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The Right to Education in Times of Democratic Crisis: Constitutional Jurisprudence of the Brazilian Supreme Court

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Abstract: *This article examines how the Brazilian Constitutional Court addressed the right to education during the country's recent democratic crisis. Through case law research covering Supreme Federal Court decisions rendered between 2013 and 2022, several hundred across the Court's database, the study analyzed restrictions on educational freedoms and attacks on institutional and financial structures necessary to realize this right. The findings indicate that the Court acted decisively in safeguarding educational freedoms, such as homeschooling, gender censorship, and academic expression, while remaining largely unresponsive on merits adjudication regarding funding and institutional capture. Overall, the study argues that, despite important gaps, the Court played a protective role in containing authoritarian regressions that threatened the right to education. The article concludes that judicial action, though insufficient on its own, remains essential for constitutional enforcement.*

Keywords: *Brazilian Constitutional Court; Right to Education; Democratic Crisis; Educational Freedoms; Institutional Capture; Judicial Action*

UN Sustainable Development Goals (SDGs): *SDG 4: Quality Education; SDG 16: Peace, Justice, and Strong Institutions*

INTRODUCTION

"The crisis in education in Brazil is not a crisis; it is a project."
— Darcy Ribeiro

The film *Mars One* portrays the daily life of a Black family on the outskirts of Contagem, Minas Gerais, during 2018 and 2019. Set in the immediate aftermath of the election of a far-right president, the story follows Deivinho, the youngest son, who faces his father's insistence that he abandon his studies to pursue a career in professional soccer. His father hoped that such a career would lift the family out of poverty. Although Deivinho resists this pressure in the film, the narrative illustrates how real-life obstacles continue to hinder Brazilians' access to their guaranteed right to education.

Education permeates Brazilian life far beyond cinema. Although enshrined in the 1988 Constitution, the right to education remains unevenly realized, and in recent years its implementation has deteriorated, not incidentally, but as a result of deliberate political choices that form the subject of this article. In a study conducted by the IMD World Competitiveness Center in 2021, Brazil received the lowest score among all countries assessed in the education category, largely due to insufficient public investment in the sector (CNN, 2021). According to a survey commissioned by Todos pela Educação, 59% of voters considered education important when choosing whom to vote for (Todos Pela Educação, 2022).

Against this backdrop, the present article examines the case law of the Brazilian Supreme Federal Court[1] concerning the right to education, specifically within the context of the democratic crisis the country underwent in recent years. The article is guided by the following research question: to what extent, and through which doctrinal and procedural mechanisms, did the Brazilian Supreme Federal Court protect the right to education against democratic backsliding between 2013 and 2022? A subsidiary question follows from it: does the Court's performance differ systematically according to the dimension of the right at stake, the negative dimension of educational freedoms, on the one hand, and the positive dimension of institutional capacity and public funding, on the other?

The working hypothesis is that there was a discernible movement by the Constitutional Court to safeguard the right to education in the face of democratic erosion that negatively affected its enjoyment, a right subjected to relentless efforts toward its dismantlement. To examine this hypothesis, the article draws on qualitative analysis of Brazilian Supreme Federal Court (STF) case law from 2013 to 2022, the contours of which are detailed in the following section.

THE RIGHT TO EDUCATION AMID DEMOCRATIC CRISIS: DECISIONS OF THE BRAZILIAN SUPREME FEDERAL COURT

The Right to Education Under Democratic Erosion: Freedoms, Institutions, and Resources

The right to education is not an innovation of Brazil's 1988 Constitution: it appeared in every constitutional charter since 1824[2]. The 1988 Constitution, however, firmly enshrines education as a social right (Silva, 2009, 183; Souza Neto and Sarmento, 2008), listed in Article 6 and detailed in Articles 205–214 (Werner, 2022). Its multiple provisions indicate both a general right to education and specific rights related to educational freedoms, public policies, and adequate resources (Ranieri, 2009, 283; Miranda, 2019, 29–32).

Despite these mandates, recent years have witnessed movement in the opposite direction. Beginning in 2013, Brazil entered a period of democratic erosion marked not by abrupt rupture, but by institutional distortion (Bermeo, 2016, 6; Barroso and Mello, 2021, 3), widely documented in international and Brazilian scholarship (Przeworski, 2019; Mounk, 2018; Huq and Ginsburg, 2017; Levitsky and Ziblatt, 2018; Vieira, 2018; Souza Neto, 2020; Nunes, 2025).

[1] The Brazilian Supreme Federal Court is originally named Supremo Tribunal Federal in Portuguese. Throughout the references and original titles cited in this article, the Court is frequently referred to by its Portuguese acronym, STF.

[2] Check, for instance: Article 179, XXXII, of the 1824 Constitution; Articles 35 and 72, § 6, of the 1891 Constitution; Articles 149 and 150 of the 1934 Constitution; Articles 128 to 133 of the 1937 Constitution; Articles 166 to 174 of the 1946 Constitution; Articles 168 to 171 of the 1967 Constitution; Articles 176 to 179 of Constitutional Amendment n. 1 of 1969; and Articles 6 and 205 to 214 of the 1988 Constitution.On the drafting of the educational provisions of the current Constitution. and particularly on the deliberations of the Subcommittee on Education and Culture of the 1987–1988 National Constituent Assembly, which shaped the constitutional treatment of secondary education, see Viana (2013). For a systematic account of the resulting constitutional architecture, encompassing the normative status of the right, its articulation across Articles 6 and 205 to 214, and the allocation of competences among the federated entities, see Werner (2022).

Levitsky and Ziblatt identify four signs of authoritarian drift: disregard for democratic rules, attacks on civil liberties, delegitimization of opponents, and tolerance of political violence (Levitsky and Ziblatt, 2018, 34–36). These dynamics directly affect the structures and freedoms necessary to realize the right to education. Rights require institutional capacity and public resources, consolidated through public policies (Menicucci and Lotta, 2018, 74; Barcellos, 2018, 253–254). Thus, authoritarian erosion operates both through austerity measures that weaken funding and through political attacks on educational institutions.

Two additional agendas, conservative and neoliberal, further shaped Brazil's authoritarian shift. Moral conservatism, fueled by anti-pluralist visions (Biroli, 2020, 150), helped justify restrictions on educational freedoms (Barroso and Mello, 2021, 4). Authoritarian neoliberalism, marked by the dismantling of the social protection system (Souza Neto, 2020; Nunes, 2025), translated into austerity policies and institutional instrumentalization, both detrimental to educational rights.

Under these conditions, violations of the right to education fall into two groups: (i) direct restrictions on educational freedoms, producing submission, intolerance, and inequality; and (ii) attacks on the structures necessary for realizing the right, institutions and public resources.

Research Design, Corpus, and Selection Protocol

To examine the Supreme Federal Court's response, a jurisprudential survey of decisions rendered between 2013 and 2022 containing the expression "right to education" was conducted using the Court's official case law database, which returned an initial set of 391 cases. From this set, a qualitative selection was carried out based on two criteria: relevance to the dynamics of democratic erosion and backsliding as identified in the literature, and significance in terms of public and doctrinal visibility. The first criterion was applied by reference to the mechanisms of erosion described in the preceding subsection, restriction of educational freedoms, on the one hand, and attacks on the institutions and resources necessary for the realization of the right, on the other, so that decisions bearing no connection to either dimension were set aside, as were decisions addressing the right to education only incidentally. The second criterion privileged cases that structured public and scholarly debate on the subject during the period, whether by the reach of the norms under review or by the doctrinal significance of the holding. Where several decisions replicated a position already represented in the selection, one was retained as representative of the group.

The cases discussed in this article are therefore illustrative rather than exhaustive; they are representative of broader patterns in the Court's jurisprudence, and their analysis is intended to reveal structural tendencies rather than to provide a comprehensive account of every decision rendered in the period. The selection is purposive, and no claim of statistical representativeness is made: the findings are offered as an interpretive account of the Court's posture, not as frequencies.

The material examined is procedurally heterogeneous, and this heterogeneity is deliberate. Alongside final Plenary rulings, this article also discusses proceedings extinguished without a decision on the merits, proceedings that remained pending throughout the period, and one interlocutory ruling. The reason is that the object of inquiry is not only what the Court held, but how it responded, and, in a context of democratic erosion, the absence of a response

is itself part of the answer. Where a constitutional challenge to measures affecting education is brought and remains unadjudicated for years, or is extinguished by the mere expiry of the impugned act, the Court has not taken a position on the merits. However, it has determined the practical fate of the controversy. Treating such outcomes as analytically relevant is consistent with the recognition that the capacity to keep an issue off the decision-making agenda is itself a form of its exercise.

THE CONSTITUTIONAL COURT'S RESPONSE TO SUBORDINATION, INTOLERANCE, AND INEQUALITY IN EDUCATION

The Homeschooling Case

By enabling the transmission of knowledge across generations, education becomes a strategic field for autocrats. It is thus no coincidence that, in the contemporary democratic crisis, education has been instrumentalized to propagate authoritarian ideals. Commonly, this intention appears disguised in socially appealing rhetoric about protecting children, the family, and freedoms of expression, religion, and learning.

One of the clearest examples is the strengthening of the political movement advocating for homeschooling. The idea is that formal schooling should not occur in official educational institutions, but instead at home, carried out by parents or third parties chosen by them. This grants the family a prominent role in determining the content delivered to the child. For this reason, homeschooling is often defended by families. However, the Brazilian Child and Adolescent Statute requires parents to enroll their children in the regular school system (Law n. 8.069/1990, art. 55).

In RE 888.815 (Recurso Extraordinário—Extraordinary Appeal), the Court was asked to determine whether freedom of teaching includes the possibility of homeschooling[3]. The petitioner was a teenage girl whose family had sought administrative authorization from the Municipal Secretary of Education of Canela to educate her at home. After the request was denied, they filed a writ of mandamus; the trial court rejected the claim, and the judgment was upheld by the Court of Appeals of Rio Grande do Sul (TJRS). The judgment further emphasized that the 1988 Constitution establishes education as a duty of both the State and the family, to be carried out within the appropriate institutions. Therefore, freedom to learn and to teach does not entail the freedom to adopt an educational model absent from the legal system and beyond public oversight.

Challenging these foundations, the petitioner filed an extraordinary appeal, arguing that "parents are required to educate their children, but are free to choose the best means to do so, in light of the child's best interest and their own pedagogical, moral, philosophical, and religious convictions." In her view, compulsory enrollment in the regular school system should apply only when parents are unable to provide education by other means. She further contended that the State may supervise homeschooling but cannot prohibit it without substituting parental judgment for its own, thereby falling into paternalism and totalitarianism. According to the

[3]RE 888.815, Full Bench, Justice Roberto Barroso (rapporteur), Justice Alexandre de Moraes (lead opinion), judgment of 12 Sept. 2018, DJe 21 Mar. 2019, Theme 822.

appellant, the TJRS decision violated Articles 205, 206, 208, 210, 214, and 229 of the Constitution.

In adjudicating the appeal, the Supreme Federal Court held that homeschooling is neither a subjective public right of the student or family nor prohibited by the Constitution. The Court emphasized that Congress may regulate homeschooling through federal legislation, provided that constitutional requirements for educational quality are respected (e.g., mandatory education from ages 4 to 17, public supervision and assessment, and guarantees of socialization). The Court ultimately adopted the following holding with general repercussion: "There is no subjective public right of the student or their family to homeschooling, which is nonexistent under Brazilian legislation". In practice, the Supreme Federal Court concluded that homeschooling is currently impermissible but may become viable if Congress enacts proper legislation. Justices Luís Roberto Barroso and, in part, Edson Fachin dissented.

A closer reading of the Constitution suggests that the tensions surrounding homeschooling may extend beyond the mere absence of regulation, reaching the conceptual core of the proposal itself. To reach this conclusion, it is necessary to consider the constitutional objectives of education, the role of the family, and the breadth of the right to education. To begin, the 1988 Constitution establishes that education must promote the full development of the person, prepare individuals for the exercise of citizenship, and qualify them for work. It thus rejects a reductionist model of education limited to reading and mathematics. Instead, educational systems must advance human development and citizenship. More than teaching basic competencies, educational policy must cultivate better individuals, capable of living together, engaging constructively with peers, and treating others as equals.

Homeschooling, however, frustrates these aims. Full development and preparation for citizenship require a holistic process, physical, mental, and social. Not coincidentally, the UN Committee on the Rights of the Child has stated that education must equip children with "the skills needed for life," including "the ability to make well-balanced decisions; resolve conflicts non-violently; develop a healthy lifestyle, good social relationships and a strong sense of social responsibility," as well as critical thinking, creativity, and other capacities necessary for life choices (Committee on the Rights of the Child, 2001).

Martha Nussbaum likewise argues that education for human development must cultivate three capacities (Nussbaum, 2009, 17–23): (i) Socratic self-criticism, enabling coexistence and dialogue with those who are different; (ii) the ability to see oneself as a member of a heterogeneous nation and world, countering stereotypes harmful to pluralist democracy; and (iii) narrative imagination, the ability to place oneself in another's position. Jean Piaget similarly identified autonomy and reciprocity as the two essential dimensions of personal development (Piaget, 1975, 59–69).

Thus, this educational model presents a significant tension with the constitutional objectives established for education. Homeschooling rests on a closed dyadic relationship between student and teacher, usually the parent, anchored in the authority of the latter, which hinders the development of autonomy. Moreover, the absence of interaction with peers impoverishes social relations, limits stimuli, and undermines the ability to respect others' rights[4].

[4]In the same vein, Maria Celina Bodin de Moraes highlighted the risk that homeschooling may hinder a student's later integration into the community: "On the contrary, it would seem that the practice of homeschooling may itself end up

In several instances, the preference for homeschooling appears linked to an attempt to ensure the transmission of a particular worldview, which could potentially undermine the pluralism demanded by the constitutional framework.

Beyond educational objectives, homeschooling rests on a mistaken premise about the family's role. Indeed, education is also the duty of families and society (art. 205), serving to prevent the State from imposing a conception of the good and to democratize curricular deliberation (Almeida, 2008, 168-171). Families are also essential in initiating and sustaining children's educational trajectories, discouraging school dropout. However, this does not authorize parents to determine the content or form of the education provided to their children. There is no "right" of families to educate children according to their own conception of the good (Almeida, 2008, 171-182). Education exists not to serve families, but to serve students and society. One way to fulfill this mandate is to offer children a pluralistic learning environment, with exposure to different people and perspectives, teaching them that neither they nor the world are mere extensions of their parents.

Indeed, the right to education encompasses all forms of teaching, transmission, reflection, and knowledge development (Ramos, 2018). It includes both formal education in schools and informal education in familial and community spaces, social movements, the media, and institutions. Recognizing this breadth, however, does not authorize homeschooling; it simply acknowledges that learning also takes place outside school. Informal education does not substitute for formal education; they complement each other.

Thus, by admitting the possibility of homeschooling should a regulatory law be enacted, the Supreme Federal Court's position appears to underestimate the tension between homeschooling and the constitutional objectives of education, a tension that, on the reading advanced here, is not merely regulatory but structural. Nonetheless, if the Legislature chooses to regulate this model, it must provide the necessary mechanisms to ensure the full development of the person and preparation for citizenship, requirements set by the 1988 Constitution, under penalty of unconstitutionality. The relevant oversight institutions will likewise need to supervise the practical implementation of any such law.

The Case of the "Nonpartisan School" Movement

The instrumentalization of education for the propagation of conservative values has also manifested itself in recent movements opposing gender studies in universities and schools, under the pretext of safeguarding the traditional family and the innocence of children[5]. This

giving rise, as an adverse effect, to a problem of recognition. Indeed, precisely because it is not based on any community-related issue, homeschooling in Brazil corresponds solely to the removal of the minor, at the parents' wish, from that space of interaction that would be typical of his or her stage of development, a choice that, according to many specialists, harms his or her future integration into the community, without the corresponding issues that, elsewhere, justify such exclusion." (Moraes, 2017, 6).

[5]At the same time, a similar movement can be observed in the attacks carried out against the teaching of Critical Race Theory in U.S. schools and universities. In summary, radical conservatives have mobilized against any ideas that examine race through a historical lens, that recognize it as a social construct, or that defend reparatory measures. To do so, they claim that such theory constitutes "indoctrination," promotes an "identity-based Marxism," and encourages national division. On this basis, they have adopted a series of strategies to prevent its dissemination, such

strategy has already reached the point of banning discussions on the topic at public universities, as in the State of North Carolina in the United States (Stanley, 2020, 57); revoking the accreditation and funding of university programs, as in Hungary (Kent and Tapfumaneyi, 2018); and shutting down universities whose curricula included gender-related content, as occurred with the European University at Saint Petersburg in Russia (Weir, 2017).

In Brazil specifically, attacks on gender-related issues gained notoriety from 2015 onward, through the movement *Nonpartisan School Movement* ("Escola Sem Partido"). Several state and municipal statutes were enacted prohibiting discussions of gender and sexual orientation in schools. In this way, supporters of the movement relied on vague terms to bar certain classroom discussions and to combat a purported left-wing "sexualização" and "doutrinação" in schools. To that end, they invoked a discourse centered on the protection of rights to freedom of political opinion, religious freedom, state secularism, and the best interests of children, arguing that education should be neutral and should not seek to influence students.

These statutes were challenged before the Brazilian Supreme Federal Court through several concentrated constitutional review actions[6]. Although the actions were assigned to different rapporteur justices, the Court adopted a unanimous stance as to the unconstitutionality of these laws. The Court's reasoning combined both formal and substantive grounds. From a formal standpoint, it emphasized, in particular, violations of the Union's exclusive competence to legislate on the guidelines and bases of education (art. 22, XXIV) and its competence to enact general rules in the field of education (art. 24, IX).

From a substantive perspective, the Court held that suppressing an entire field of knowledge obstructs the emancipatory function of education, the pluralism of ideas, and the freedoms to teach and to learn (arts. 205, 206, II, III and V, and 214). In *ADPF* 460 (Arguição de Descumprimento de Preceito Fundamental—Action for Non-Compliance with a Fundamental Precept), the Court stressed that a blanket prohibition on addressing a particular topic devalues teachers, may foster persecution within the school environment, and chills democratic debate. These statutes violated the right to equality, insofar as they sought to employ state power to privilege sectarian hegemonic perspectives and to keep minority groups in a position of inferiority (arts. 1, III, and 5). The Supreme Federal Court also concluded that there was a breach of the principle of full protection of children and adolescents, as the laws denied them the possibility of learning about sexual diversity and discouraged the development of gender identities and sexual orientations that diverge from the dominant pattern (art. 227, *caput*).

In this context, we agree with the decisions rendered by the Supreme Federal Court. Three points, in particular, support this conclusion: (i) education is not neutral; it is, by its very nature, political; (ii) the 1988 Constitution places education at the service of reducing inequalities; and (iii) the freedoms to teach and to learn must be protected.

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as passing laws that penalize schools or teachers who teach it and requiring colleges to research competing ideas under penalty of losing public funding. Cf.: (Lynn, Dixson, 2022; López et al., 2021; Huq, 2017).

[6]ADPF 526, Plenary, Justice Cármen Lúcia (rapporteur), judgment on 5/11/2020, DJe 6/3/2020; ADI 5.537, Plenary, Justice Roberto Barroso (rapporteur), judgment on 8/24/2020, DJe 9/17/2020; ADPF 460, Plenary, Justice Luiz Fux (rapporteur), judgment on 6/29/2020, DJe 8/13/2020; ADPF 461, Plenary, Justice Roberto Barroso (rapporteur), judgment on 8/24/2020, DJe 9/22/2020; ADPF 467, Plenary, Justice Gilmar Mendes (rapporteur), judgment on 5/29/2020, DJe 7/7/2020; ADPF 457, Plenary, Justice Alexandre de Moraes (rapporteur), judgment on 4/27/2020, DJe 6/3/2020.

First, it is necessary to deconstruct the notion that education should aspire to neutrality. In recent years, the idea that schools are merely instruments for job training has gained increasing prominence, as evidenced, for instance, by the policy of militarizing public schools and the attacks directed at Paulo Freire. In truth, as he affirms, "whatever the nature of educational practice, whether authoritarian or democratic, it is always directive" (Freire, 2013). Hence the claim that a neutral language can or should be adopted in schools rests on questionable grounds. From a constitutional standpoint, education is necessarily implicated in values, and the 1988 Constitution makes those values explicit: full human development, preparation for citizenship, and the reduction of inequalities. What the *Nonpartisan School Movement* framed as neutrality may, on this reading, be better understood as the imposition of a particular ideological perspective under the guise of pedagogical abstention.

This is, indeed, one of the goals that education must pursue. Beyond the already mentioned full development of the person, Article 205, *caput*, of the Constitution places educational policies at the service of preparing individuals for citizenship. This requires that education impart the skills needed for students to exercise their rights, fulfill their duties, and participate actively in community life. For that to occur, school curricula must commit to equality, non-discrimination, recognition, and the rights of vulnerable groups. Equality is, after all, both a precondition of the democratic regime and part of a core set of fundamental values. More than transmitting knowledge, teaching must function as a mechanism for transforming reality and giving effect to an increasingly democratic society.

Education has enormous potential in this regard: it can intervene from the earliest stages of life and shape subjectivities on the basis of egalitarian values. Quality education can, therefore, curb exclusionary social practices by interrupting their continuity; denaturalize them by cultivating critical thinking capable of perceiving them; and contribute to the empowerment of the excluded by restoring their self-esteem. In light of the aims of education and of the Republic itself (arts. 3, I and III, and 205, *caput*, of the Constitution), addressing diversity and gender identity in classrooms is a constitutional mandate.

Finally, it is undeniable that statutes preventing teachers from addressing certain topics violate the freedom to learn, to teach, to research, and to disseminate thought, art, and knowledge. This principle is enshrined in Article 206, II, of the 1988 Constitution, which protects educational freedoms. These freedoms ensure not merely the existence of buildings called schools, but the provision of genuinely high-quality education. With regard specifically to academic freedom, the goal is to ensure that members of the academic community are "free, individually or collectively, to seek, develop and transmit knowledge and ideas through research, teaching, study, discussion, documentation, production, creation or writing" (Committee on Economic, Social and Cultural Rights, 1999, § 39). This right includes, in particular, the freedom to express one's views in the academic environment without discrimination and without fear of reprisal. It is a right not only of professors, but also of students, who are entitled to a learning environment conducive to the free exchange of ideas. Plainly, banning discussions of gender in classrooms infringes this right and chills democratic debate in one of the spaces where it is most essential.

For these reasons, the Supreme Federal Court's approach has been crucial in confronting the *Nonpartisan School Movement* ("Escola Sem Partido"), authoritarian practices in schools,

and discrimination against women and LGBTQIA+ groups. The Court thus performs an indispensable role in strengthening constitutional democracy itself.

Cases Involving Restrictions on Educational Freedoms

In contexts of democratic backsliding, teachers and academics tend to become targets: education comes under fire because there is a concerted effort to contain any form of expression or opposition. In this setting, numerous cases of restrictions on educational freedoms emerge. The tools used to attack teachers multiply and are designed to silence and persecute them, in order to stifle free debate within educational institutions. As Mendes and Sanctis note, "the legal-institutional apparatus *served* as a tool both to send messages and intimidate, as well as to openly restrict academic freedom" (Mendes; Sanctis, 2020). In this sense, some of the cases adjudicated by the Supreme Federal Court are especially important for exposing the authoritarian project directed against education in Brazil between 2013 and 2022.

The first is ADI 3.757[7] (Ação Direta de Inconstitucionalidade—Direct Action of Unconstitutionality). In this action, the National Confederation of Educational Institutions challenged Law n. 14.808/05 of the State of Paraná, which regulates the organization of Student Unions, Academic Centers, and Central Student Directories in public and private higher-education institutions. On one hand, the law was alleged to infringe the Union's exclusive competence to legislate on the guidelines and bases of education; on the other, it was said to violate university autonomy by prescribing the organization of student representative bodies. The Court partially granted the claim. In any event, the decision ultimately favored freedom of association, the democratic management of education, and the free circulation of ideas, which, in the Court's view, encompass the right to create and organize student unions and directories.

Another example of pressure on educational freedoms was the production, by the Ministry of Justice and Public Security, of confidential reports targeting federal and State civil servants, which was challenged in ADPF 722[8]. Among the 579 civil servants listed in the report, three university professors were identified as members of the "antifascism movement." The Supreme Federal Court declared the Ministry's actions unconstitutional.

These cases are not limited to the freedoms of professors. Students have likewise faced restrictions on their rights, as they are prevented from demonstrating, organizing, and pressing their claims. This was the situation that gave rise to ADPF 548[9]. The action was filed by the Prosecutor General of the Republic, Raquel Dodge, against a series of decisions by electoral judges ordering the seizure of campaign leaflets and materials in universities and faculty associations, as well as prohibiting electoral issues from being addressed in classes and politically oriented meetings. The contested decisions also mandated the interruption of any expressions of support for or rejection of candidates at federal and State universities.

In that case, the Supreme Federal Court confirmed the preliminary injunction granted by Justice Cármen Lúcia to safeguard the free expression of thought and ideas within universities. Her opinion stressed that the Constitution guarantees university autonomy precisely to protect

[7]ADI 3.757, Plenary, Justice Dias Toffoli (rapporteur), judgment on 10/17/2018, DJe 4/27/2020.
[8]ADPF 722-MC, Plenary, Justice Cármen Lúcia (rapporteur), judgment on 8/20/2020, DJe 10/22/2020.
[9]ADPF 548, Plenary, Justice Cármen Lúcia (rapporteur), judgment on 5/15/2020, DJe 6/9/2020.

all forms of freedom in these spaces. Accordingly, the Court declared unconstitutional any judicial or administrative acts that allow, determine, or promote the entry of public agents into universities, the seizure of documents, or the interruption of classes, debates, or demonstrations by faculty and students.

Taken together, these cases reveal an attempt, carried out through legal and institutional instruments, to dismantle educational freedoms. The curtailment of freedom of expression for teachers and students became one of the tools employed to advance authoritarianism in education, through covert forms of censorship. As Gustavo Binenbojm observes, "one of the insidious characteristics of censorship is not only its denial of different or dissenting ideas, but, above all, its denial of its own existence" (Binenbojm, 2020, 34-35).

In these situations, we agree with the stance adopted by the Supreme Federal Court in protecting educational freedoms, academic, expressive, and associational. As Robert Post argues, the protection of academic freedom, which can be extended to educational freedoms more broadly, constitutes a protection of knowledge itself and an effective means of ensuring its advancement (Post, 2012, 110). Safeguarding these freedoms, especially in a context of democratic crisis, operates as a positive constraint on regressive moves against the right to education.

In any case, the cases discussed here are only a few examples. According to the 2022 national survey, "Is Academic Freedom at Risk in Brazil?", the situation was even more serious: among the professors and academics surveyed, "58.4% are aware of cases of individuals who have faced undue limitations or interference in their classes or research" (Observatório Do Conhecimento et al., 2022, 5). In the cases that reached the Supreme Federal Court, the Court's stance was, as a rule, one of reinforcing educational freedoms. Within its institutional limits, the Supreme Federal Court sought to contain retrograde attacks on academic freedoms, in line with its long-standing, strongly protective case law on freedom of expression.

THE CONSTITUTIONAL COURT'S RESPONSE TO STRUCTURAL THREATS TO EDUCATION

The Attempt to Weaponize Institutions Against Education

As argued earlier, rights depend on a functioning state structure. They require, on one hand, public resources and, on the other, active institutions for their realization, most commonly through public policies. In the educational field, authoritarian actors in Brazil undertook a concerted effort to attack and capture these institutions. During the period under analysis, at least four initiatives illustrate this trend: one reached the Supreme Federal Court and was decided; another lost its object; a third remains pending; and a fourth did not even reach judicial review.

The first is ADPF 756[10], filed by the Brazilian Socialist Party (PSB), challenging various acts and omissions of the federal government during the COVID-19 pandemic. The Plenary held that universities have constitutionally protected autonomy and may therefore require proof of vaccination as a condition for the resumption of face-to-face activities. The Court reasoned that subtracting managerial, administrative, and financial autonomy from educational institutions

[10]ADPF 756, Plenary, Justice Ricardo Lewandowski (rapporteur), judgment on 2/21/2022, DJe 3/24/2022.

violates university autonomy and undermines the constitutional principles governing education in Brazil, thereby infringing Articles 6 and 205–214 of the Constitution. In this way, the Supreme Federal Court halted the federal government's attempt to interfere with universities' internal governance.

Another relevant case is ADI 6.315[11], filed by the Sustentabilidade Party (Rede), which challenged Provisional Measure (MP) 914. The MP sought to alter the rules for selecting and appointing leaders of federal universities, federal institutes, and Colégio Pedro II, thereby reducing institutional autonomy by increasing the power of the President of the Republic over appointments. However, because the MP expired without being converted into law, the action was dismissed as moot, without requiring intervention by the Court. This episode belongs to the third analytical category described previously: it evidences the attempted institutional capture. However, it supports no inference as to how the Court would have ruled had the measure survived.

A case that demonstrates a certain institutional omission by the Court is ADI 6.791, brought by three opposition parties (PSOL, PT, and PCdoB), which remains pending[12]. The parties argue that Paraná's laws establishing the Civic-Military Schools Program impose premature and forced militarization on children and adolescents, with no basis in the National Education Guidelines and Framework Law. They contend that the program violates the principle of democratic school governance, as well as republican and democratic principles. The petition was filed on April 8, 2021, and remains undecided, despite presenting a clear attack on constitutional structures for basic education and an attempt to subordinate the educational system to a conservative and militarized agenda.

As previously noted, not all political actions reach the judiciary. The episode described below is therefore presented as contextual evidence of the offensive against educational institutions, and not as a datum about judicial behaviour. Other attempts at institutional capture were undertaken by the federal government in 2021; perhaps the most serious involved the National Institute for Educational Studies and Research (Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira—INEP), the agency responsible for administering Brazil's National High School Examination (ENEM—Exame Nacional do Ensino Médio). Shortly before the exam, thirty-seven staff members collectively resigned, citing the absence of technical leadership, a climate of fear and insecurity under the then-president Danilo Dupas Ribeiro, and improper interference in ENEM procedures. They claimed that the director had dismantled the agency and taken a series of technically unfounded decisions (Pacheco, 2021). This occurred in tandem with several verbal attacks on the ENEM by the President of the Republic, including suggestions of direct interference (Oliveira, 2021).

The Supreme Federal Court's actions against institutional capture in the education sector, viewed broadly, were mixed. On one hand, the Court acted decisively to protect university autonomy; on the other, it left the challenge to the civic-military schools programme (ADI 6.791) unadjudicated for the entirety of the period, without either granting or denying the interim relief sought. This oscillation may reflect the Court's own historical treatment of university autonomy. As Cirne and Paixão note, the Court has frequently avoided delving deeply into autonomy-

[11]ADI 6.315, Justice Marco Aurélio (rapporteur), judgment on 6/08/2020, DJe 6/15/2020.
[12]ADI 6.791, Justice Dias Toffoli (rapporteur).

related disputes (Cirne and Paixão, 2018). It must also be acknowledged that a single institution cannot perform miracles. When the Court did act, it was effective within its institutional limits, even though it could have intervened more often to counter authoritarian advances against the right to education.

Education Funding: Fiscal Austerity and Budget Cuts

In addition to the institutional attacks affecting the implementation of the right to education, another front of assault operated through the restriction of resources. As previously mentioned, the realization of rights depends on the availability of resources and on public policies that support them (Menicucci and Lotta, 2018, 74; Barcellos, 2018, 253–254). The dismantling of these two pillars therefore hinders the enjoyment and material fulfillment of rights in practice, an avenue that was deliberately pursued by the agents driving Brazil's democratic erosion.

For this article, two actions merit highlighting for having jeopardized the resources essential to the realization of the right to education. Neither of these proceedings produced a merits ruling within the period analysed. They are examined here for two reasons, both consistent with the analytical framework set out previously. First, they document the existence and the intensity of the offensive against the financial conditions of the right to education. Second, sustained non-adjudication is itself an institutional behaviour of a constitutional court, one that this article treats as an object of analysis, while carefully refraining from converting it into a substantive constitutional position attributable to the Court.

The first measure involved cuts to education funding following Constitutional Amendment n. 95/2016, which froze public spending in the areas of education and health for twenty years. Although fiscal responsibility is important, the amendment restricts two areas that, given their centrality to ensuring dignity, should instead be prioritized in the allocation of public resources. Moreover, the purported "freeze" amounts, in practice, to a reduction in resources for these sectors, since mandatory and permanent expenditures continue to rise. This represents a significant setback for the effectiveness of the right to education in a country that remains far from meeting its own educational targets.

In 2021, the Inter-American Commission on Human Rights expressed concern over the limitations imposed by the amendment in a report specifically addressing the situation in Brazil (Inter-American Commission on Human Rights, 2021, 164–165). The Commission underscored persistent challenges in early childhood education, access to higher education, adult and youth literacy, school dropout rates, and racial disparities.

The federal spending cap did not escape the Supreme Federal Court's docket. As noted by Oliveira and Arguelhes, Constitutional Amendment 95/2016 is among the most frequently challenged recent amendments: as of August 2018, seven direct actions of unconstitutionality had been filed against it (Oliveira, Arguelhes, 2021, 5).

Some decisions were issued on the matter, though none addressed the concrete realization of the right to education. In MI 7.300 (Mandado de Injunção – Injunction Writ)[13], the

[13]MI 7.300, Plenary, Justice Marco Aurélio (rapporteur), Justice Gilmar Mendes (lead opinion), judgment on4/27/2021, DJe 8/23/2021.

Plenary partially granted an injunctive order against the federal government's failure to fix the value of the basic income benefit established by Law 10.835/2004, determining that the Executive set that value, for the population living in socio-economic vulnerability, in the fiscal year following the conclusion of the judgment. In doing so, the Court expressly weighed the fiscal and budgetary constraints bearing on the matter against its duty to protect constitutional rights. The decision is therefore significant as evidence that the Court was willing to confront a state omission carrying direct budgetary consequences. However, it did so outside the field of education, and it did not address the compatibility of the spending cap with the constitutional financing regime for the sector. Another example is the ruling in MS 34.448-MC/DF (Mandado de Segurança—Writ of Mandamus), which rejected claims of unconstitutionality in the constitutional amendment process that culminated in Constitutional Amendment 95/2016 (Mariano, 2017).

What can be affirmed on the available record is narrower and procedural rather than substantive. Within the period analysed, none of the constitutional challenges to Constitutional Amendment 95/2016 reached a merits ruling on the compatibility of the spending cap with the constitutional financing regime for education. The Court therefore neither validated nor invalidated the fiscal retrenchment of the sector, and it would be inaccurate to attribute to it a substantive position on the question. The analytically relevant point lies elsewhere: in a domain where the object of litigation is itself time-sensitive, budgetary allocations exhaust themselves within the fiscal year, the deferral of adjudication produces material consequences irrespective of the eventual outcome. Under the analytical category adopted here, this is judicial omission and agenda control, not judicial endorsement.

A comparable pattern is found in ADPF 940[14]. In that action, the Green Party argued that presidential cuts and vetoes on federal budget transfers to federal universities and institutes were pushing these institutions into a state of collapse. Given the unconstitutional State of affairs created in the sector, undermining scientific, administrative, and financial autonomy, as well as the right to education, the party sought a preliminary injunction ordering the immediate release of the budgeted funds.

No decision was ever taken on that request. The action remained undecided throughout the period analysed and, in September 2023, was terminated without any ruling on the merits: applying settled case law under which the exhaustion of a temporary statute deprives abstract review of its object, the Court held that the expiry of the 2022 annual budget statute had rendered the challenge moot. It added that no justiciable interest exists in a claim seeking a declaration that public authorities are bound by the constitutional order where no specific act or omission is challenged.

The sequence is analytically significant, and the categories set out previously help to state why. This is not a case decided against the applicants: it is a case whose object was consumed by the passage of time. The relief sought was the release of funds appropriated for a single fiscal year, so that the deferral of any decision on the interim request guaranteed that, by the time the matter was examined, there would be nothing left to adjudicate. Where the object of constitutional litigation is annual budgetary execution, the timing of adjudication is not a neutral procedural variable: delay operates as a determination of the outcome. Taken on its own

[14]ADPF 940, Justice Luís Roberto Barroso (rapporteur), decision on9/27/2023, DJe9/28/2023.

terms, the Court's ruling is an unobjectionable application of its mootness doctrine. What the episode documents is something structural, the difficulty of subjecting the fiscal retrenchment of education to abstract constitutional review at all, given the mismatch between the annual cycle of budgetary norms and the pace at which such challenges are adjudicated. Although the Court acted positively in other cases, concerning attempts to impose submission, intolerance, and inequality through homeschooling, the *Nonpartisan School Movement*, and restrictions on educational freedoms, as well as in cases involving institutional capture, its stance on resource-related matters fell short of what was required to safeguard the right to education.

In both the case of the spending cap and the budget cuts affecting universities and federal institutes, the Court chose not to act. Regardless of the explanation, be it docket overload or agenda-setting constraints (Vieira, 2008, 449–450), the fact remains that, with respect to financial resources, education was not shielded by the Court from antidemocratic attacks.

THE PROTECTION OF THE RIGHT TO EDUCATION: BETWEEN CONSTITUTIONAL STRENGTH AND CIRCUMSTANTIAL RISKS

As noted above, the right to education has long had constitutional status in Brazil's legal history. Under the 1988 Constitution, as Nina Ranieri argues, it only began to acquire substance in the Supreme Federal Court's case law in the 2000s. Gradually, the right gained space not only in public debate but also in legal discussion (Ranieri, 2017, 146). This trajectory of gradual consolidation was disrupted during the period of democratic backsliding under Bolsonaro's administration (2019–2022). The authoritarian shift, marked by restrictions on civil liberties, institutional instability, and the advance of a conservative agenda, directly affected educational freedoms, institutions, and resources essential for realizing the right to education.

Throughout this period, the Supreme Federal Court was repeatedly called upon to safeguard education. Although Brazil had been moving toward recognizing education as a subjective public right, the crisis altered this path. The cases examined here illustrate both the breadth of the attacks and the Court's varied responses.

Ranieri identifies a shift in the Court's case law toward protecting educational freedoms as a way of giving effect to the right to education (2017, 163). From 2013 onward, however, this dynamic changed: attacks on institutions, censorship, and funding restrictions increased the urgency not only of safeguarding freedoms, but also of defending the structural conditions, public resources, institutional autonomy, and pluralistic curricula necessary for the right to education.

The Court acted more decisively in cases involving educational freedoms: homeschooling, gender and sexuality bans, student organization, and academic expression. In these areas, the Supreme Federal Court consistently protected pluralism, autonomy, and free inquiry, thus mitigating some of the most severe effects of democratic erosion on education.

However, when structural issues reached the Court, such as the spending cap (EC 95), budget freezes for federal universities, and civic-military schools, the Supreme Federal Court's response was more limited. Whether due to caseload constraints or institutional self-restraint (Vieira, 2008, 449-450), the Court failed to intervene in several crucial moments. These omissions weakened protection of the right to education, particularly given the clearly disproportionate

impact of austerity on marginalized groups and on Brazil's already fragile public education system.

Even so, the Supreme Federal Court was a central actor during the crisis: the volume of educational litigation reaching the Court between 2013 and 2022, several hundred decisions, on a conservative reading of the case law database, indicates the extent to which it was mobilized to respond to authoritarian practices. Despite imperfections, its overall posture was one of defense of educational freedoms, institutional autonomy, and, more broadly, constitutional democracy itself. As Sarmento notes, the Court played "a moment of containment of the Bolsonaro government," protecting democracy and fundamental rights against authoritarian attacks (Sarmento, 2023).

CONCLUSION

"Vou aprender a ler, para ensinar meus camaradas"
("I will learn to read so I can teach my comrades")
— Excerpt from the song "Massemba" by Roberto Mendes, performed by Maria Bethânia

The story from the film *Mars One*, mentioned in this article's introduction, could, as we noted, have been a real one. A boy who, despite precarious economic and social circumstances, might have achieved his dream of becoming an astrophysicist and perhaps even colonizing Mars, if guaranteed access to education. For that to be possible, the right to education must move beyond textual promise and become part of the country's concrete reality. This article examined the obstacles along that path through one lens: the case law of the Brazilian Supreme Federal Court concerning the right to education, specifically within the democratic crisis Brazil experienced in recent years.

The article argued that, overall, the Constitutional Court did act in defense of the right to education amid democratic erosion, even as that right was the target of continuous attempts at its dismantling. The Brazilian case is not singular in this regard. Across contemporary democracies facing authoritarian backsliding, from Hungary to the United States, educational institutions, curricula, and funding have become privileged sites of political contestation. What distinguishes the Brazilian experience is the role played by a constitutional court in partially containing these attacks, offering a comparative reference point for ongoing debates about judicial protection of social rights in times of democratic stress. Despite certain omissions, the Supreme Federal Court, as Daniel Sarmento observed when reflecting on its role during the democratic crisis, "fought to defend the Constitution from the greatest adversary it had ever faced" (Sarmento, 2023).

These findings are subject to three limitations, which also delimit the reach of the claims advanced here. First, the corpus was assembled from a single search expression: decisions that address educational rights without employing the phrase "right to education" fall outside it, so that the mapping is under-inclusive at the margins. Second, the sub-sample examined in depth is purposive rather than random, and the criteria applied, connection to the backsliding dynamic and public and doctrinal visibility, necessarily privilege high-salience litigation, leaving low-visibility decisions, which may well follow different patterns, under-represented. Third, and most consequentially for the argument developed in this study, several of the proceedings analysed

remained undecided when the period under study closed; one has since been terminated without any ruling on the merits, while the others remain open. The assessment offered here of the Court's posture towards the structural and financial dimensions of the right to education is therefore provisional, and open to revision as those cases are adjudicated.

These limitations point towards questions that remain open for future research.

First, to what extent does the Supreme Federal Court's relative inaction on structural and funding issues reflect an institutional choice, as opposed to procedural constraints, and what reforms, if any, could make the Court more responsive to the material dimensions of educational rights?

Second, how do the patterns identified here compare with constitutional courts in neighboring countries that faced similar pressures, such as Argentina and Colombia?

Third, what is the long-term jurisprudential legacy of the cases examined here: do they consolidate educational rights or remain vulnerable to reversal under changed political conditions? These questions point toward a broader research agenda on the role of judicial institutions in defending social rights during democratic crises, an agenda whose urgency extends well beyond the Brazilian case.

Whatever the answers, judicial action is never sufficient on its own to bring constitutional rights into reality, whether in times of regression or democratic consolidation. The realization of the right to education, like all constitutional rights, depends not only on the actions of the other branches of government but on all of us who, as the epigraph to this conclusion reminds us, have learned to read and are therefore able to teach our comrades.

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