

Social constitutionalism in Brazil: the Brazilian Education Association and the writing of the 1934 Constitution

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1. *Introduction*

The recent celebration of Weimar Constitution's one hundred years represents a great opportunity for discussions about the so-called social constitutionalism. Usually, social constitutionalism is associated with the inter-war period, when a series of written constitutions around the world incorporated norms with social and economic content¹. These norms authorized State intervention in economic and social domains and crafted a juridical concept of private property's social function. They also brought forward regulations regarding family, education and culture. If it is accurate that social constitutionalism had these common characteristics, it is also correct to say that each country had a unique development of its own social constitutionalism. Therefore, there is room for a series of researches about these developments in each country and also about them in a comparative perspective.

In Brazil, the arrival of social constitutionalism is normally connected to the discussions that led to the 1934 Constitution and the Vargas' Era (1930-1945). The 1934 Constitution inaugurated a new role for the State Power. Hence, this Constitution was the first one to establish a chapter about economic order and to present the notion of a social function for the individual property. It was definitely inspired by some Weimar ideas.

Much has been said about the economic chapter and the attempt to regulate labor and capital. This article, however, focus the strategies used by different social groups to embed in the new constitution a chapter about education. Considering that the 1934 Constitution introduced a series of themes that were not present in the previous Constitution, it is vital to understand which social groups acted in favor of an education chapter.

The previous Constitution, from 1891, only mentioned education to define which branch of federal government would be



Carlota Pereira de Queiroz, the only woman of the 1934 Constituent Assembly



Getúlio Vargas with the American President Franklin Roosevelt, Rio de Janeiro 1936

responsible for each stage of the educational process. The 1891 Constitution also assured that public education would be free of religious proselytism, considering the anticlerical character of politicians of that period. But that was it. Nothing more was said about education in Brazil's previous Constitution. The 1934 Constitution, on the other hand, had many articles regarding the public education system and education regulation. That's the reason why it is important to understand the "strategies for constitutionalization" operated by those groups and why it was critical for them to insert education in the constitutional framework.

One can argue that the 1934 Constitution only lasted three years and, therefore, had almost no impact. In November 1937, in a very turbulent period in Brazil and all around the world, the President Getúlio Vargas promoted a coup d'état imposing a new Constitution written by the jurist Francisco Campos. He closed the Parliament and stayed in power until 1945. Nonetheless, the 1934 inaugurated a tradition to consider education as a theme in Brazilian constitutions. The authoritarian 1937 Constitution, for instance, also had a chapter on education and regulated in detail that area. Of course, it represented a more centralized and authoritarian system, but the idea that the Constitution had to regulate education prevailed. It is also possible to read in the actual Brazilian Constitution, from 1988, many rules inspired by the 1934's Constitution².

This article is divided in two parts. First, it will briefly explain the social and political context of 1920's and 1930's Brazil. Furthermore, the first part will explain the creation of the Brazilian Education Associ-

ation and its main characteristics by using primary sources from the Association's Archives³. Then, in the second part, the article will target the attempt to regulate education in the Constitution and the role played by the Brazilian Education Association (Associação Brasileira de Educação – ABE). The proposals from ABE and from another Commission of experts will be compared between each other. Then, those Education Chapter's drafts will be compared with the approved text of the 1934 Constitution.

This article's focus of interest on the Education Association is not random. It represents a methodological path which expresses that constitutional history can be written in multiple forms. There are many ways to read a constitutional text. One could read the constitutional text and interpret it, but that text would have to be connected to the social-political context. That interpretation could be done by studying the jurists that drafted the constitutions or the clashes between opposite interpretations and uses of the text, for example. In this article in particular, the methodological path is a little bit different. The focus on organized civil society is a way to understand the political and juridical forces that forged the Constitution of 1934.

This methodology also represents a way to take "Brazilian constitutional history" seriously⁴, by questioning the tradition which argues that all Brazilian constitutionalism is "secondhand material". It is certainly true that constitutionalism in Brazil was historically inspired by the United States' and Europe's constitutions. On the other hand, these legal transplants were not automatic. In this specific research, the concept of "cultural translation of law"⁵ would be more accurate, since this concept

highlights the reception of a foreign law as a creative act.

This article shall demonstrate that the Brazilian Education Association used the Weimar reference in a very particular way. The Weimar Constitution represented the effort to constitutionalize the right to education, establishing public, free and compulsory schools to children from six to fourteen years old⁶. Although ABE did not copy exactly the German Constitution text, the Association incorporated those ideals and contributed to placing public education as a right in the Brazilian Constitution of 1934.

2. *The 1934 Constitution and its political context*

The 1920's was a revolutionary decade to Brazil in social and cultural terms. The Brazilian Modern Art Week – an art exhibit that took place in 1922 – is deemed as the event that integrated Brazil into artistic modernity. The same can be said about the book organized by Vicente Licínio Cardoso in 1924 called *"À Margem da História da República"*⁷. In political grounds, this book can be read as a kind of "modern political manifesto". In this book it is possible to find the famous text written by the jurist Oliveira Vianna criticizing the "idealism" of the 1891's Constitution, seen as a legal text disconnected from Brazilian "reality". There are also other articles in this book that addressed some of the most relevant Brazilian issues at that time.

It is no coincidence that the opening text of Cardoso's book tackled the problem of educating Brazilian people. The article

"The Duties of the New Brazilian Generations", by Carneiro Leão, stated: «I believe that, in this age of scientifically based civilization, when everything is achieved by culture, education is Brazil's greatest need. In our country, we need culture everywhere and for everything: physical, hygienic, professional, mental, moral, social, political, and civic culture»⁸.

It is naïve to think that there were no deep discussions about education before the 1920's and the 1930's. Two of the most important Brazilian jurists of the XIX century Tavares Bastos and Rui Barbosa, for example, wrote about public instruction. Nonetheless, since 1920's the number of people claiming for state intervention in this area increased significantly. Leão was just another one begging for a government that would prioritize education.

Getúlio Vargas took power in 1930, through an armed movement that is known as the "1930 revolution". His rise to power opened space for this generation of 1891 regime's critics. They wanted a more active government that would assume control and solve the main Brazilian social and economic problems. Since the beginning of Vargas' leadership, there was a tension between different political groups. One of those groups wanted a Constitutional Assembly as soon as possible to turn the Provisional Government into a legitimate Constitutional State. Another group, mostly connected to the military, was interested in maintaining a discretionary government, so that they could promote the changes they thought necessary without depending on the Parliament.

This conflict lasted years. It even resulted in a civil war between the federal government and the state of São Paulo, although

the motives of this conflict are not that simple to delineate. Finally, in 1933, there were elections for constituents and, after that, the Vargas' provisional government installed the Constituent Assembly to write and approve a new federal Constitution.

Education was a central issue for this generation of 1920/1930 and a significant part of discussions in the public sphere during this period. Education became a central constitutional problem. The creation of the Minister of Education and Public Health and the educational reforms promoted by the federal provisional government in 1931 generated the expectation that the new Constitution would at least trace some basic structures to the development of the public education system.

It is possible to argue that the 1934 Constitution had no impact whatsoever in educational policy. By this perspective, the creation of the Minister of Education and Public Health in November 1930 was the real inflection point, and all the public education system was structured without any connection to the constitutional text⁹. However, there was a big effort from different social groups to insert in the constitutional text a chapter on education. Whether symbolically or not, Brazilian educators of that time considered relevant the "constitutionalization" of educational policy. The opinion of the famous Brazilian educator Anísio Teixeira, in a text originally published in 1936, expressed this concern: «The Brazilian democracy of 1934 sought to correct itself from the mistakes of 1891, outlining in the current Constitution new directions for the educational work of the Republic. The governing bodies are, today, constitutional bodies, which derive their

authority and competence from the country's own great law»¹⁰.

Throughout the Constitution's draft, ideas about education from different social groups were confronted. Understanding these ideas is vital to comprehend the construction of social constitutionalism in Brazil. The studies about the 1934 Constitution normally use as a primary source the so-called Itamarati Commission debates¹¹. A subcommittee was set up by the Federal government to draft the new constitution, so that the Constituent Assembly would have something to work on¹².

Considering the specificities of the debate on education, it is crucial to better understand the performance of the Brazilian Education Association (ABE). Important figures at the time were part of ABE, like Vicente Licínio, the organizer of the book mentioned above, and Anísio Teixeira, one of the most notorious educators in Brazilian history. Despite these two names, ABE was an extremely plural group, bringing together not only educators, but also jurists, engineers, and other professionals concerned about education.

ABE's archive has already been scrutinized by several researchers, especially education historians. Nevertheless, a history of law approach to this material can reveal the construction of certain strategies to promote the right to education in the 1930's. This article states that the articulation of this group during the period of the provisional government (1930-1934) resulted in the insertion of a series of predictions about education in the new constitutional text, therefore having lasting effects in Brazilian educational and constitutional history.

3. *The Brazilian Education Association*

The ABE was founded on October 18th, 1924. A document from August 1927 mentions that ABE started as a small group of teachers that were members of the Distrito Federal Teachers' League. At that time, ABE had approximately five hundred members. It was a time in Brazil with a significant proliferation of civil movements in different areas. The main examples of these organized groups were the Sanitary Movement and the National Defense League. The Association auto proclaimed as a non-official, non-partisan organization. Its main purpose was to collect data and to produce research to solve Brazilian education system's problems.

The 1920's was also a time for educational reforms in several states of the Brazilian Federation, such as São Paulo, Minas Gerais, Rio de Janeiro, Ceará and Bahia¹³. The leaders of these reforms would all become relevant in educational debates one decade later. Names such as Sampaio Dória, Francisco Campos, Fernando de Azevedo, Lourenço Filho and Anísio Teixeira all promoted the idea of a "new school" or, as Anísio called, a "progressive pedagogy". All of them would, sooner or later, become members of the Brazilian Education Association.

As mentioned above, one of the main activities of the Association was to collect data about education in Brazil. In 1925, one year after ABE's inauguration, the Secretary of ABE sent to all states of the Brazilian Federation a letter requesting data on their education systems. ABE asked for a list of schools and official education establishments, their programs and a list of all teachers' names.

Although the Association's objective was, at first, to centralize and analyze this data, the Association gradually assumed other functions. Letters sent and received by the Association shows that ABE acted as a lobby entity in certain moments. That happened, for example, when Fernando de Azevedo, an important educator at that time, wanted to approve an education reform in Distrito Federal. ABE sent letters to the Municipal Council members arguing in favor of that reform.

ABE also organized several conferences and lectures. ABE organized annual meetings that took place in different Brazilian cities: Curitiba in 1928, Belo Horizonte in 1929, São Paulo in 1930 and Rio de Janeiro in 1931. Those meetings promoted the formation of a network of educators engaged in educational reforms and supporters of a new pedagogy. Considering that Brazil had a vast territory, the realization of this kind of encounter must not be underestimated.

The 1932 Conference was held in Niterói, a city close to Rio de Janeiro, in December of 1932 and January 1933. At this Conference, the members of ABE discussed a draft for the new Constitution. In late 1932 Getúlio Vargas had already promised that he would promote an election for the Constitutional Assembly.

In addition to organizing an educators' network, ABE tried to reach out to different civil society organizations that would eventually deal with education issues. During the 1920's and 1930's, ABE established connections with organizations such as the National Defense League and the *União Universitária Feminina*, a group formed only by female university students. They also contacted the Teachers' Union (*Liga dos Professores*) and *Sociedade dos Amigos de Alberto*

Torres, a group formed by the admirers of Alberto Torres, one of the most mordant critics of the 1891 constitutional regime. All that information was extracted from the correspondences sent and received by the ABE during that period of time.

They also established relations with international organizations such as: Bureau International d'Education, Institute Jean-Jacques Rousseau, International Institute of Education, Carnegie Foundation, The National Education Association (USA), and the Interamerican Federation of Education Associations. Most of the time they exchanged material about education.

Although it was a time marked by the emergence of the "educator", a specialist in pedagogy, ABE had the participation of many important jurists. Carlos Maximiliano, the jurist that integrated the Itamarati Commission, was a member of ABE since the 1920's. The Supreme Court Justice Edmundo Muniz Barreto was contacted by ABE to pursue a cooperation and the well-known jurist Pontes de Miranda was elected a consultant member of the Association¹⁴. Levi Carneiro, the lawyer that founded the Brazilian Bar Association (*Ordem dos Advogados do Brasil*), was also a member. Levi Carneiro is an example that the ABE members had also other affiliations. They were not fully dedicated to ABE and, for most of them, ABE did not represent their main affiliation.

Still on ABE's members, it is important to highlight that the Association had a considerable women's participation. Taking into account that the education field had many women acting as teachers, ABE had some female members that at some point occupied important roles such as General Secretary and President of the Association.

Beatriz Sofia Mineiro was General Secretary and Armanda Álvaro Alberto and Izabel Jacobina Lacombe assumed the Presidency for some time.

Through the analyses of ABE's archives it is clear that some internal disputes led to different kinds of leaderships from the 1920's to the 1930's. It is not irrelevant to remember that a tragedy marked the Association's history. A plane crashed in 1928 and some members of ABE, Ferdinando Laboriau, Amoroso Costa and Tobias de Lacerda, all engineer professors, died in this accident¹⁵. The influence of these engineer professors of technical schools diminished, probably because they were outnumbered. In early 1930's, the group of young educators, critics of traditional schooling, became more active in the Association. Fernando de Azevedo, Lourenço Filho, Armanda Álvaro Alberto, Anísio Teixeira, and others assumed a more prominent role in ABE.

The most evident tension, however, existed between this group of educators and the Catholics. Private schools in Brazil were, at that time, mostly Catholic schools and the Catholic church wanted to maintain its influence. Suddenly they were organized in Centro Dom Vital. This group of organized Catholics was a huge critic of the "new school movement" and, therefore, they moved away from ABE as soon as this group of young educators became more active. The tension was even more explicit when the group of educators published a Manifesto¹⁶ in march 1932 claiming for secular, compulsory and free public education. Therefore, the participation of ABE in the drafting of the 1934 Constitution is mainly the participation of this group of educators that took over ABE's most prominent positions.

4. *Drafting the education chapter of the 1934 Constitution*

To better understand the origins of the final text of 1934's Constitution, one should put side by side the three proposals for the Education chapter: i) the proposal elaborated by the ABE Congress in 1932; ii) the final proposal published by the designated Itamarati Commission¹⁷ and iii) the second proposal elaborated by ABE members, after reading the Itamarati's proposal and trying to strike a consensus¹⁸.

The first ABE's proposal was elaborated and approved during the V Education Conference in the end of 1932. A Commission with 32 members was responsible for writing this draft. Fernando de Azevedo, the educator that wrote de 1932 Manifesto, was the President of this Commission, alongside with Diniz Junior and Americo Wanick. The second ABE's proposal, on the other hand, was approved during an ordinary meeting of ABE's Directive Committee. Educators such as Carneiro Leão, Anísio Teixeira, Lourenço Filho, Armanda Álvaro Alberto and Edgard Sussekind de Mendonça were present at that meeting.

The proposals were organized in the boxes below. They were divided by themes so to facilitate the analysis of this research. The texts were divided according to the following themes: (a) opening statements and values; (b) federative issues and the National Education Plan; (c) the financing of education and (d) the constituency of Education Councils. The final 1934 Constitution text is in the end of each box. Organizing the table in such way should make it easier to compare the final constitution text with each suggestion presented by ABE and the Itamarati Commission.

By reading the constituents debates, which is not the approach of this article, it is clear that many constituents were mere representatives of one of those proposals. Therefore, it is not our aim to scrutinize those debates, but to compare the ABE's proposals and the Itamarati Commission proposal with the final text approved by the Constituent Assembly to better understand the impact of those drafts in the 1934 Constitution. What is being analyzed here is only the basic structure of the chapter built before the installation of the Constituent Assembly.

There is some remarkable work about the political confrontation at the Constituent Assembly regarding education¹⁹. Arilda Arboleya²⁰, for instance, highlights that, in a first moment, the project submitted by the Itamarati Commission was discussed. Then, the constituents presented 121 amendments, most of them extracted directly from the ABE's proposal. To justify their amendments, the constituents referred to the conclusions of the V National Education Conference and to the ABE's members' expertise²¹. However, Arboleya also highlights the influence of ideas from other groups besides the Itamarati Commission and the ABE. She analyzed the role played by a group called the Catholic Electoral League, formed by religious politicians, and also by some regional political forces. Therefore, it is not correct to say that the Constituent Assembly did not change those proposals. However, as we will try to demonstrate using the boxes bellow, the core of the Education chapter of the 1934 Constitution was built outside the Parliament, during the making of those drafts.

4.1 *Opening statements and educational values*

ABE'S FIRST PROPOSAL Art. 3 Paragraph 1. Education in public and private institutions shall aim at the integral formation of man and citizen, developing, in Brazilian spirit, the awareness of solidarity between peoples.	1934 CONSTITUTION Article 148 - The Union, the States and the Municipalities must encourage the development of the sciences, arts, letters and culture in general, to protect the objects of historical interest and the artistic heritage of the country, as well as to assist the intellectual worker.
ITAMARATI COMMISSION Art. 111. Art, science, and education are free. Paragraph 1. The Union, the States, and the Municipalities are responsible for protecting and favoring them. Paragraph 2. The artistic monuments, supported and solicited by the public powers, enjoy the as well as the historical and the natural ones. Paragraph 3. The Union shall prevent the emigration of the national artistic heritage. Art. 112 [...] Paragraph 5. For the admission of a candidate to a public, vocational, secondary school or higher, only merit will be taken into account, and the parents' social condition will not be considered. Paragraph 6. Academic freedom is recognized and guaranteed, however the teacher can not hurt the feelings of those who think differently. Paragraph 7. Civic education, physical education and manual labor are compulsory subjects in primary, secondary, vocational or normal schools. Paragraph 8. Religion is an optional subject, taught in public, elementary, secondary, professional or normal, subordinate to the religious confession of the students.	Article 149 - Education is everyone's right and must be provided by the family and the Public Authorities, and they must provide it to Brazilians and foreigners domiciled in the country, so as to enable efficient factors in the moral and economic life of the nation. and develop in a Brazilian spirit the awareness of human solidarity. Article 153. Religious teaching shall be of optional attendance and shall be given in accordance with the principles of religious confession of the student manifested by the parents or guardians, and shall be part of the timetable in the primary, secondary, vocational and normal public schools. Article 154 - Private primary or vocational private education establishments, officially considered suitable, shall be exempt from all taxes. Article 155 - Academic freedom is guaranteed. Article 158 - The dispensation of the competition of titles and tests in the provision of the positions of the official teaching, is prohibited, as well as, in any course, the school tests of qualification, determined by law or regulation. Paragraph 1 - However, national and foreign nominees may be hired for a certain period of time. Paragraph 2 - The professors appointed by competition for the official institutes are entitled to stability in their positions, without prejudice to the provisions of Title VII. In cases of extinction of the position, the teacher will be conducted to another position, for which he is qualified.
ABE'S SECOND PROPOSAL Article 1 - Education is a right of all people who live in the Brazilian territory and should be provided by the family and the state. Paragraph 1. The State shall have the obligation to offer opportunity and school education to those who inhabit the Brazilian territory. Art. 2 Paragraph 1. Education in public and private institutions shall aim at the integral formation of man and citizen, developing, in a Brazilian spirit, the awareness of solidarity among peoples.	

The Itamarati Commission proposal had the exact same opening line for the Education Chapter as the Weimar Constitution. The German Constitution of 1919,

in its Article 142, stated that: «The arts, science and instruction are free. State provides protection and participates in its cultivation». The Brazilian 1934 Constitution

didn't copy this phrase, but it mentioned the responsibility of the federal, state and municipal branches for arts and sciences. The first ABE's proposal mentioned the idea of solidarity between peoples, an expression that was inserted in the article 149 of the 1934 Constitution as "human solidarity».

The Itamarati Commission included the national heritage provision in its proposal and the 1934 Constitution maintained that. The Mexican Constitution of 1917 already mentioned "culture" and the Weimar Constitution of 1919 had a similar provision in its Article 150: «Artistic, historical and natural monuments and the landscape enjoy state protection and care. It is task of the Reich to prevent the export of German cultural property into foreign countries». ABE's discussion did not tackle the national heritage problem, since they were focused only in educational issues.

In another article, the 1934 Constitution guaranteed academic freedom. The final version of this article guaranteed the freedom of teaching without any kind of limitation. During the Constituent Assembly debates of 1933-1934, on the other hand, some representatives came up with amendments seeking to restrict or limit this right²². For them, academic freedom should exclude "offense to students that had other opinions", "teaching a doctrine contrary to patriotism" and "preaching doctrines hostile to the regime and form of government adopted in the Constitution". The agreement made by the Constitutional Assembly was that any regulations on academic freedom should be fixed in the National Education Plan. The idea of academic freedom was present only at the Itamarati

Commission's proposal and was also taken from the Weimar Constitution.

The first ABE's proposal and also the Itamarati Commission's suggestions did not stated education as a right. ABE's second proposal brought forward the rights language and this idea was incorporated by the final text of the 1934 Constitution. The Constitution's article 149, in its final version, displayed important values: (i) the importance of education to the development of moral and economic factors, (ii) the idea of education as a right for everyone who lived in Brazilian territory, including foreigners, (iii) and a universal character to education when mentioning "human solidarity". The Constitution, while declaring that education is a right, is saying that in modern Constitutional State, education must be considered an individual right²³.

Both ABE's proposals did not mention any regulation to religious teaching. Probably, its members thought that it would be better to leave this theme to the National Education Plan. As mentioned earlier, just before the installation of the Constitutional Assembly, Catholics walked away from ABE. That does not mean that Catholics did not influenced the drafting of the 1934 Constitution. A significant number of constituents were part of the powerful group Catholic Electoral League. They had a political program and an important item was to allow religious teaching in public schools²⁴. The Article 153 represented a victory for them. However, it is important to underscore that Itamarati Commission, following the Weimar example, also embraced the idea of religious teaching as an optional subject.

Oddly, ABE's and Itamarati's proposals were silent about the teaching career.

The reason why this subject is absent is not completely clear. This subject was a theme both ABE and Itamarati probably wanted to insert into the National Education Plan, but this question was particularly sensitive. In early 1930's, there was growing tension in the disputes for positions in important universities. In the end, the Constitution Assembly had to find a compromise. On one hand, the 1934 Constitution had a disposal for a mandatory test to select professors and teachers. On the other, it authorized temporary contracts for national and foreign teachers. So, it contemplated a more rigid approach to teacher's selection, but it made an exception thorough those temporary contracts.

By putting side by side both ABE's proposals and the Itamarati Commission draft, it is clear that the Commission copied several articles from the Weimar Constitution (articles 142, 143, 148 and 150). They brought forward a direct translation of the German text into Portuguese. The final text of the 1934 Constitution, however, merged those drafts and it is possible to find in the Constitution words and expressions extracted from both drafts (ABE's second proposal and Itamarati Commission proposal) and also from the debates during the Constituent Assembly.

One could argue that the legal transfer, between Weimar Constitution and the Brazilian 1934 Constitution, would have occurred more intensely if they had adopted the exact text proposed by the Itamarati Commission. Then, Brazil would have a similar, if not identical, education chapter to the Weimar Constitution. However, the proximity between ABE's proposal and the Weimar Constitution is very clear. Since the 1932 Manifesto, mentioned above, the ABE

members have been fighting for compulsory and free public education, accessible for all Brazilian children and teenagers. They were able to turn education into a right determined by the Constitution.

By adopting a sophisticated concept of legal transfer, that it is not reduced just to the exact legal text or the norm, we can conclude that ABE incorporated many of Weimar educational ideals, putting that into their own words and even establishing education as everyone's right.

b) *Federative issues and the National Education Plan*

ABE FIRST PROPOSAL

Article 1. The States and the Federal District are responsible for organizing, managing and financing their educational systems, within the principles adopted by the Union.

Paragraph - To the municipalities that have sufficient incomes, the States may delegate, by ordinary law, the managing of the respective educational apparatus.

Art. 2 - The Union shall:

a) to establish a national education plan, which aims to offer to those who inhabit the Brazilian territory, equal opportunities, according to their capacities.

b) stimulate and coordinate educational work throughout the country.

c) to exercise, wherever necessary, by deficiency of means or initiatives, a supplementary action.

d) to create and maintain, in non-autonomous territorial districts, educational systems similar to those of the States.

Art. 3 - The national education plan shall be implemented through general, lay and free systems comprising schools of all grades, common and special, and any other educational purpose institutions that may be created.

Paragraph 2 - Primary education shall be compulsory, extending the obligation progressively until the age of 18, in the subsequent educational process.

Paragraph 3. Private education shall follow, in its

organization and functioning, the norms established by laws of the Union and of the States.

Article 4 - The national education plan referred to in article 2, once promulgated, shall not be altered until after its full years of implementation.

Paragraph 1 - Modified, in whole or in part, under the terms of this article, only after an identical period of six years may be amended again.

ITAMARATI COMMISSION

Art. 112. Education will be public or private. Public education is a concurrent responsibility between Union, States and Municipalities. The education regime, however, will obey a general plan drawn up by the Union, which will establish the normative principles of the school organization and supervise, by private technical staff, their implementation.

Paragraph 1. For the purpose of awarding diplomas, the Union may formalize or equate private schools, whose program and teaching are equivalent to those of similar official establishments.

Paragraph 2. Primary education is compulsory and can be given at home and in public or private schools.

Paragraph 3. Education in primary public schools is free. In them will be provided school material free of charge.

Paragraph 4. In order to allow them access to secondary and higher schools, the Union, States and Municipalities shall establish in their budgets funds intended for the students fit for such studies and unable to afford them. The aid will be given until the end of the course, whenever the student demonstrates success.

ABE'S SECOND PROPOSAL

Art. 1 - Paragraph 3. The States and the Federal District are responsible for organizing, managing and financing their educational systems, within the principles adopted by the Union.

Paragraph 4 - The Union shall:

- a) establish a national education plan aimed at providing education in accordance with the preceding paragraphs;
- b) encourage and coordinate educational work throughout the country;
- c) to exercise, wherever necessary, due to deficiency of means or initiatives, a supplementary action
- d) to create and maintain, in non-autonomous territorial districts, educational systems similar to those of the States.

Art. 2 - The national education plan shall be implemented by means of free and public general systems comprising schools of all grades, common and special, and any other educational institutions that may be created.

Paragraph 2. Primary and secondary education shall be compulsory.

Paragraph 3. Private education shall follow, in its organization and operation, the norms established by the laws of the Union, the States and the Federal District.

1934 CONSTITUTION

Article 151 - It is incumbent upon the States and the Federal District to organize and maintain educational systems in their respective territories, subject to the guidelines established by the Union.

Art 150 - The Union shall:

- a) to establish the national plan of education, comprehensive of the teaching of all the degrees and branches, common and specialized; and coordinate and supervise its execution throughout the country;
- b) determine the conditions for official recognition of secondary and further education institutions and of higher education institutes, exercising the necessary supervision over them;
- c) to organize and maintain appropriate educational systems in the territories;
- d) to maintain in the Federal District secondary and complementary education, superior and university;
- e) to take supplementary action, where necessary, for lack of initiative or resources and to stimulate educational work throughout the country, through studies, surveys, demonstrations and grants.

Paragraph 1 - The national education plan contained in federal law, pursuant to arts. 5, no. XIV, and 39, no. 8, letters a and e, may only be renewed within specified periods and shall comply with the following rules:

- (a) free and compulsory full-time primary education extended to adults;
- (b) the tendency for free post-primary education to make it more accessible;
- (c) freedom of education in all grades and branches, subject to the requirements of federal and state law;
- (d) teaching in private schools, taught in the native language, except foreign languages;
- (e) limitation of enrollment to the didactic capacity of establishment and selection through tests of intelligence and achievement, or by objective processes appropriate to the purpose of the course;

(f) recognition of private educational establishments only when they ensure to their teachers stability as long as they serve, and a decent remuneration.

In ABE's first proposal, the role that States and the Federal District would assume in education appeared in Article 1. It showed that the responsibility of these states regarding education was extremely important. We can trace back this relevance that ABE attributed to this division of responsibilities between the federal entities to the discussions during the V Education Conference in Niteroi-Rio de Janeiro. The Conference was organized by specific themes. The most important theme was transformed into a question that some educators would have to answer: "What are the respective federal, state and municipal government responsibilities for primary, secondary, vocational and normal education?". They would discuss this together during the Conference (mornings were all dedicated to the discussion of this question) and then they would also debate this with representatives of all 22 estates in Brazil.

The centralization and decentralization debate was intense in 1933-34 Constitutional Assembly. There was some sort of consensus that the 1891 regime gave too much power to states and that the Union should assume more responsibilities. However, many representatives in Constitution Assembly argued in favor of state power, as a way to maintain the federal republic and to distribute power. Inside the Itamarati Commission members had different opinions too.

The proposals elaborated by ABE highlighted federation issues. Although the Weimar Constitution mentioned the coopera-

tion between the Reich and the states, it did not get into details. So, the Weimar formula would not be enough. The importance of establishing clear boundaries in federation issues related to education in Brazil had to do with the political placements of many ABE members. Some of them were education advisers for mayors and state governors and therefore they vindicated political power for those federal entities. This perspective of giving power to states did not emerge only from a theoretical understanding, but arose from the acquired political experience from those social actors.

ABE's draft prevailed in the final version of the Constitution. Therefore, States would be responsible for their public education system and the Union would trace general and basic guidelines. The National Education Plan would function as an element of unity to the system. Both ABE and the Itamarati Commission's proposals mentioned the existence of a Plan, elaborated by the Union, to set up general rules on education, but ABE's conception of autonomy to states prevailed. ABE's members at that time occupied important positions in education in different states. It is not a surprise that they wanted to give the states some autonomy to manage their schools.

However, ABE's achievement was not absolute. Article 150 d) in the 1934 Constitution represented a huge backlash for Anísio Teixeira, one of the most prominent members of ABE at that time. He was the Secretary of Education in Federal District and had a plan to build a complete public education system, from nursery to universities. The Constitution of 1934 established that secondary schools and universities in Federal District would be Union's attribution.

Free and compulsory full-time primary education was a guarantee in the 1934 Constitution. ABE first wanted compulsory primary education, extending the obligation progressively until the age of 18. The second proposal included primary and secondary education as free and compulsory. The Weimar Constitution, in its Article 145, stated that "Compulsory education shall be universal. For this purpose, the elementary school with at least eight school years, followed by the continuation school up to the completion of the eighteenth year, shall serve primarily. Instruction and school supplies shall be free in elementary and continuation schools". In the end, the Brazilian 1934 Constitution copied the Itamarati Commission proposal that stated that only primary education was compulsory.

c) *Financing public education*

ABE First Proposal
Article 5 - For the maintenance and development of educational systems, the Union, the States and the Federal District shall constitute the respective education funds. Paragraph 1. The national education fund shall consist of a percentage of not less than 10% of the income from federal taxes, special taxes and other eventual financial resources. Paragraph 2. The education fund of the States and of the Federal District shall consist of percentages of the income from state and municipal taxes of no less than 20% of the total of their respective revenues, taxes and special fees allocated to them and other eventual financial resources. Paragraph 3 - Of the education funds, a percentage fixed by ordinary law shall be used to fund municipal, state and national scholarships to provide education, in all grades and specialties, for students of exceptional ability.

ITAMARATI COMMISSION
ABE's Second Proposal Paragraph 4 - For the maintenance and development of educational systems, the Union, the States and the Federal District shall constitute the respective education funds. Paragraph 5 - The national education fund shall consist of a percentage of not less than 10% of the income from Union taxes, special taxes and other eventual financial resources. Paragraph 6. The education fund of the States and of the Federal District shall be constituted of percentages of state and municipal tax revenues of not less than 20% of the total of their respective revenues, taxes and special fees allocated to them and any other financial resources. Paragraph 7 - Of the education funds, a percentage fixed by ordinary law shall be allocated to the funding of municipal, state and national scholarships to provide the education, in all grades and specialties, of students of exceptional ability.
1934 CONSTITUTION
Article 156 - The Union and the Municipalities shall apply no less than 10%, and the States and the Federal District no less than 20% of the income derived from taxes on the maintenance and development of education systems. Paragraph 1. For the purposes of education in rural areas, the Union shall set aside at least twenty per cent of the quotas allocated to education in its annual budget. Article 157 - The Union, the States and the Federal District shall reserve part of their territorial assets for the formation of their education funds. Paragraph 1. The surplus of the budget appropriations plus the donations, percentages of the proceeds of public lands sales, special taxes and other financial resources, shall constitute, in the Union, in the States and in the Municipalities, these special funds, which will be applied exclusively in education, determined by law. Paragraph 2 - Part of the same funds will be used to help students in need, through free provision of school material, scholarships, food, dental and <u>medical assistance, and for villagers.</u>

Surprisingly, the draft written by the Itamarati Commission did not have a descriptive part of financing public education. During the Commission sessions, its members discussed many possibilities of financially guaranteeing the education system²⁵ – though it is still unclear the reason why they did not incorporate any proposal on this subject. A study about the inconsistencies of the draft and the Commission sessions is yet to be done²⁶.

Undoubtedly, ABE members and Itamarati Commission members were concerned about turning the “right to education” into a reality. Therefore, it was important to create educational funds. ABE’s was consistent in guaranteeing a Fund of 10% of federal taxes to education. States should detach 20% of their income to education. In the end, the Constitution of 1934 adopted a similar formula to the one ABE had proposed.

The Weimar Constitution, in its Article 146, stated that the Reich, states and communities would provide funds to allow poor children access to middle and high schools, but it did not get into details about funding education in general. In 1930’s Brazil, the percentages municipalities, states and the Union would give to education were subjected to intense discussions in the Constitutional Assembly²⁷. However, jurists and politicians of that time reached a relatively stable consensus that the Constitution design should guarantee de resources to make education right feasible. This formula was replicated in the actual 1988 Constitution, although with different percentage numbers.

d) Education Councils

ABE FIRST PROPOSAL
Article 6 - The Union shall establish in the appropriate Ministry a National Education Council, as its executive and technical body. Paragraph 1. The National Education Council is responsible for exercising the Union’s duty to stimulate and coordinate educational work throughout the country, to administer the education fund and to oversee other federal educational activities. Paragraph 2. The autonomy of the military administration is respected, as far as its specialized educational institutions are concerned.
Article 7 - The States and the Federal District shall maintain Education Councils and Departments, with technical, administrative and financial autonomy. Paragraph 1. The Education Councils of the States and of the Federal District are responsible for administering and overseeing the respective educational systems, through Education departments, their executive bodies. Paragraph 2 - It is the private responsibility of the Education Councils to approve the regulations and plans presented by the Departments and make the necessary distribution of expenses.
Article 8 - In ordinary laws of the Union, the States and the Federal District, proposed by the Councils of Education, specific rules shall be established for the organization of the technical staff, teachers and administrators of the educational apparatus, in order to free it from any disruptive influences, and to ensure their staff, on their own basis, the best recruitment conditions and maximum permanent <u>stimuli for their specialization and efficiency.</u>
ITAMARATI COMMISSION
ABE’S SECOND PROPOSAL
Art. 1 Paragraph 2. The oversight and direction of school education shall be exercised through Education Councils organized with the necessary autonomy and exemption to ensure, against any influences, the independence of the school and spiritual freedom. Paragraph 8 - The Union shall establish in the appropriate Ministry a National Education Council, with the respective executive and technical body.

Paragraph 9 - The National Education Council is responsible for exercising the Union's function of stimulating and coordinating educational work throughout the country, administering the Education Fund and overseeing other federal educational activities.

Paragraph 10. The States and the Federal District shall maintain Education Councils and Departments with administrative and financial technical autonomy.

Paragraph 11. The Education Councils, of the States and of the Federal District, are responsible for administering and overseeing the respective educational systems through the Education departments, their executive bodies.

Paragraph 12 - It is the private responsibility of the Education Councils to approve the regulations and plans presented by the Departments and make the necessary distribution of expenses.

Paragraph 13 - In ordinary laws of the Union, of the States and of the Federal District, proposed by the Councils of Education, specific rules will be established for the organization of the teaching and administrative technical bodies of the educational apparatus, in order to free it from any disturbing influences., and to ensure to its staff, on their own basis, the best recruitment conditions and the maximum permanent stimulus to their specialization and efficiency.

1934 CONSTITUTION

Article 152 - It is primarily for the National Education Council, organized in accordance with the law, to draw up the national education plan to be approved by the Legislative Power and to suggest to the Government the measures it deems necessary for the best solution of educational problems as well as the appropriate distribution. of special funds.

Paragraph - The States and the Federal District, in accordance with their respective laws and for the exercise of their competence in this area, shall establish Education Councils with functions similar to those of the National Education Council and autonomous departments of educational administration.

Another example of a successful lobby from ABE's members was the creation of Education Councils in the states. Both ABE proposals had detailed rules about those

Councils. The constitutional article was not so specific, but it incorporated ABE's suggestion. Although this subject was not an issue to the Itamarati Commission, the question of the freedom of educators and teachers to formulate the education policy was central to ABE. In a way, it was a corporatist demand, since its members needed work placement all around the country.

An excerpt from the educator Anísio Teixeira from ABE shows this concern about the formation of technical bodies to manage education: «As Brazil rebuilds and reorganizes its democratic institutions, having voted a new constitution, it is essential that, for the most perfect implementation of its spirit, we reshape the fundamental direction of service, such as education, guaranteeing independence against unusual political or ideological interventions»²⁸. However, even after the 1934 Constitution, there would be a controversy whether education councils were technical or political bodies.

3. *Final considerations*

After the approval of the 1934 Constitution, Getúlio Vargas spoke about the difficulties imposed by the text. According to Vargas, the Constitution represented a mix of ideas that would make the government's attempt to rule very hard. Considering that a constitutional text is forged by different political groups, it is expected that the final text embraces multiple visions. In the case of the education chapter, the participation of jurists, politicians and educators in the process of writing the Constitution was crucial. Even before the installation of the

Constituent Assembly, groups such as the ABE worked to promote the idea that education was a priority and should be given a central role.

The 1934 Constitution brought forward many institutional innovations in the education field. The National Education Plan and the States' Education Councils did not exist before that. There were no constitutional rules for financing the public education system and regulation for the activities of each federal branch. Most of these innovations came from the ABE's proposal, a civil society organization that had huge impact in drafting this part of the Constitution. The 1934 Constitution, nonetheless, is not a copy of ABE's proposal, because it incorporated suggestions from Itamarati Commission and even some demands from Catholics, such as assuring religious teaching at public schools.

As demonstrated, there was definitely an inspiration on Weimar, but the final result was not a copy of the German Constitution of 1919. To understand Brazilian social constitutionalism, then, it is important to comprehend the influences of foreign experiences, but it is also vital to highlight the activities of groups, associations and organizations that helped shaping Brazil's legal framework. ABE did not replicate the Weimar Constitution text, but the Association was able to do as the Germans: to constitutionalize a series of norms regarding education, including the innovative provision that, for the first time in Brazil, recognized education as a constitutional right.

¹ C.M. Herrera, *Estado, Constituição e direitos sociais*, in «Revista do Tribunal Regional do Trabalho da 15 Região», n. 28, jan/jun 2006, p. 133.

² One example is the cooperative federalism formula inaugurated by the 1934 Constitution that was replicated by the 1988 Constitution. C.S. Duarte, F.S. Mascarenhas, *Bildung Tupiniquim: a Constituição de Weimar e a disciplina constitucional da educação brasileira*, in G. Bercovici (org.), *Cem anos da Constituição de Weimar (1919-2019)*, São Paulo, Editora Quartier Latin, 2019, p. 297.

³ The Brazilian Education Association's archive is located in its office in Rio de Janeiro (Rua México, 11). The following boxes were consulted: Sent mail

from 1925 to 1929 (CE-I); Sent mail from 1930 to 1932 (CE-II); Sent mail from 1933 (CE-III); Incoming mail from 1925 to 1930 (CR-I); Incoming mail from 1931 to 1933 (CR-II); V National Education Conference (A5-17 and AO5-16). Not all archive's documents are indexed. The Directive Council meeting's summaries can be consulted online at <<http://museudaeducacao.org.br>>, September 2020.

⁴ L.A.A. Barbosa, *História constitucional brasileira: mudança constitucional, autoritarismo e democracia no Brasil pós-1964*, Brasília, Câmara dos Deputados, Edições Câmara, 2012.

⁵ L. Foljanty, *Legal Transfers as Processes of Cultural Translation: On the Consequences of a Metaphor*

(October 26, 2015), in «Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft», Heft 2/2015, pp. 89-107 (Der Beitrag ist hier auf Deutsch erschienen: Rechtstransfer als kulturelle Übersetzung. Zur Tragweite einer Metapher); Max Planck Institute for European Legal History Research Paper Series No. 2015-09. Available at SSRN: <<https://ssrn.com/abstract=2682465>>, September 2020.

⁶ C.R.J. Cury, *A constituição de Weimar: Um capítulo para a educação*, in «Educ. Soc.», Campinas, v. 19, n. 63, pp. 83-104, Aug. 1998. Available from <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0101-73301998000200006&lng=en&nrm=iso>, September 2020.

- ⁷ V.L. Cardoso (org.), *À margem da história da República*, introdução de A.V. Filho, Brasília, Editora Universidade de Brasília, 1981.
- ⁸ C. Leão, *Os deveres das novas gerações brasileiras*, in V.L. Cardoso (org.), *À margem da história da República*, introdução de A.V. Filho, Brasília, Editora Universidade de Brasília, 1981, p. 19.
- ⁹ G. Bercovici, *Estado Intervencionista e Constituição Social no Brasil: o silêncio ensurdecedor de um diálogo entre ausentes*, in CP. Souza Neto, D.Sarmiento, G. Binenbojm (orgs.), *Vinte Anos da Constituição Federal de 1988*, Rio de Janeiro, Ed. Lumen Juris, 2009, p. 727.
- ¹⁰ A. Teixeira, *Educação para a democracia: introdução à administração escolar*, Rio de Janeiro, Editora UFRJ, 2007³, p. 59.
- ¹¹ J.A.M. Azevedo, *Elaborando a Constituição Nacional: atas da subcomissão elaboradora do anteprojeto 1932/1933*, Brasília, Senado Federal, Conselho Editorial, 2004.
- ¹² This committee had as members: Afrânio de Melo Franco, former Minister of Justice; Themistocles Cavalcanti, public law specialist; Assis Brasil, former member of the commission that drafted the Electoral Code and Minister of Agriculture; Osvaldo Aranha, Minister of Finance; José Américo de Almeida, Minister of Traffic and Public Works; Carlos Maximiliano, jurist; Antonio Carlos de Andrada, former president of the state of Minas Gerais; Artur Ribeiro; Prudente de Moraes Filho; Agenor Roure; João Mangabeira; Oliveira Vianna, and General Pedro Aurélio de Góis Monteiro. At some point, Artur Ribeiro and Olivera Vianna were replaced by Castro Nunes and Solano da Cunha. In May 1933 they finished the constitution draft.
- ¹³ J. Nagle, *Educação e sociedade na Primeira República*, São Paulo, Editora Universidade de São Paulo, 2009³.
- ¹⁴ Carlos Herrera wrote about the impact of Weimar ideas in Brazil through Pontes de Miranda: "The author of the most important Brazilian scholarly work on the Weimar Constitution, however, provided a more complex evaluation. Pontes de Miranda, possibly the best expert on German doctrine in the Americas, had been arguing for constitutional reform since the 1920s. Two of his works from the 1930s show the extent of the German presence in the Brazilian debate. In *Os fundamentos Actuais do Direito Constitucional* (1932), Pontes de Miranda argued that the right to subsistence and the right to education were at the center of modern constitutionalism". C. Herrera, *Weimar, the South American Way*, in «Rechtsgeschichte – Legal History», Rg 27, 2019, p. 190.
- ¹⁵ *Jornal Diário Nacional*, 4 de dezembro de 1928, Ano II, n. 436. São Paulo, p. 1.
- ¹⁶ F. Azevedo et al., *Manifestos dos pioneiros da Educação Nova (1932) e dos educadores (1959)*, Recife, Fundação Joaquim Nabuco, Editora Massangana, 2010.
- ¹⁷ The Brazilian Senate published the final draft presented by the Itamarati Commission in R. Polletti (org.), 1934. *Coleção Constituições Brasileiras*, Brasília, Senado Federal, Subsecretaria de edições técnicas, v. 3, 2012³, pp. 53-94.
- ¹⁸ The first and the second ABE's drafts were part of a book published by the Association in 1934. ABE *O problema educacional e a nova Constituição*, São Paulo, Companhia Editora Nacional, 1934.
- ¹⁹ J.S.B. Horta, *A Constituinte de 1934: comentários*, in O. Fávero, (org.), *A educação nas Constituintes Brasileiras 1823-1988*, Campinas-SP, Autores Associados, 2001³; M.B.M. da Rocha, *Tradição e modernidade na Educação: o processo constituinte de 1933-34*, in Fávero, *A educação nas Constituintes Brasileiras 1823-1988*, cit.,
- ²⁰ A. Arboleya, *Educação nos anos 1930 e os dilemas da modernização no Brasil*, PhD dissertation presented at the Programa de Pós-Graduação em Sociologia da Universidade Federal do Paraná. Supervisor: Prof. Dr. A. Dantas Trindade, Curitiba, Paraná, 2017.
- ²¹ Ivi, p. 101.
- ²² L.M. Galvão, *Constituição, educação e democracia: a Universidade do Distrito Federal (1935-1939) e as transformações da Era Vargas*, PhD dissertation - Universidade de Brasília (UnB). Supervisor: Prof. Dr. C. Paixão. Brasília, 2017, p. 30.
- ²³ MB.M. Rocha, *Tradição e modernidade na Educação: o processo constituinte de 1933-34*, in Fávero, *A educação nas Constituintes Brasileiras 1823-1988*, cit., p. 125.
- ²⁴ J.S.B. Horta, *O hino, o sermão e a ordem do dia: regime autoritário e a educação no Brasil (1930-1945)*, Campinas, SP: Autores Associados, 2012², p. 100.
- ²⁵ J. A. M. Azevedo, *Elaborando a Constituição Nacional: atas da subcomissão elaboradora do anteprojeto 1932/1933*, Brasília, Senado Federal, Conselho Editorial, 2004, p. 56, p. 388, p. 820.
- ²⁶ B. Hochheim, *Federalismo, Centralização e Intervenção Estatal: Os debates na Comissão do Itamaraty (1932-1933)*, Dissertation - Universidade de Brasília. Supervisor: A. Cerqueira-Leite Seelaender, Brasília, 2017, p. 310.
- ²⁷ A. Arboleya, *Educação nos anos 1930 e os dilemas da modernização no Brasil*, cit., p. 110.
- ²⁸ A. Teixeira, *Educação para a democracia*, cit., p. 58.