

## A Right to Learn, A Right to Belong: Education's Impact on Immigrant Citizenship in Brazil<sup>1</sup>

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### Abstract

*The Law 13.445, from May 24, 2017, postulated Brazilian migration policy and presents equal opportunities for the nation's citizens and migrants. The article 4, X, establishes the right to public education, prohibiting discrimination based on nationality or migratory status. According to the Federal Constitution (1988), education has three purposes: fostering the complete development of the individual, preparing them for active citizenship, and equipping them with skills for employment. This article aims to explore how these three purposes consist in provide quality education for immigrants, thereby strengthening their citizenship in Brazil. The methodology involved conducting a bibliographic review of relevant literature and analyzing relevant legislation.*

**Keywords:** *Immigration; Right to Education; Citizenship; Migration Policy; Quality Education*

### Introduction

Nationality defines one's eligibility to a nation's rights, although it also acts a criterion for discrimination and the deprivation of rights. There are countries where nationality is assigned based on the criterion of bloodline (*ius sanguinis*), and others where the chosen criterion is territorial (*ius soli*) (Silva, 2021).

The former, the bloodline criterion, is based on heredity — which means nationality is granted to the people that have ancestors with that country's nationality. On the other hand, the territorial criterion is based on the citizen's birthplace. That is, nationality is granted only if they were born in the country's territory, which is the case in Brazil. We must highlight that both aforementioned criteria encompass exceptions and complements according to the legislation of the respective country (Silva, 2021).

Having one's nationality be recognized by a country marks the premise that their fundamental rights and freedoms will be guaranteed by the State. The National Constitution of 1988 institutes the ways of granting Brazilian nationality in Chapter III, articles 12 and 13 (Brasil, 1988). In this scenario, the State grants Brazilian nationality to the citizens that suit the constitutional criteria. However, it also excludes the ones who do not fulfill the established

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criteria in the constitutional text. Thus, people that do not fit the description set on Chapter III will not be considered national citizens and, therefore, immigrants.

According to Charleaux (2022), the division between “us” and “them” is delimited by identification ties. Such ties will constitute the groups of a given society, excluding seeming strangers or foreigners. In his work, the author draws an analogy with a bus. The vehicle transports multiple people that don’t know each other, but are headed to the same destination. Then, the vehicle has to stop because another bus was parked in the lane due to a mechanical failure. Thus, the passengers of the broken bus need to enter the other vehicle so they can travel as well (Charleaux, 2022).

The passengers that were already in the bus notice the new batch of people that enter through the door, changing the established dynamic of the group. To the eyes of those who were already seated, the new passengers are strangers, agitated and disturbing. The ones who just got there are relieved. In that way, the bus is divided between those who were already there and the newcomers. The new dynamic in the bus can cause discomfort in the original passengers, facilitating “a type of mutual solidarity that tries to defend the rights of those who were already aboard, emphasizing the rejection of the newcomers” (Charleaux, 2022: 28 - free translation by the author<sup>3</sup>)

Aiming to regulate the arrival of the new group, States create frontiers and barriers. “It is up to the immigrant to prove their right to migration. After all, this is what is asked of them before granting a visa. And, depending on the reason they claim, the doors that were initially closed are opened. Or not” (Charleaux, 2022: 30 - free translation by the author<sup>4</sup>). The act of migrating in order to meet one’s needs all around the world should be an absolute right, but it becomes a bureaucratic, legal and political activity (Charleaux, 2022).

According to Faria (2015), the contemporary world is currently going through a contradictory situation, because, even though individual mobility is facilitated by the evolution of transportation and broad access to information, the regime of border control and advanced techniques prevent migrants from traveling.

Such travels occur due to two different factors: pull factors, meaning that migrants search for better living conditions in the destination countries related to jobs, salaries and economic mobility; or push factors, when migrants are forced to leave their country of origin due to natural disasters, armed conflicts and persecution of any kind. Regardless of the reason that led one to migrate, States must welcome these migrants in order to guarantee their human rights in the destination country (Faria, 2015).

The right to education is one of the human rights recognized in the Brazilian legal system, and it should be guaranteed to migrants as well. According to the Federal Constitution (1988), education has three purposes: fostering the complete development of the individual, preparing them for active citizenship, and equipping them with skills for employment. This article aims

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<sup>3</sup> Original text in portuguese: “uma espécie de solidariedade mútua que tenta defender os direitos do que já estavam a bordo, realçando o rechaço aos recém-chegados” (Charleaux, 2022: 28).

<sup>4</sup> Original text in portuguese: “Cabe ao imigrante provar que tem o direito a migrar. É isso, afinal, que lhe pedem antes da concessão de um visto. E, a depender da razão alegada por ele, as portas, que são em princípio fechadas, se abrem. Ou não” (Charleaux, 2022: 30).



to explore how these three purposes consist in provide quality education for immigrants, thereby strengthening their citizenship in Brazil.

To achieve this goal, a qualitative methodological approach was adopted (BOGDAN; BIKLEN, 1994). The methodology involved conducting a bibliographic review of relevant literature and analyzing relevant legislation. The bibliographic review focused on articles and books by authors who have written about keywords such as immigration, the right to education, citizenship, migration policy, and quality education. Moreover, the authors who specifically addressed the three purposes of education outlined in the Constitution were selected, i.e., the full development of the person, preparation for the exercise of citizenship, and qualification for work. The document analysis, on the other hand, was based on normative documents in the Brazilian legal system and in the international system that regulates the rights of immigrants.

### **The right to education of immigrants provided in the Brazilian migration policy**

Mármora (2010) writes about models of migration governance proposed by States, which vary according to the State's perspective on migration flows. The author highlights that these models are not implemented in a pure form, but rather correspond to the prevailing perspectives in States' migration policies.

The “modelo de la securitización”, or “securitization model”, in free translation to English, is based on the national, social, cultural and work security of the destination country. In this model, the immigrant is seen as a threat and their rights are limited by their documentation status and nationality. According to the author, this model presents the bad technologies of border and immigrant residence control (Mármora, 2010). An example of it is the Foreigner Statute, Law 6.815, from August 19, 1980, that aimed to protect the national interest and to define the legal situation of foreigners in Brazil (Brasil, 1980).

Then, Mármora (2010) presents the “modelo de los beneficios compartidos”, or “model of shared benefits”, in free translation to English, which proposes that circular migrations can provide benefits to the immigrant's country of origin as well as to the destination country. This model requires deals between the countries in order to create equal opportunities in the market of the receiving countries (Mármora, 2010).

The “modelo del desarrollo para las migraciones”, or “model of human development for migration”, in free translation to English, is based on a migration policy centered around immigrants rights. This model ensures free movement, residency, returning and social justice for immigrants. Moreover, it considers the immigrant's undocumented situation as an administrative transgression, not a felony (Mármora, 2010). An example of this model in Brazil is the Migration Law, Law 13.445, of May 24, 2017.

In Brazil, Law 6.815, of August 19, 1980, known as the “Foreigner Statute”, was edited during the Military Dictatorship (1964–1985) aiming to protect the country's interests and national sovereignty. It did not establish fundamental rights and freedoms to immigrants in a broad sense, and instead limited itself to norms and guidelines established by the State. The right to education is an example of this, which required proper registration with the Ministry of Justice, based on Article 48 (Brasil, 1980).

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The Statute (1980) was not in accordance with the international normative documents of human rights. In the United Nations (UN), the 1948 Universal Declaration of Human Rights (UDHR) postulated the universality of human rights and prohibited any type of discrimination (ONU, 1948).

In addition to the Statute (1980) contradicting human rights documents, the norm was also in disagreement with the 1988 National Constitution, which presented a long list of fundamental rights and freedoms to all, without any kind of distinction, during the country's redemocratization period.

Article 5, caput, of the 1988 Federal Constitution is an example of the State's perspective when establishing the list of rights and safeguards of Brazilian citizens and foreigners in Brazil, without any kind of distinction. The rights guaranteed through Article 5 must be considered universal rights because, in spite of the caput of Article 5 apparently including only foreigners residing in the country,

for decades, doctrine and jurisprudence have sought to mitigate this distinction and understood that the rights guaranteed through Article 5 are also extended to foreigners who do not reside in Brazil (Silva, 2021: 108 - free translation by the author<sup>5</sup>).

Rule of Law postulates the right to qualified access to social assets and equality before the law. Equality is a principle of citizenship and republicanism. Equality aims for non-discrimination and fights to eliminate bloodline, ethnic and nationality privileges, for example; therefore decreasing discriminatory differences (Cury, 2002).

Among the fundamental human rights postulated by the Federal Constitution (1988) are the social rights, such as education, healthcare, food, labor, housing, transport, leisure, safety, social security, the protection of maternity and childhood, as well as aid to those in need (Brasil, 1988).

The State is responsible for guaranteeing migrants rights, but the nature of this duty is not negative. It is not enough for the State to remain inert in the face of its responsibility, or for the State to refrain from violating human rights norms. The State's duty is to actively work on the implementation of public policies that aim to effectively guarantee citizens rights (Duarte, 2004).

Regarding the migration issue, taking globalization and the intensification of migration flows into account, societies and their respective legislations must adapt to guarantee migrants rights in order to protect them from omissions, arbitrariness and negligence. In that perspective, the Brazilian legal system needed a new migration policy, which was implemented with the advent of Law 13.445, from May 24, 2017.

The Migration Law (2017) leaned towards the protection of migrants human rights and changed the Brazilian Migration Policy in order to grant fundamental rights and freedoms. In Article 3, the norm institutes the migrant's equal and free access to education. However, the norm does not present the guidelines of the right to education, nor does it extensively explore the subject. It only institutes the right to public education, prohibiting the discrimination

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<sup>5</sup> Original text in portuguese: "há décadas, a doutrina e a jurisprudência têm procurado mitigar essa distinção e compreendido que os direitos garantidos elo art. 5º são também extensíveis aos estrangeiros não residentes no Brasil" (Silva, 2021: 108).



based on nationality and migration status (Brasil, 2017). Therefore, in order to further our discussion about the right to education, we must consult normative human rights documents and the Federal Constitution (1988).

In the sphere of the United Nations (UN), some documents institute the right to education, such as the Universal Declaration of Human Rights (1948); Convention Against Discrimination in Education (1960); International Covenant on Economic, Social and Cultural Rights (1966); Convention on the Rights of the Child (1989); and World Declaration on Education for All: Framework for Action to Meet Basic Learning Needs (1990). In general, the normative documents institute that education is a human right that can be claimed by any person, without any kind of discrimination. They postulate the universalization of basic education, being free and mandatory, with the responsibility falling on member States.

In domestic law, the Federal Constitution (1988) also institutes, among the purposes of the right to education, individual complete development, preparing for the practices of citizenship and becoming qualified for work. And it is not enough to only guarantee access to the educational institution; it is necessary to guarantee quality education. The guarantee of the quality standard is instituted in Article 206, item VII, of the Federal Constitution (1988). To Oliveira and Araujo (2005), the establishment of quality standards is a tool that seeks equality in the implementation of the right to education.

According to Law 9.294, from December 20, 1996, mandatory and free basic education for people between 4 and 17 years old is a State duty, being sectioned into preschool, elementary school and high school (Brasil, 1996). As exposed by Oliveira (2007), the right to education means it must be compulsory and free.

The right to education encompasses everyone and implies a dual duty, since the State must guarantee its enforcement and the legal guardians of children and teenagers must provide it, being responsible for enrollment and attendance (Oliveira, 2007).

Being free of charge is a requisite for the State to demand the mandatory enrollment of all; otherwise, the obligation would be a burden for the families (Oliveira, 2007). It has been a legal precept since the 1934 Constitution, maintained in the 1988 Federal Constitution, in Article 206, item IV, *in verbis*: “free public education in official establishments” (Brasil, 1988 - free translation by the author<sup>6</sup>), that is, being free of charge is a guarantee for all school years.

It is important to highlight that the right to education encompasses school-age immigrant citizens as well as immigrants of any age group that did not have access to their right in their country of origin and, therefore, can claim it in Brazil. The right to education is a subjective public right, that is, citizens can demand it, based on Article 208, §1, of the Federal Constitution (1988).

Based on the constitutional text, this article aims to understand how the three purposes — complete development of the immigrant; preparing for the practices of citizenship; and becoming qualified for work — build quality education for immigrants and thus strengthen their citizenship. The article has been divided into the following sections: complete development of the immigrant; preparing for the practices of citizenship; and becoming qualified for work.

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<sup>6</sup>Original text in portuguese: “gratuidade do ensino público nos estabelecimentos oficiais” (Brasil, 1988).

### **Complete development of the immigrant**

The student is not restricted to the school's formal teaching-learning process. The process happens in the multiple spaces they frequent, through activities and the exchange of experiences.

Therefore, education is multidimensional and involves the student's spheres beyond the traditional content of the educational institution. Cury (2002) writes:

The magnitude of education is recognized as such because it involves all dimensions of the human being: *singulus*, *civis* and *socius*. *Singulus*, because it belongs to an individual, *civis*, because it involves the participation in the community's destiny, and *socius* because it means basic equality among all men (Cury, 2002: 254 – original highlights, free translation by the author<sup>7</sup>).

According to the previous passage, education enables the development of the immigrant's mind and body in an individual perspective. It also develops their autonomy and critical capacity so they can better engage with the school's and society's decision-making spaces. Lastly, it enables immigrants to recognize themselves as subjects with rights, members of a society, in the social perspective.

In that way, students communicate and interact with each other, building knowledge. The cultural convergence between local and immigrant students enables the experiences of exchange to overcome borders and develop them in their different dimensions: mind and body, the social, emotional and political.

### **Preparing for the practices of citizenship**

In Freire's words (2001):

to be a citizen means to be an individual that possesses civic and political rights under a State, and citizenship is related to the condition of being a citizen, that is, taking advantage of the rights and the right to have the duties of a citizen (p. 25 - free translation by the author<sup>8</sup>).

According to Canivez (1991), the constitutional State, also known as Rule of Law, institutes equality before the law and also assigns a citizenship status, because it guarantees free access to justice in case there is an omission on the part of the State regarding the law, and also guarantees public duties, whether in plebiscites or in representative elections (Canivez, 1991).

It is important to highlight that Brazil follows a republican regime and that popular sovereignty is practiced through universal suffrage and the secret and direct vote, with an equal weight for everyone. However, as a general rule, Article 14, §2, states that foreigners cannot register as voters, with some legal exceptions.

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<sup>7</sup> Original text in portuguese: “A magnitude da educação é assim reconhecida por envolver todas as dimensões do ser humano: o *singulus*, o *civis*, e *socius*. O *singulus*, por pertencer ao indivíduo como tal, o *civis*, por envolver a participação nos destinos de sua comunidade, e *socius*, por significar a igualdade básica entre todos os homens” (Cury, 2002: 254 – original highlights).

<sup>8</sup> Original text in portuguese: “cidadão significa indivíduo no gozo dos direitos civis e políticos de um Estado e que cidadania tem que ver com a condição de cidadão, quer dizer, com o uso dos direitos e o direito de ter deveres de cidadão” (Freire, 2001: 25).



Despite the immigrant's absence in representative elections, as a general rule, the active participation in the city's subjects of discussion can be a part of the immigrant's daily life, such as in the school community. According to Canivez (1991), the school institutes citizenship.

The democratic school culture is strengthened by the equality of all and by the active participation of social actors in decision-making processes. Education geared towards citizenship is a process inseparable from the concept of quality public schools, and it is fostered by democratic management.

Democratic management requires the participation of the school's community, generating debates and dialogues about the institution's demands. The school community is comprised of collaborators, educators, professionals that are part of the team, management, families and students. Topics are discussed by members, such as the end of authoritarianism, school resources, teacher training, among others. The community's involvement in building the reality of the school is a form of civic participation (Paro, 2000).

Freire (2015) writes that education geared towards citizenship must raise student awareness so that they can transform the community and themselves, changing social reality. Education is political, given that it is a human experience and a way to intervene in the world.

Educational practices must allow the immigrant student to be a

social and historical being, a thinking, talking, transformative, creative, dream-achieving being that is able to feel anger because they are also able to love. It is to assume oneself as a subject because one is also able to recognize oneself as an object (Freire, 2015: 42 - free translation by the author<sup>9</sup>)

This self-awareness as a historical subject does not exclude the other, but it is fostered insofar as the subjects recognize themselves in their diversity. In order to create an inclusive and respectful learning environment, teachers must honor the individual traits of each student and the knowledge embedded in their community. This means acknowledging the importance of cultural diversity and historical legacies specific to a student's place of origin, particularly when working with immigrant populations. Such recognition should be reflected in instructional practices.

An educational project that enables emancipation and social inclusion presupposes the active participation of the subjects in the process. Teaching Portuguese for immigrants as a second language implies the participation of immigrants in decision-making spaces and debates in society. Immigrant integration in its totality requires knowing the Portuguese language so that the immigrant can understand and participate actively.

Resolution 1, from November 13, 2020, institutes, in Article 6, item VI, "the offering of classes of Portuguese as a second language, seeking the social integration of the ones who have little to no knowledge of the Portuguese language" (Brasil, 2020 - free translation by the author<sup>10</sup>). Knowing how to speak the language of the destination country bridges the cultural

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<sup>9</sup> Original text in portuguese: "ser social e histórico, como ser pensante, comunicante, transformador, criador, realizador de sonhos, capaz de ter raiva porque capaz de amar. Assumir-se como sujeito porque capaz de reconhecer-se como objeto" (Freire, 2015: 42).

<sup>10</sup> Original text in portuguese: "a oferta de ensino de português como língua de acolhimento, visando a inserção social àqueles que detiverem pouco ou nenhum conhecimento da língua portuguesa" (Brasil, 2020).

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gap between peoples and builds the acknowledgement of the immigrant as a participative subject in the decision-making processes.

In this sense, the right to quality education must provide

an enriching experience from the human, political and social points of view, which should, in fact, substantiate a project of emancipation and social inclusion. Therefore, the right to education should presuppose quality primary education for all and it must not (re)produce mechanisms of discrimination and social exclusion (Oliveira; Araujo, 2005: 28-29 - free translation by the author<sup>11</sup>).

To Saviani (2008), the school's social and political role is based on the socialization of knowledge. It is essential for schools to foster student knowledge and critical thinking skills. When students understand their role in society, they are better equipped to make contributions. A critical and historical comprehension of reality must be enabled through assimilated information, which must be connected to social practice.

Considering an education that reinforce citizenship, Canivez explains (1991):

This education can no longer consist of information or instructions that allow the individual, as a *ruled* party, to have knowledge of their rights and duties, so they conform with scruple and intelligence. It must provide, beyond this information, an education that is related to their position as a *potential ruler* (Canivez, 1991: 31 – original highlights, free translation by the author<sup>12</sup>).

Providing immigrants with education that prepares them for citizenship practices is crucial, as it allows them to recognize their rights and obligations as citizens and view themselves as active participants in democratic life, belonging to their new society. High-quality citizenship education also enhances their awareness of the changes taking place in their environment and cultivates critical thinking skills, which are essential for navigating the complexities of their new society.

In this sense, “school education is a founding dimension of citizenship, and this principle is essential for policies that seek the participation of all in the social and political spaces, and even in the reintegration into the professional world” (Cury, 2002: 246 - free translation by the author<sup>13</sup>).

The immigrant's introduction and reintroduction to the professional world will be discussed in the next section.

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<sup>11</sup> Original text in portuguese: “uma experiência enriquecedora do ponto de vista humano, político e social, e que consubstancie, de fato, um projeto de emancipação e inserção social. Portanto, que o direito à educação tenha como pressuposto um ensino básico de qualidade para todos e que não (re)produza mecanismos de diferenciação e de exclusão social” (Oliveira; Araujo, 2005: 28-29).

<sup>12</sup> Original text in portuguese: “Essa educação não pode mais consistir numa informação ou instrução que permita ao indivíduo, enquanto *governado*, ter conhecimento de seus direitos e deveres, para a eles conformar-se com escrupulo e inteligência. Deve fornecer-lhe, além dessa informação, uma educação que corresponda à sua posição de *governante em potencial*” (Canivez, 1991: 31).

<sup>13</sup> Original text in portuguese: “a educação escolar é uma dimensão fundante da cidadania, e tal princípio é indispensável para políticas que visam à participação de todos nos espaços sociais e políticos e, mesmo, para reinserção no mundo profissional” (Cury, 2002: 246).





## Becoming qualified for work

The need to work derives from the fact that individuals, beings in nature, need to eat, find housing and build ways of living. Work enables the immigrant to be acknowledged and feel belonging. In this sense, becoming qualified for work is not limited by the subject's insertion in the market, but rather, it relates to the "production of all dimensions of human life" (Frigotto, 2010: 2 - free translation by the author<sup>14</sup>).

Work is a transformative praxis through which the immigrant creates and recreates in an economic, artistic, cultural, political and social environment. The immigrant relates to their surroundings through work, transforming it and transforming themselves.

To Frigotto (2010), work is a right and a duty. A duty because citizens must collaborate in the production of material, cultural and symbolic assets. And a right because humans are beings in nature and thus demand a relationship with their surroundings, transforming assets for production and reproduction (Frigotto, 2010).

With the promulgation of the Migration Law (2017), opportunities welcoming immigrants were expanded. Article 3, X, institutes the social, labor and productive inclusion of the migrant through public policies (Brasil, 2017). This right is legally postulated, which grants the immigrant the right to demand it. However, the reality experienced by migrants in Brazil differs from the normative text.

According to the *Fiquem Sabendo* agency<sup>15</sup>, between 2006 and 2020, at least 860 foreigners were rescued from slavery in Brazil. 46% of them worked in the textile sector making clothes. Labor analogous to slavery is a violation of human rights and must be fought by States through effective supervision and public policies.

## Ensuring Migrants' Access to Quality Education: Final Considerations

Migration is a phenomenon that has been taking place throughout human history, driven by various factors. The Universal Declaration of Human Rights recognizes the right of any person to migrate for any reason. In Brazil, the Migration Law of 2017 guarantees fundamental rights to migrants on an equal footing with local citizens, including the right to public education. However, while the law outlines the provision of education without discrimination, it fails to specify how it will be implemented.

According to the Federal Constitution of Brazil, education plays a crucial role in developing an immigrant's physical, mental, social, emotional, and political capacities, and helps them exercise their citizenship. It is a vital tool for migrants to demand their other fundamental rights, making it a crucial aspect of their dignity. The Federal Constitution also recognizes the right to quality education for immigrants, enabling them to develop as individuals and prepare for citizenship.

To ensure that the rights of migrants are protected, the Migration Law of 2017 establishes the need for a National Policy on Migration, Refugee, and Statelessness, which is yet to be

<sup>14</sup>Original text in portuguese: "produção de todas as dimensões da vida humana" (Frigotto, 2010: 2).

<sup>15</sup>*Fiquem Sabendo* had access to data through a legal request of Access to Information issued by the Ministry of the Economy. Available at: <https://fiquemsabendo.com.br/transparencia/nos-ultimos-14-anos-860-estrangeiros-foram-resgatados-de-trabalho-esravo/>. Accessed in: Oct. 25, 2022.

implemented. Collaborative efforts between the Union, states, cities, and the Federal District are required to develop public policies that guarantee the correct welcome of migrants in Brazil.

In conclusion, ensuring quality education for immigrants is vital for their development as individuals and their ability to exercise their citizenship. It is essential to implement policies that provide equal access to education without discrimination, and support the proper integration of migrants into Brazilian society.

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