer<sup>9</sup>, one of the basic axes of Arendt's thought is the theme of freedom, which she sees as a form of action that takes place in the plurality of the public space of speech and action, as a result of the original creativity of each human being.

Freedom is also autonomy of choice, which is not contradictory to independence and effective capacity but even its complement. It signifies the power to do and not do something, choosing or preferring among various possible means or objects of action. Referring to political active life and social interaction, it means participation in collective decisions, choosing those who will decide or determining the content of decisions.

As a consequence of these values, man positions himself as an individual entitled to rights based on the foundation that is the dignity of the human person. It is man in a perspective of social, individual, and collective rights.

After ensuring human rights guarantees in the vital sphere of the person in the domestic realm (motherhood, childhood, standard of living, disability, etc.) and in work, the document then addresses the educational problem in the following terms:

"Article XXVI — Everyone human 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 generally available, and higher education shall be equally accessible to all on the basis of merit."

Education as a social right – this is the normative value found in Article 6 of the historic 1988 Constitution. Social rights include education, health, work, leisure, security, social welfare, protection of motherhood and childhood, and assistance to the vulnerable.

Society is in constant evolution, and the time has passed when constitutional letters merely enunciated the absolute power of kings and the

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<sup>9</sup> LAFER, Celso. **Hannah Arendt. Thought, persuasion, and Power.** São Paulo: Paz e Terra, 2003, p. 47.

classical division of powers (Executive, Legislative, Judiciary, and Moderator). With the economic, social, and cultural evolution of peoples, which occurred unevenly in different regions of the globe, constitutions with more expressive and defining content of political rights and individual liberties and guarantees began to emerge, characterizing the first liberal states.

With the historical emergence of the Universal Declaration of Human Rights in 1948, nations began enshrining social rights in their constitutions.

Social rights are among the fundamental rights of man, directly stemming from the rights to equality and freedom. They are understood as positive benefits that the modern state provides to the people, especially the weaker and usually more numerous, with the aim of reducing social inequalities by offering opportunities to an increasing number of citizens.

José Afonso da Silva (1995:277) aptly states that social rights *"serve as prerequisites for enjoying individual rights to the extent that they create more favorable material conditions for achieving real equality, which, in turn, provides a condition more compatible with the effective exercise of freedom."*<sup>10</sup>

Education in Brazil is consecrated at the level of constitutional status (Art. 6), as one of the social rights, within the title dealing with "Fundamental Rights and Guarantees" and the chapter "Social Rights." However, the constitutional foundations of education are detailed in the title "Social Order" and, more specifically, in Section I, "Education," which is inserted in Chapter II, "Education, Culture, and Sports".

By ensuring education as a right for all, the State has created a constitutional duty to provide it, designating the family, with the collaboration of society, as responsible for its delivery. In return, this grants the right to effectively interfere in the educational process.

Regarding the fundamental right to education, the Constitution defines in its Article 22, XXIV, that the exclusive competence to legislate on the matter lies with the Union, concerning the *"guidelines and bases of*

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<sup>10</sup> SILVA, José Afonso da. **Course of Positive Constitutional Law**. 10th ed. São Paulo: Malheiros, 1995.



*national education.*" This means that laws of a general nature regarding Brazilian education, which define guidelines and establish bases, can only be formulated exclusively by the Union.

The common competence on the matter within the Union, States, Federal District, and Municipalities, as stipulated by the constitutional legislator in Article 23, V, is defined as *"providing the means of access to culture, education, and science."*

The concurrent competence to legislate on education within the Union, States, Federal District, and Municipalities is defined in Article 24, IX, of the Constitution: *"education, culture, teaching, and sports."*

To prevent conflicts between the federative entities due to legislative freedom, it is necessary for the legislator of each sphere to respect the hierarchy of laws, observing the Constitution. Thus, a state law cannot contradict a federal law, just as a federal law and a state law cannot contradict a constitutional provision.

The constitutional system, in Article 34, item VII, subparagraph "e," and Article 35, item III, provides for intervention in States and Municipalities concerning education.

Article 34, VII, "e" states:

"The Union shall not intervene in the States or in the Federal District, except for: (...) 'e) application of the minimum required revenue from state taxes, including transfers, in the maintenance and development of education.' Article 35, III: 'The State shall not intervene in its Municipalities, nor shall the Union intervene in the Municipalities located in Federal Territory, except when: III - The minimum required municipal revenue has not been applied to the maintenance and development of education.

The norm seeks to prevent state and municipal authorities from violating the constitutional precept and any other type regarding resources for education.

Regarding the Municipalities, the Constitution enshrines the precept (Article 30, VI) to *"maintain, with the technical and financial cooperation of the Union and the State, programs of preschool education and elementary education."*

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

The 1988 Constitution, enhancing the provisions regarding education, inserted, in the field of the National Tax System (Article 150), a prohibition on 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 item VI, it enshrines immunities related to taxes on institutions, aiming to ensure respect for fundamental rights and guarantees, such as social rights related to education.

Article 150, VI, "c," § 4 of the Magna Carta states:

Without prejudice to other guarantees afforded to the taxpayer, it is forbidden for the Union, the States, the Federal District, and the Municipalities to: VI - institute taxes on: c) property, income, or services of political parties, including their foundations, of trade union entities, of educational and social assistance institutions, without profit, meeting the requirements of the law; § 4 The prohibitions expressed in item VI, sub-items 6 and c, comprise only property, income, and services related to the purposes of the entities mentioned therein.”

Legally, it is important to note that this constitutional prohibition does not mean exemption from paying taxes, as it might seem, but rather a true tax immunity. As Elias de Oliveira Motta teaches (1997: 163):

“Master PONTES DE MIRANDA clarifies that: The State, here, does not exempt; the State cannot burden with taxes. In exemption, the tax debt does not arise because the tax law has made an exception: opening it only explains what would have to be understood with it or without it. The legal rule of exemption is an exceptional right that places the person (subjective exemption) or property (objective exemption) out of the reach of the law, which – without this legal rule – would be affected. The legal rule of immunity is a legal rule in the field of the rules of competence of public powers – it hinders legislative tax activity, removes from the body that creates taxes any competence to impose them in the species. There is a quality of the person or property that stands against the State; the act of imposition would be contrary to the law, and could therefore give rise not only to declaratory judgments of the non-existence of the legal relationship of tax or the very impossibility of existence but also to judgments that condemn the State for the damage caused by the imposition.”<sup>11</sup>

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

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<sup>11</sup> MOTTA, Elias de Oliveira. **Educational Law and Education in the 21st Century: with comments on the new National Education Guidelines Law**; foreword by Darcy Ribeiro. Brasília: Unesco, 1997. 784p.

“The State will promote and encourage scientific development, research, and technological training. § 1 Basic scientific research will receive priority treatment from the State, considering public good and progress in the sciences. § 2 Technological research will focus predominantly on solving Brazilian problems and developing the national and regional productive system. § 3 The State will support the training of human resources in the areas of science, research, and technology, and will grant those who occupy them special means and conditions of work. § 4 The law will support and stimulate companies that invest in research, creation of technology suitable for the country, training and improvement of their human resources, and that practice remuneration systems that ensure the employee, unrelated to the salary, participation in the economic gains resulting from the productivity of their work. § 5 States and the Federal District are allowed to earmark a portion of their budgetary revenue to public entities promoting education and scientific and technological research.”

The Constitution adequately regulates education in Article 205: *“Education, the right of all and the duty of the State and the family, will be promoted and encouraged with the collaboration of society, aiming at the full development of the person, their preparation for the exercise of citizenship, and their qualification for work.”*

Based on the 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 topic, former Minister of Education, Cristovam Buarque (1999: 57), asserts with great authority:

“If the best indicator of poverty is the abandonment of children, poor, without school, in the streets or at work, or in false schools, the first path to eradicate poverty is through education for all children in quality schools. For 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 Federal units. 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 proportion between revenue and product. These are the gross costs of the program to eradicate poverty by eliminating exclusion among children; deducting the fiscal return that occurs in all economic spending, the net cost is 31% cheaper.”<sup>12</sup>

At this point, we can affirm that education is intertwined with *integral democracy.*

Regarding integral democracy, Leonardo Boff (2000: 79) clarifies the meaning and delimits the scope of this fundamental value that must be experienced in all aspects by humans, while emphasizing the importance of investing in education.

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<sup>12</sup> BUARQUE, Cristovam. **The Second Abolition: A Manifesto-Proposal for the Eradication of Poverty in Brazil.** São Paulo: Paz e Terra, 1999.

About integral education, Boff writes:

“Integral education is a permanent pedagogical process that encompasses all citizens in their various dimensions and aims to educate them to exercise ever more full power, both in the sphere of their subjectivity and in their social relations. Without this exercise of solidarity and cooperative power, integral democracy will not emerge, nor will development centered on the person, and therefore, truly sustained. (...) We start from what St. Francis and Mao Tse-tung already taught: we learn by doing. Practice, therefore, is the original source of human learning and knowledge because humans, by constitutive nature, are practical beings. They do not have existence as a given, but as a task that requires a practice of continuous construction. Having no specialized organ, they have to continually construct themselves and their habitat through cultural, social, spiritual, and technical practice.”<sup>13</sup>.

According to the author, integral education enables and shapes humans to generate open, sociocosmic democracy and development that ensures a sustainable society. This was the path followed by countries that are now at the forefront of the technological process and ensure the sustainability of their social process, such as European nations, the United States, Japan, and Korea, which heavily invested in education.

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

“Investing in education is inaugurating the greatest revolution that can take place in history, the revolution of consciousness that opens up to the world, to its complexity, and the ordering challenges it presents. Investing in education is founding the autonomy of a people and ensuring them the permanent foundations of their recovery in the face of crises that can shake or disorganize, like Germany and Japan in World War II, which, because of the level of education of their defeated and humiliated people, 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 qualified labor. Investing in education is ensuring higher productivity. The Brazilian state has never promoted the educational revolution. It is a historical hostage to the propertied elites who need to keep the people in ignorance and inculturation to hide the perversity of their social project, to reproduce their privileges, and perpetuate themselves in power”<sup>14</sup>

It is concluded that the integral formation of the human person in the educational process is the main purpose highlighted by the constitutional legislator in the Magna Carta. The expression "*full development*" logically includes the political and social development of the learner, allowing them to open the doors to economic success (qualification for work, productivity, quality of social and spiritual life), a true conscious participation in the political life of the State.

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<sup>13</sup>BOFF, Leonardo. **After 500 Years: What Brazil Do We Want?** Petrópolis, RJ: Vozes, 2000.

<sup>14</sup> Ibid., p. 83.84.

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