

## Homeschooling in Brazil: A Matter of Rights or a Political Debate?

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### ABSTRACT

This article presents an analysis of the right to education in Brazil in light of the growing number of Brazilian families practicing homeschooling. The debate is recent in Brazil. Here we present an analysis of international literature on homeschooling, Brazilian literature on the right to education, and an appraisal of lawsuits against Brazilian families for teaching their children at home. In light of truancy regulations and the evolution of a right to education in Brazil, homeschooling creates legal and political challenges.

### KEYWORDS

Brazilian education;  
homeschooling in Brazil;  
right to education

In the midst of the many challenges facing the Brazilian educational system regarding equity and outcomes, there is little concern about the 3,200 Brazilian families<sup>1</sup> who choose to homeschool their children. Homeschooling in Brazil is a silently growing phenomenon, little analyzed. This growth points to flaws in the Brazilian school system. Further, the movement calls for changes in the national legislation to regulate the right to educate children at home, based on the quality of education homeschool families provide.

Thus, this article presents considerations resulting from a review of the national and international literature on homeschooling and on the right to education for all. The reflections are also drawn from interviews with Brazilian families who have been subjected to lawsuits due to their decision to educate their children at home. Such occurrences are increasing the pressure for change in Brazilian legislation aimed at the authorization and the regulation of home education.

### Homeschooling in Brazil: Challenges to the right to education

Ever since 1930, the Brazilian educational system has expanded slowly but significantly, so that by the end of the 20th century, compulsory primary

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education was practically universal. These historic changes drove modifications in legislation. It is important to point out the place education occupies in the Brazilian Federal Constitution of 1988 (Constitution of the Federative Republic of Brazil, 1988), as well as its role assigned in the context of a democratic State of law.

The Brazilian Federal Constitution states that education is a right for all and the shared responsibility of the State and the Family. A recent constitutional amendment n. 59/2009, made education compulsory for the ages of 4–17 covering kindergarten, elementary, and high school. In addition, the National Education Bases and Guidelines Law No. 9394/96 (National Education Bases and Guidelines Law, 1996) and the Statute of Children and Adolescents (Statute of Children and Adolescents, 1990). stipulate that it is the duty of parents to enroll their children in a school during the aforementioned ages, as well as the duty of the State to provide school placement for every child and to supervise compulsory attendance.<sup>2</sup> Thus, the prevailing view regarding the right to education in Brazil is assumed to be school attendance. This stands out in the Federal Constitution of 1988 which highlights the relevance given to the rights of each person as a citizen, while being an individual pertaining to a political body; this being a republican theme emphasizing the supremacy of the common good and requires the formation and participation of active citizens in society (Ranieri, 2009, p. 196).

According to Duarte (2004, p. 115), the recognition of the subjective public right to compulsory education as a *social* right implies admitting that its purpose is not simply individualized, but the fulfillment of public policy, since it extends to all: “After all, education is a foundational dimension of citizenship, and such a principle is essential for policies aimed at the participation of all in the social and political arenas (Cury, 2002, p. 246).”

Although this is the majority view, it is not unanimous. Given international research on the practice of homeschooling, and the numerous problems faced by the Brazilian educational system, with low academic results in national and international assessments,<sup>3</sup> many question the school as the only (or best) institution to promote education for citizenship, via the provision of healthy socialization and the teaching of quality content. Also for these reasons the number of Brazilian families educating their children at home is rising.

Regarding the court system, the first trial involving Brazilian homeschooling was carried out by the *Superior Tribunal de Justiça* (Supreme Court of Brazil) in 2001, with court members debating the constitutionality of such a practice under the Federal Constitution of 1988. The final decision denied parents the right to homeschool. The Court’s arguments stressed the necessity of education as not only for the acquisition of academic knowledge, but

also for the socialization and preparation for citizenship, considered essential for the continuity of a democratic society (Warrant of Security, 2009).

After this decision, other families were reported to the *Ministério Público* (Brazil's Public Attorney Office) for having removed their children from school. Thus began judicial proceedings regarding the possibility of "intellectual abandonment." Although most of these Brazilian families have received decisions prohibiting the continuation of homeschooling, in more recent cases the main arguments related to the role of the school for socialization and preparation for citizenship are no longer a major issue, giving way to another concern: the potential for inferior academic results of students studying at home, as well as their inability to access higher levels of education as a result. In this debate, permission given by a local magistrate for a Brazilian family in 2009 to continue homeschooling stands out, because the children were assessed by the government and the academic results were positive (Barbosa, 2013).

Regarding the courts, there is no consolidation of jurisprudence on the subject; thus, we face different decisions in local courts (Barbosa, 2013). However, in 2015, the Supreme Court recognized the general repercussions on the theme of the homeschooling in Brazil. Such analysis and judgement on the constitutionality of the practice of homeschooling in the country has not yet been held, and is anxiously awaited by the families that already practice homeschooling even without legalization and regulation. Regarding the Legislature, bills and proposed constitutional amendments have been submitted to the House of Representatives since 1996, with the goal of legalizing and regulating homeschooling in Brazil. So far these bills have been denied, demonstrating the position in favor of the school as an institution that promotes socialization between different individuals, and the fulfillment of the constitutional objective of training for citizenship, along with academic school subjects. On the other hand, the authors of this article intend to associate homeschooling legalization with modernity (given international homeschooling experiences), and relate it to the construction of a truly democratic society with parental freedom of choice (Barbosa, 2012).

We now highlight the importance of evaluating the issue in light of Brazil's educational history and the associated legal changes arising from it. Homeschooling in Brazil has its roots in the education of the 19th century elite, predating much of the Brazilian educational system. There is also a common feature in homeschooling in Brazil in the past and in the present which Vieira (2012, p. 26) called the "influence of foreign customs in the acculturation of the modality." If, in the past, homeschooling was practiced in Brazil as the result of the influence of French and English customs from the nobility and royalty (Vasconcelos, 2005), "today's middle-class families who homeschool their children are inspired especially by North American cases," and those that have adopted it for a longer period

(since the mid-90s), in general, became aware of the practice through evangelical religious leaders from the United States visiting Brazil or Americans who immigrated to Brazil (Vieira, 2012, p. 26).

The very movement for the interpretation of national laws in the light of the International Human Rights Treaties, which underscore the freedom of parental choice in relation to child education, also reveals a “lesson” learned from the experience lived by the Americans. Such experiences create the possibility of claiming the exercise of the rights guaranteed on an international level, with the challenge to adapt them to our legislation and national context, with emphasis on the justification parents’ choices be related to pursuit of the child’s best interest (according to the Convention on the Rights of the Child).

However, this legislation also implies a subjective decision, both for the parents who claim “their right” to choose their children’s education, and for legal practitioners who judge in light of the objectives foreseen constitutionally on education. Such a debate, which on an international level leads to endless discussion on ownership of rights, in Brazil, rests on the belief that the child is an individual with the right to education, especially based on the infraconstitutional tools as the Statute of Children and Adolescents and the Civil Code.

In this context, the broad refusal against homeschooling legalization and regulation (referred to in Brazil as standardization) on the grounds that the practice is a mere incorporation of a North American movement, is based upon the differences between these countries with regard to their constitutions, educational systems, and social and economic inequalities.

It is never too much to remember that the great problems of the Brazilian education system have originated from a society torn by gross inequalities, which structure increasingly excludes and marginalizes a number of citizens. Meanwhile, the North Americans have the luxury of claiming “rights,” defending “freedoms,” opposing the “all for the social,” to the “all for the individual.” (Boudens, 2002, p. 21)

After the Federal Constitution of 1988, the majority understanding that this practice is no longer permitted in Brazil contributed to the emphasis on the role of the State in the imposition of compulsory education for the population, and limited the debate on freedom of education to the possibility of opening private schools, also supervised by the State. Thus, if education is compulsory, parents have the “freedom” to “choose” between registering children in public or private schools, without homeschooling as an option.

However, faced with new and increasingly frequent cases of families who opt for homeschooling in Brazil, the need to analyze the possibility of its legalization and regulation exists. For this to occur, an alteration of the

Federal Constitution is necessary, at least in article 208, incision I, paragraph 3, which deals with school attendance.

### **Homeschooling in Brazil: A political debate**

Besides legal challenges in the current regulation of homeschooling in Brazil, there are conflicts of a political nature. The first issue arises from the practical nature and purpose of such regulation, raising questions not only as to the “how,” but also as to the population’s identification to be served this “right.” The choice and practice of homeschooling is not by all, but limited to those able to perform it.

Even in North America, where choice becomes increasingly popular and accepted, with homeschooling as an educational option, “choice” is not real for everyone:

The belief that a parent will always choose the most appropriate type of education for their child does not take into consideration that the choice is not freely available to all parents. The notion of parental choice ignores several common barriers

such as time, money, and other interests (Fineman, 2009, p. 13). In other words, parents with fewer resources have fewer choices. In Brazil, social and economic inequalities exacerbate this, with very few having time, resources and the ability to maintain a family member out of the labor market who exclusively focuses on the education of children at home. Furthermore, in Brazil, access to cultural opportunities and educational and sporting organizations is scarce, limiting homeschoolers ability to socialize outside the family circle or learn the required content.

For most Brazilian children, compulsory education represents an achievement—assuring the right to an education and protection from socioeconomic problems that precluded access to school (such as child labor). Thus, to draw out the discussion of compulsory schooling versus homeschooling in Brazil means recognizing on the one hand, the need to guarantee the individual rights of families and, on the other, the undeniable advances of access to school for previously excluded social layers brought to the democratization process of education in Brazil (Beisiegel, 2005).

Thus, by all indications, the regulation of homeschooling in Brazil should be in character with that of exception. To this end, legal norms explaining this exceptionality are required answering the objective questions: Who can actually practice homeschooling? How will we assess whether families are able to accomplish homeschooling? Will substantiation for its implementation involve requirements for the parents’ education or conditions? When regulated as a form of education, will it be possible for families to request public subsidies for homeschooling?

Since the Brazilian school system has serious issues, many now emphasize individual needs (an increasing feature of modernity), which for some means homeschooling or private schooling. Boudens (2002, p. 24) understands homeschooling as a reaction to this and questions the parents' choice to withdraw their children from school:

As if the Brazilian public education problems were other people's children's problems ... Why not help solve them, participating in collegiates, assemblies and councils, valuing the democratization of public education management, and thus rescuing the old quality standard, which is of everyone's interest?

Such criticisms enunciate concern regarding the (non)commitment of some individuals from improving the public education system. But such concerns should not be limited to parents opting for homeschooling, but also to parents who choose private schools for their children, as well as the freedom of the market's action in the provision of private schools in coexistence with the State public schools, as provided constitutionally: "If they [parents] are given the right to choose between public and private schools, why are they deprived from the right to educate their own children, submitting this education to official evaluations of sufficiency?" (Warrant of Security, 2009, p. 40).

The parent's search for quality education for their children and the claim for homeschooling in Brazil provides us the opportunity to inquire, after centuries of recognizing the school as a teaching place, if indeed this institution is the ideal place to educate active citizens with autonomy to meet their needs as individuals and participate in the community for maintaining a democratic society and seeking the quality of the exercise of that democracy.

From international experiences and research on homeschooling, the school institution does not have the monopoly on the socialization of children and their education to citizenship (an argument commonly found in opposition to homeschooling in Brazil). Studies show that, in addition to a study routine that leads to good academic results (Van Pelt, Allison, & Allison, 2009), children that homeschool can have a daily routine of activities and participate in collective schedules that put them in social interaction with other people, of different ages, social classes, and religious choices, contrary to the social isolation stereotype commonly portrayed, particularly as a result of religious decisions by those families. Similarly, some families who homeschool their children have pursued a more active participation in the community through volunteer work and training for greater political participation in society (Arai, 1999).

Increased homeschooling in Brazil results in various currents (not necessarily in opposition, nor in competition with each other) such as: seeking reform in the educational institutions; the acceptance of homeschooling,

therefore legalizing it; and the total rejection of the idea of homeschooling or even of school.

It must be recognized that, in standardizing homeschooling in Brazil, policies that regulate it are necessary, thus raising a series of actions and benefits from the State:

(...) one cannot forget that all regulations require monitoring, control and supervision. Thus, the authorization of a homeschooling license, the registration of homeschooling “teachers,” the approval of educational activity programs, the adaptation of homeschooling to guidelines and official curricula, the verification of “school” performance in establishing the regular network and other rules would require a considerable investment in the creation and maintenance of specific bureaucratic structures. (Boudens, 2002, p. 14)

In light of this, there are criticisms regarding the investment of public resources to attend education in the private sector which could further advantage the privileged. From this perspective, the worsening situation would occur if the families who opt for homeschooling started to apply for public subsidies (either in terms of financial aid or services and materials), as in some countries.

With the State financing the education of all and at the same time ensuring the “right of parents” to choose the education of their children, the State could finance the religious beliefs of families, causing extensive (and recurring) debate in the Brazilian education system on matters concerning State secularism and the transfers of public resources to the private sphere.

This concern is based on the data indicating the relatively large percentage of highly religious parents choosing homeschooling in North America and incipient data on families in Brazil (Vieira, 2012) showing similar patterns, despite the growing diversity in homeschoolers as well as their varied motivations (Rothermel, 2003). This finding encourages debate on the implications of the use of financial resources from public coffers to support the choice of some parents for the religious education for their children, and also the possibility of legalizing the right of fundamentalist families opting for homeschooling with the objective of socially isolating children from different views of their religion, thus hampering their formation as individuals and citizens in a community.

According to the challenges listed in this article and the arguments and their implications, it appears that both the legalization as the implementation of public policies for homeschooling will require from the State a lot of effort; thus, regulation of homeschooling may take time to evolve. This process has already begun, whether due to the growing number of families who have been brought to the court system, either by direct attempts to regulate homeschooling via amendment proposals or bills presented to the legislative



power, or even through homeschooling advocacy (especially television or newspaper reports and adoption of a defense association of their interest).

## Final remarks

This analysis shows the need for an agenda of research. Brazilian homeschooling has various dimensions in terms of rights, public policies, society, and values and morals, thus simply presenting a polarized position as favorable or contrary is too simplistic. The debate on homeschooling in Brazil thus “... will not be, therefore legal, but political in nature” (Boudens, 2002, p. 15), especially political positioning on the educational challenges that the country has. Politically, the quest of parents who homeschool their children for a quality of education is recognized as valid. In this sense, the position in favor of the normalization of homeschooling as an individual right of choice of families is evaluated as acceptable, due to the existence of choice between public or private schools.

However, many advocate concentrating efforts and resources (by the State and society) for educational system reform, aimed at quality education for all. If the arguments in favor of an education of compulsory frequency in Brazil, understanding the right to education as a fundamental requirement for the acquisition of other rights and life in society, are related to the importance of socialization and training for citizenship offered by the educational institution, it is of vital importance to promote changes towards a school that includes dimensions and objectives beyond simple academic achievement of students, and that offer conditions for holding such an achievement.

## Notes

1. Data announced by Associação Nacional de Educação Domiciliar—ANED (National Association for Home Education); as the practice of homeschooling is not yet regulated in Brazil, there is no official data showing the quantity and characteristics of the population that adheres to this modality of education.
2. Highlighting Federal Constitution article 208, I, § 3, which states that: “It is Government responsibility to register students in elementary school, record their attendance and watch over, along with parents or guardians, their *attendance to school*” (emphasis added); National Education Bases and Guidelines Law No. 9394/96, article 6 and Statute of Children and Adolescents, article 55, which establish the parents’ duty to enroll their children at school as from the age of 4 (four).
3. In 2015, Brazil reached the 60th place in the Programme for International Student Assessment (PISA), in a list of 76 countries.



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## References

- Arai, A. B. (1999). Homeschooling and the redefinition of citizenship. *Education Policy Analysis Archives*, 7(27), 1–15. doi:[10.14507/epaa.v7n27.1999](https://doi.org/10.14507/epaa.v7n27.1999)
- Barbosa, L. M. R. (2012). Proposals aimed at legalizing home schooling in Brazil. *Revista Do Direito Educacional*, 5(Year 3), 41–58.
- Barbosa, L. M. R. (2013). *Homeschooling in Brazil: A Challenge to School?* (Doctorate thesis). Universidade de São Paulo, São Paulo, Brazil.
- Beisiegel, R. (2005). *Quality of education in public schools*. Brasília, Brazil: Líber Livro.
- Boudens, E. (2002). *Home education in Brazil*. Brasília, Brazil: Câmara dos Deputados.
- Constitution of the Federative Republic of Brazil. (1988).
- Cury, C. R. J. (2002, July). Right to education: Right to equality, right to difference. *Cadernos De Pesquisa*, 116, 245–252.
- Duarte, C. S. (2004). The public rights and educational policies. *São Paulo Em Perspectiva*, 18 (2), 113–118.
- Fineman, M. A. (2009). *Taking children's interests seriously* (pp. 229–237). Rochester, NY: Social Science Research Network.
- National Education Bases and Guidelines Law No. 939 (Brazil). (1996).
- Ranieri, N. B. S. (2009). *The Democratic rule-of-law state and the meaning of personal preparing for citizenship through education* (Post doctorate), Law College, University of São Paulo, São Paulo, Brazil.
- Rothermel, P. (2003). Can we classify motives for home education? *Evaluation & Research in Education*, 17(issue 2–3), 74–89. doi:[10.1080/09500790308668293](https://doi.org/10.1080/09500790308668293)
- Statute of Children and Adolescents, Law n. 8.069 (Brazil). (1990).
- Van Pelt, D. A. N., Allison, P. A., & Allison, D. J. (2009). *Fifteen years later: Home-educated Canadian adults*. London, Ontario, Canada: Canadian Centre for Home Education.
- Vasconcelos, M. C. (2005). *The house and its masters: The education in Brazil on the 1800*. Rio de Janeiro, Brazil: Gryphus.
- Vieira, A. D. H. P. (2012). “School? No, thank you”: *A portrait of the homeschooling in Brazil* (Undergraduate monography). University of Brasília, Brasília, Brazil.
- Warrant of Security n. 7.407 - DF (2001/0022843-7). Superior Tribunal de Justiça [Supreme Court of Brazil].

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