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**BRAZIL**

**THE NECESSARY SUBORDINATION  
OF THE INTERESTS AND COMMITMENT  
OF ADULTS IN THE CONSTRUCTION  
OF A PREVENTIVE PUBLIC POLICY  
TO REDUCE THE SEXUAL VULNERABILITY  
OF CHILDREN IN BRAZIL**

Antonio Jorge PEREIRA JÚNIOR

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*Resumé*

Cet article discute d'une nouvelle perspective en matière de politiques publiques concernant les enfants et les adolescents, qui vise à actualiser le principe du meilleur intérêt de l'enfant en garantissant son absolue priorité et en portant l'attention sur les droits de l'enfant et leur entière protection. Ces standards sont au cœur des conventions internationales, de la constitution et de nombreuses législations brésiliennes. De manière plus particulière, l'auteur plaide pour une réduction de la sexualité dans les environnements où évoluent à la fois les

enfants et les adultes, à titre de mesure préventive contre l'exploitation et les abus sexuels qui sont facilités par la provocation et par le fait que les jeunes sont souvent familiers avec des sujets pourtant réservés aux adultes.

## 1. INTRODUCTION

The rights of children and adolescents are not guaranteed or respected as planned and prescribed in the legal system of Brazil. In particular, prevention policies fail. Among these, in places frequented by both children and adults, nothing ensures a friendly environment for youth development. Both children and adults in Brazil, as elsewhere, share almost the same public space and have access to the same content on the internet. This communal atmosphere should be considered in light of the best interests of the child.

Allowing a child to be brought up in a permissive and consumerist environment, which may doubtless be less offensive to adults, is to encourage them to become comfortable with related values. Growing up in such an environment, he or she may easily become familiar with 'adult behaviour', especially as it refers to sexual activity. The child tends to adhere to adult behaviour, because he or she uses it as a model and learns from it by sensory stimulation and imitation. Behaviour, publicity and situations with undercurrents of sexuality make it easier for the child to become comfortable with sensuality, facilitating sexual exploitation, since it does not seem so foreign. That would go against public policies of protection vis-à-vis TV programming and forbidding access to places inappropriate to the child's development. Precedence must be given to *the best interest of the child*, along with *absolute* attention and *priority* and effective *complete protection* through involvement of civil society and the state in order to prepare the joint environment to protect future interests. This requires adult content restrictions in the living environment of children and adolescents.

For better structuring this perspective of prevention, this chapter will defend the legal development of the concept of 'goods of formation' or 'formative goods', without which full protection derails into innocuous black letter law. Such goods should have priority over others in the social environment, when different interests co-exist in competing for what is best for the child. Formative goods are guaranteed if the environment where children dwell stays safe from the moral perspective appropriate for them.

## 2. SEXUAL EXPLOITATION AND SEXUAL HYPER-CULTURE

We live in an extremely eroticised culture, especially since the 'sexual revolution' of the 1960s. A product of this market, a feedback, is pornography, made

exponentially more powerful by the internet. The internet facilitates access to many good things for child and youth audiences. But it is permeated with adult content as well, which also sharpens the curiosity of children and adolescents. There are legal restrictions on pornographic sites and there are filters available to parents to reduce their children's access. However, pornography escapes strictly pornographic sites and migrates to different environments, and the restrictions do not screen the obscene and the indecent. So, despite restricting access to pornography to adult audiences, it is in fact present in the surrounding medium via sexual imagery in the media and in advertising that indiscriminately reaches the public on streets, TV, movies, malls, concerts, etc. The atmosphere is full of strong sexual content. This is the appetiser that makes many young people, especially men, feel encouraged to discover porn sites, on which they may then spend hours. Ease of access on the one hand, and the natural curiosity of age, on the other, plus the strong environmental stimulus, make them more vulnerable to solicitation.

The degree of sexual provocation, the intense stimulation of exhibitionism and voyeurism invites them to anticipate sexual experiences at an age when it would be appropriate to invest in the development of other virtues. Among other effects, this allows the fantasy of sexual practice distanced from intimate and personal involvement. It tends to occupy boys' imaginations when it would be more appropriate for them to devote themselves to light-hearted activities related to culture, friendship and service. These qualities are indeed scarce in the environment.

The continuous elation and progressive sexual stimulation, therefore, disfavour full development. They generate a real addiction or predisposition so intense as to demarcate the brain's behaviour, as warns Norman Doidge, a psychiatrist of the Department of Psychology at the University of Toronto and a researcher at Columbia University in New York:

Pornography, by offering an endless harem of sexual objects, hyperactivates the appetitive system. Porn viewers develop new maps in their brains, based on the photos and videos they see. Because it is a use-it-or-lose-it brain, when we develop a map area, we long to keep it activated. Just as our muscles become impatient for exercise if we've been sitting all day, so too do our senses hunger to be stimulated.<sup>1</sup>

The intense appeal, as is commonly suggested, increases appetite and sexual fixation. From enhanced desire come actions, in degrees that are increasingly self-consuming. Pornography facilitates, in this way, the 'objectification' of the human body and, therefore, of the female partner, making her an instrument,

<sup>1</sup> N. DOIDGE, *The Brain That Changes Itself: Stories of Personal Triumph from the Frontiers of Brain Science* New York: Viking, 2007, at p. 108.

regardless of her inner being. This type of situation promotes a disassociation from spiritual and corporal intimacy. It breaks up the harmony cultivated in the Judeo-Christian cultural matrix, which guided the West for 2,000 years, between sex and personal donation of self. It slowly settles a kind of resignation about the extent of sexual experience, reduced to an occasion of simple sensual gratification. The deep emotional dimension has become self-desensitised. The person becomes hostage to sensory pleasure, detached from ethical values with which he could be associated. The continuous and repetitive stimulation facilitate intemperance, behavioural addiction, and impacts the capacity to adhere to the requirements of a lasting relationship, such as fidelity. In this circumstantial framework of exacerbated sexual desire, children and teenagers are more easily co-opted by the sexual 'market', where abuse is carried out.

I argue that this explains why exploitation of the sex drive in advertising of diverse products ranging from perfume to shoes, facilitates abuse. Wherever one looks and wherever one is, one is under the stimulus of sexual appetite. As has been said, such a climate contributes to the reduction of the individual to the condition of a tool to satisfy desires. Pornography is the icon of such context, because it treats a person as an object of satisfaction. A similar effect operates in audiovisual products, on the internet, and in public media, raising the desire for physical fulfilment. Of course the very beautiful in such a climate facilitates abuse. A scholar from Europe thus asserted that:

Trafficking in women and children in Europe is dominantly connected with prostitution and other forms of sexual exploitation because the progress in technology facilitates exploitation of children for the purpose of pornography.<sup>2</sup>

There is a connection between pornography and sexual exploitation as well, for it feeds on intemperate desires in favour of lust.

It would be necessary to admit that the economic exploitation of someone to satisfy the sexual appetite of another, reducing her to the status of a thing, affects the human dignity of both. But such a conduct is considered 'lawful' among adults. In Brazil, prostitution per se is not a crime. Permissiveness has become the rule, and any communication in the direction of greater prudishness is termed moralist. The younger notice it. In the context of easy and revered sex, soon they will judge that the limits imposed on them are some kind of 'age taboo'. Restrictions seem to ban without reason, since family members or acquaintances, sometimes only one year older, enjoy the atmosphere of sexual excitement without any fear. Around children, hence, there are movies, magazines, novels and other products that facilitate the enjoyment of sex,

<sup>2</sup> M. VINKOVIC, 'The "unbroken marriage" – trafficking and child labour in Europe' (2010) 13(2) *Journal of Money Laundering Control* 87–102, at 88.

if not notoriously promiscuous individuals, who rely on the complicity of the means to 'naturalise' their behaviour.

Sexual exploitation can translate into the consummation of an excessively permissive culture. Authentic prevention should go against the growing erotic atmosphere, which will culminate in the coaxing of children and adolescents, diffusely or directly. There will be no full prevention without reducing sexual exposure that reigns in the environment. It is necessary to clean up this atmosphere, making it favourable to certain formative behaviours in children. Solicitations from the adult world widespread in the child-juvenile universe generate risk to the vulnerable owing to their youth. Especially unguarded are situations associated with pleasure or pleasant feelings, or with economic enrichment, which can be achieved by the simple action of the child without any intermediation of the parents. Also, the young seek self-esteem through the appreciation of others, by praise and other compensation. Growing in self-esteem, getting pleasure and money can be extremely attractive to those who are unaware of the harmful effects of associated behaviour. This happens in terms of legal drugs (alcohol derivatives), illegal drugs (narcotics), unhealthy foods that cause obesity (junk food) and sex. They are all areas where the child becomes a victim, invisible, through reflex, in a diffuse way.

### 3. FULL PROTECTION AND THE NEED FOR EXPANDED PREVENTION

For the child, the person under 18 years of age according to international treaties, exploitation equates to violence and slavery or forced labour. This has grown to a global topic of concern, with to date three global conferences to combat sexual exploitation of children and adolescents by mobilising media, governments, experts, civil society organisations and transnational organisations. They were signed in the cities of Stockholm,<sup>3</sup> Yokohama<sup>4</sup> and Rio de Janeiro<sup>5</sup> in 1996, 2001 and 2008, respectively.

At the first meeting, in 1996, it was decided that sexual exploitation includes pornography, child sex tourism and other forms of commercial sex where the child is involved through an exchange of money or similar means. Regarding the latter, Brazil, in the same year as it served as host country, added important

<sup>3</sup> Cf. <http://www.oecd-ilibrary.org/docserver/download/443a21a8-en.pdf?expires=1521586665&id=id&accname=guest&checksum=A4501BBDABE52B7342E2831536F6B44B>.

<sup>4</sup> Cf. <<https://www.unicef.org/events/yokohama/outcome.html>> and <<https://resourcecentre.savethechildren.net/node/5203/pdf/5203.pdf>>.

<sup>5</sup> Cf. <[https://www.unicef.org/protection/brazil\\_46520.html](https://www.unicef.org/protection/brazil_46520.html)> and cf. <[https://www.unicef.org/brazil/pt/br\\_IIIWC\\_En.pdf](https://www.unicef.org/brazil/pt/br_IIIWC_En.pdf)> and <[http://www.ecpat.org/wp-content/uploads/legacy/ECPATWCIIIReport\\_FINAL.pdf](http://www.ecpat.org/wp-content/uploads/legacy/ECPATWCIIIReport_FINAL.pdf)>.

provisions to the Statute of Child and Adolescent, by virtue of Law No. 11,829 of 26 November 2008. These are palliative situations, in face of the abuse of a specific child. They enhanced penalties for those who commit such crimes. The repressive framework was increased. However, no progress was made proportionally on preventive policy that would establish the means to prevent crime or reduce risk factors. In the prevention of sexual exploitation, work is needed on its causes, requiring, among other measures, efforts to stem the tide of eroticism that affects young people and children, a reflection of the sexual consumerism fed and revered by adults.

The overt and intense diffusion of sexual behaviours harm the child and adolescent's maturity. There is negative impact on mental and moral health. In a document signed by more than 50 researchers, Mary Eberstad, from the Hoover Institute, and Mary Anne Layden, director of the Sexual Trauma Program and Center of Psychopathology for Cognitive Therapy of the Department of Psychiatry at the University of Pennsylvania, found that:

[t]here is evidence that the prevalence of pornography in the lives of many children and adolescents is far more significant than most adults realize, that pornography is deforming the healthy sexual development of these young viewers, and that it is used to exploit children and adolescents.<sup>6</sup>

The findings of the researchers are contained in the summary of 'The Social Costs of the Pornography: the Statement of Findings and Recommendations'.

1. Unlike at any other time in history, pornography is now available and consumed widely in our society, due in large part to the internet. No one remains untouched by it.
2. There is abundant empirical evidence that this pornography is qualitatively different from any that has gone before, in several ways: its ubiquity, the use of increasingly realistic streaming images, and the increasingly 'hard-core' character of what is consumed.
3. Today's consumption of internet pornography can harm women in particular.
4. Today's consumption of internet pornography can harm children in particular.
5. Today's consumption of internet pornography can harm people not immediately connected to consumers of pornography.
6. The consumption of internet pornography can harm its consumers.
7. Pornography consumption is philosophically and morally problematic.

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<sup>6</sup> Cf. M. EBERSTAD and A.M. LAYDEN, *The Social Costs of Pornography: a Statement of Findings and Recommendations* Princeton: The Whitedspoon Institute, 2010, at p. 32.

8. The fact that not everyone is harmed by pornography does not entail that pornography should not be regulated.<sup>7</sup> There is therefore ground for implementation of public policies able to better protect people from harm that can be carried out by pornography and contexts of sensuality, whose social costs are higher than many realise, beyond consumers and direct victims of sexual exploitation.

This chapter therefore moves towards the goal of proposing better pre-emptive action appropriate to the legal perspective, under the paradigm of full protection, in order to raise efficient mechanisms linked to the integral development of children and adolescents according to human dignity and in harmony with the legal obligation. For this to succeed, a leap forward in the experience of solidarity is necessary, so that the adult audience accepts, ultimately, and collaborates in cleaning up media in public space, in cyberspace, in media products and in common environments of entertainment, that determine the behaviour of youth.

The setting up of an effective system of full protection for children and adolescents (Child and Adolescent Statute (SCA), Law n. 8069, the main diploma with regard to children and youth in Brazil, Article 1), a top priority in Brazil (Federal Constitution of Brazil, (FC), Article 227), needs, therefore, of an expanded legal approach, so as to protect those goods needed for human formation. It is not enough just to have a remedial system, which is quite similar to what was in place in the past and was criticised strongly as part of the so-called ‘Criminal Law for Minors’ (nineteenth and twentieth centuries, until 1924) and the ‘Law of Irregular Situation’ (1924–88), when government was limited to taking care of the ‘juvenile offender’ and ‘abandoned children’, people already vilified, without regard to other dimensions of the human condition, and without any preventive action against damage caused to such public.

The particular vulnerable individual’s condition, as in need of special care, requires ‘full protection’, an expression incorporated into the Brazilian legal system in 1990 (SCA, Article 1), by proactive development of a culture in favour, ultimately, of the upbringing of the youth, making them able to resist the pressure of those who present abusive proposals to them.

### 3.1. NORMATIVE PROVISIONS OF MAXIMUM PROTECTION OF THE CHILD IN BRAZIL

The SCA, in its ‘general part’ sets out the fundamental rights and soon thereafter deals with ‘Of Prevention’ (Title III). Prevention requires guaranteeing policies

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<sup>7</sup> Ibid, at p. 5.

in an atmosphere free from the risk of harm. It also prevents by encouraging empowerment policies (*empowerment*) of the intellectual and moral faculties of the youth. It should prepare them to exercise freedom in a mature way, when they are entitled to full responsibility for their actions.

It is possible to infer a plan of human development in the analysis of the national education law and the legislation on the rights of children and adolescents in Brazil. From the sum of rules it can be deduced as a duty of all – although particularly of the parents – to assure to the youth the means to achieve a well-built intellectual and decision-making capacity, through which they can have the greatest possible knowledge of the causes and effects of their preferences and decisions. This is accomplished through education of the intellect, will and affectivity.

After 25 years since the promulgation of the SCA, much has been implemented in favour of children's rights, especially in the field of social services. Nevertheless, the preventive system, designed to ensure the formative content in the above expressed dimensions – intelligence, will and affectivity – is still found wanting, especially when it is compared to repressive policy. Anyone who watches the news on TV must realise that, despite being in the age of 'full protection' of children and adolescents, according to the law, we live in a media culture of 'criminal law of the minor'. A strategic development plan is lacking to harmonise the requirements of the Basis and Guideline for Education Law (BGEL), the SCA and the Federal Constitution, in an integrated set of policies to effectively promote an atmosphere of development of children and youth potential in all environments. Therefore, more than economic resources, what is warranted is a state strategy. The omission translates into inefficiency of prevention. It lacks investment and integration between municipal, state and federal spheres of all governmental branches.

It is necessary to bring the preventive perspective to the forefront and to commit to it. This will require government to add programmes which offer recreational activities, sports and are of a cultural character, occupying extra classroom time. These should be linked to a prevention policy in order to preserve children and adolescents from the hyper-sensual climate that ends up making them vulnerable. As stated previously, when they become accustomed to the eroticised climate, youth are enculturated by the sex industry and, then, more easily absorbed in the sexual exploitation system. First, they are victims. In the end, they became victimisers.

It is worth revisiting the great constitutional project to potentialise to the highest degree the education of new generations, under the perspective of full protection. The legal provisions used terms that establish maximum commitment – 'absolute priority' – for the full development of the 'person in a peculiar development phase' (SCA, Article 6). In this context, it is necessary to take development of a caring environment of values to a new level. And it is in this sense that legal doctrine must also be improved through concepts that

translate human needs of formation, in terms legal professionals can assimilate, to defend the 'goods of formation' adequate to the constitutional project. The components for the child and adolescent's full maturity should be presented as legal rights to be guaranteed. Ethical values enter this scenario, renovated as worthy of legal protection. They are differentiated elements of the human condition, extremely important for its maturity. They are indispensable to the improvement of the potentialities of intelligence, will and affectivity.

Observing the legal system, it is easy to see that 'values' make up the universe for legal culture. Besides the Federal Constitution, which repeatedly uses the term 'values', they are objectively expressed in BGEL, which contains the formative programme for the new generations of the Brazilian state. Thus, Article 1 of Law n. 9.394 (BGEL), of 20 December 1996, reads,

[The] education covers the formative processes taking place in family life, into everyday life, at work, in educational and research institutions, social movements and civil society and cultural events.

When it regulates the framework, BGEL covers topics referring to full formation. In Article 27, I, it is determined that the curricula have as a guideline, among others, '*the diffusion of fundamental values to social interest, to rights and duties of citizens, of respect to common good and democratic order*' (emphasis added). There is talk of values, which means ethics formation. BGEL specifies a category of values: those *fundamental to social interest*, which means the government is willing to develop social virtues in children, i.e. to forge their character according to specific interaction habits with their peers.

While dealing with early childhood education, the legislature determines in Article 29 the goal of 'integral development of children up to six years old, in their physical, psychological, intellectual and social aspects, *complementing the action of the family and community*' (emphasis added). Integral development implies consolidation of values compatible with a just, free and supportive society, the goal of the Republic of Brazil, according to Article 3, section I of the Constitution.

Article 32 of Law no. 9394, stipulates as purposes of elementary school:

[...] II – the understanding of the natural and social environment, political system, technology, arts and values on which society is based; III – the development of the learning ability, aiming to acquire knowledge and skills and the *formation of attitudes and values*; IV – the strengthening of family ties, of human solidarity and mutual tolerance in which social life lies (emphasis added).

For the 'formation of attitudes and values' and the 'strengthening of family ties, of human solidarity and mutual tolerance ties', it is necessary to ensure an environment conducive to the formation of the citizen's character and,

accordingly, avoid those things that, in any way, harm him or her. Back to the question of action: there is a national plan, continuing the constitutional project to develop habits among citizens found necessary for social life. Such behaviours presuppose a concrete formative atmosphere that should be created and protected by the state and civil society. Would it be unreasonable to require that all people living under the incidence of a constitutional rule show zeal for the environment where children circulate, so that this be in accordance with their stated educational needs? To what extent does an erotic environment contribute to the achievement of these goals? Would it not produce exactly the opposite effect?

As laid down by BGEL, high school must teach ethical content. According to Article 35, III, of Law n. 9394, school education should improve a student 'as a human person, including *ethics formation* and the development of intellectual autonomy and critical thinking'. The teenager is in the process of forming values. Ethics training necessarily implies the development of behavioural habits and not just ideas. The law says *ethics formation* and not just (*in*) *formation on ethics*. A citizen well-formed in ethics behaves according to values of sociability. Legal systems presuppose such learning be conducted up to 18 years, and so presume full suitability for unattended operation from this age on. It is believed that the person will have assimilated social virtues – usual practices associated with peaceful co-existence values and respect. He or she is then answerable for his or her choices. Because of this expectation, the person in formation is entitled to receive moral inputs to enable him or her to internalise social habits, in accordance with the common good and to the particular well-being. Today's young adult lacks goods of ethical formation.

The Federal Constitution calls family, civil society and the state for an integrated action in favour of the person in development. The words of Article 227 are scathing. This is very unusual for a constitution. The first part of the device states the rights of children and youth and the second imposes a general duty of prevention.

The third article of SCA imposes the duty to offer, 'by law or by other means', 'all opportunities and facilities' for physical, mental, moral, spiritual and social development. The scenario envisioned by the law would rule out any situation where a child or young individual was attracted and entertained by occupations working against those best for his or her improvement. Thus, to ensure all opportunities and facilities to allow their full development, it is necessary to restrict their exposure to certain 'adult' interests, since children and young people live in the same environment as mature consumers, for most of their lives.

Article 4 shares most of the same text as Article 227 of the Constitution, but adds the need to ensure 'with an absolute priority, the *concretization*' of rights. This is like saying it is not enough for the rights to be written down: they need to

be effective. Its single paragraph, in turn, translates into where the guarantee of priority should follow. The text is clear and incisive.

Art. 4. *It is the duty of family, community, society at large and the state to assure, with absolute priority, the concretion of the rights inherent to life, health, food, education, sport, leisure, professionalization, culture, dignity, respect, freedom and family and community life.*

*The priority of guarantee comprises:*

- a) *primacy* in receiving protection and help in all circumstances;
- b) *precedence* in receiving public services or of public importance;
- c) *preference* in the formulation and implementation of public social policies;
- d) *privileged* allocation of public resources in areas related to protection of children and youth. (Emphasis added)

Another two expressions of totality are found in Article 5: ‘no child or adolescent *at all*’ will be subject to ‘*any form*’ of ‘negligence, discrimination, exploitation, violence, cruelty and oppression’.

In Article 6 there is an important explanation for such care: children and adolescents are regarded as in the peculiar condition of persons in development:

Art. 6 In the interpretation of this Law it will be taken into account the social purposes for which it is destined, the requirements of the common good and the individual and collective rights and duties, and the peculiar condition of children and adolescents as persons in development.

The third title in the General Part deals with ‘Of Prevention’ and contains a chapter ‘The Special Prevention’. In this passage of the law there are devices that link media content and culture to the educational needs of children and adolescents. Again, there is the need for children to be raised in an environment free from constraints which do not favour the development of children and adolescents.

### 3.2. DIRECT AND INDIRECT SUPERVISION: PREVENTIVE PROTECTION

Because of their vulnerability, the child and the teenager should receive priority in treatment to guarantee their rights, even if they lack the legal power to act for themselves, which translates into full civil capacity. In other words, it is necessary that the family, the state and civil society offset their lack of capacity. To the exact extent that they are people in peculiar stages of development, they require special care, whence their special rights. *Special*, hence, are the rights *on account of their age*.

Among these special rights are those that might be called 'rights of formation', which apply until the age of 18, when the family power ceases, as does their custody and guardianship. From a legal perspective, at 18 years, special needs thus disappear.<sup>8</sup> For example, the rights set forth in Article 5 of the FC would not be special rights of children and adolescents, because they are common to all at any age. However, Article 227 of the Constitution established a duty of preferential service to the youngest, even when their rights are equal to those of others. This is incorporated into the SCA. The priority of attention to the child and adolescent's fundamental rights is a fundamental guarantee.

The *full protection*, as stated in Article 4 of the SCA, as well as protection of *special* rights, entails priority of service. The mechanisms that make up the protection system can be classified as of *indirect protection* (mediate) or *direct* (immediate).

The indirect protection is done by measures which establish duties that fall upon individuals other than the child or adolescent, sanctioned when the former affect the rights of the latter. It combines administrative, civil and criminal sanctions. The aim is to inhibit, indirectly, harmful acts or, when consummated, to delineate a punitive-retributive response.

Now it is possible to move forward to special prevention, from which connection is made with the necessity to assure for the child an atmosphere of values of sociability that stimulates behaviours consistent with such, protecting them from adult sexual content.

There are direct and indirect mechanisms of protection and promotion of rights. Example of indirect protection (mediated) and direct (immediate) in harmony can be seen in the combination of the Articles 76 and 254 and 255 of the SCA.

Article 76 of the SCA purports to prevent harmful effects of TV programming on child and adolescent formation. It states that 'radio and television stations may only exhibit, on schedule recommended for children and youth, programs with educational, artistic, cultural and informative content'. The aim is to ensure content that serves the integral formation of the person in a peculiar stage of development. To strengthen the provision, the Act sanctions non-compliance. Thus Article 254 and 255, beyond other legal proceedings relating to child rights violation and adolescents, establish penalties for entities that disrespect the norm of Article 76. It typifies as administrative violations 'to broadcast by radio or television spectacle at a time different from the authorized or without notification of its classification' (Article 254) and 'display film, trailer, play, sample or the like classified by body competent as inappropriate for children

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<sup>8</sup> W. MORAES, *Programa de direito do menor*. São Paulo: Cultural Paulista, 1983, at p. 65.

or adolescents admitted to the spectacle' (Article 255), followed by a number of sanctions to such acts. Preventive protection, described in Articles 70–85 of the SCA, seeks to avoid the risk and the harmful outcome to the rights of children and youth. It comprises measures described in the statute, without excluding other measures that derive from the principles set out by it.

Article 70, the first in the title dedicated to the general provisions of prevention, imposes on all citizens the duty of prevention: 'it is the *duty of all* to prevent the occurrence of threat or violation of children's and adolescents' rights' (emphasis added). Again, it does not allow for one to be oblivious to this legal duty. In addition, pursuant to Article 72, the measures set out in the SCA are only illustrative, and by provision of the statute, can be applied any other measure 'derived from the principles adopted by it' (SCA, Article 72). That is, various other public policies will make up prevention policies with the SCA.

Chapter 2 of the third title of the general part of the SCA is dedicated to *special prevention*. The word *special* is the signal of a higher duty of care. The first section of the chapter is dedicated to the theme 'Of Information, Culture, Leisure, Sports, Entertainment and Shows'. Article 76 is specific to the public service of broadcasting, and states that *only* programmes with educational, artistic, cultural and informational purposes should be exhibited at the time recommended for children and young people. It is interesting to notice that Article 76 is a direct and preventive protection rule, accompanied by rules of indirect protection, which criminalise the administrative offence of non-compliance, with sanctions imputed in Article 254. The *special preventive* character is due to the great impact of social media in the full development of children and youth. There will be a connection made to the improvement of public policies that extend the preventive character for the environments of mutual circulation of children and adults, the latter also being under the authoritative rule of utmost care of the interests of the juvenile public.

### 3.3. SPECIAL PREVENTION: PROTECTING THE MORAL INTEGRITY, CONDITION OF FREEDOM

The duty to protect children and adolescents from hyper-sensual environments at an early age should translate into public policy to rectify the adult environment, as it is in a great degree common to the juvenile audience. This requires joint, integrated societal action to ensure an atmosphere conducive to the child's best interest.

In Brazil, it was seen that the law requires from open TV (television which is open to all free of charge) and schools concrete actions in the teaching process. In the context of legal and constitutional principles, maximum prevention, requires that care be taken when children dwell in virtual or real environments, even if adults are also present there.

Education aims to develop in children the perception of values and encourage them to adhere to related practices. Values are also a constitutional requirement for audiovisual programming. Article 221, IV outlines the principles for broadcast programming. The theme is complemented in the SCA, in the part that deals with special prevention (Article 76), as seen above. The Constitution also requires that the radio and TV programming must have as a conditioning principle the ‘social and ethical values of the person and of the family’ (FC, Article 221, IV). *Social and ethical values* should therefore be the framework of television programming, which is also required to comply with the educational purpose (FC, Article 221, I, and infra-constitutional legislation).

In this time of consumer culture, children and teenagers are driven by advertising to expect the pleasure that a product can bring them, skipping the rational assessment that may enable a better decision. Simply put, advertising does not enter into dialogue with intelligence. It provokes only the sense of taste.<sup>9</sup>

In the context of ensuring the rights of children in the face of advertising a rule from the Consumer Protection Code (CPC) prohibits the so-called abusive advertising, having as such that

[...] *that takes advantage of lack of judgment and experience of a child*, disrespects environmental values, or is capable of inducing the consumer to behave in harmful or dangerous way to their health or safety (CPC, Article 37 §2, emphasis added).

Note at the end of the rule, the duty to avoid advertising that induces behaviour that could put at risk consumer health or safety. Induction to behaviours harmful to physical and mental health is also considered to amount to advertising abuse. Such advertising stimulus encourages behaviour that is contrary to the best interests of the child, such as eating inappropriate foods that damage his or her health, and lead to or consolidate an addiction. It is also understood that exposing children to sexual stimulation situations promotes inappropriate behaviour to them, which, at the same time, is beyond their scope of judgement and experience.

#### 3.4. FULL PROTECTION AND EDUCATION OF FEELINGS

In order to fulfil the purpose of Article 3, section I of the 1988 Brazilian Constitution for building a free and supportive society (‘The fundamental

<sup>9</sup> Cf. R. YEPES STORK and J. ARANGUREN ECHEVARRÍA, *Fundamentos de antropologia. Um ideal de excelência humana*. (Fundamentos de antropologia) (trans P.C. DWYER) São Paulo: Instituto Brasileiro de Filosofia e Ciência ‘Raimundo Lúlio’ (Ramon Llull), 2005.

objectives of the Federative Republic of Brazil: I – to build a free, just and solidary society’), it is necessary to educate younger generations on free choice. This will enable them to make their own decisions based on an education which has helped them develop the competence to evaluate every human action or behaviour in accordance with ethical values, and enable them to behave in a way which conforms to social ethics. In this sense, it is important to involve the whole of society in the cultivation of solidarity through education. For people to be effectively free, they must learn to suppress the immediate desire for pleasure and adopt behaviours corresponding to higher, intangible ethical values that translate into real concern for others. This fixation for pleasures accessible by consumption is stimulated by advertising. The more conditioned to consuming by stimuli, the more vulnerable to advertising the person becomes, unconsciously. The consumerist culture tends to over-glorify individual pseudo-needs. Through a process of persuasion, it encourages the search for more pleasure, enjoyed with no connection to higher feelings and without reference to transcendence. Therefore, it works in the opposite direction to the goal of creating a fair and caring society, a constitutional goal (Article 1, III).

Because of the above expressed inner mechanisms, films, programmes, video games and even advertising, along with their enriching possibilities, can damage affectivity, intelligence, will and children’s freedom, as they grow to maturity. They handle the feelings, which are the engines of human behaviour, sometimes decontextualizing them from what would be the corresponding value for human enhancement.

Children and adolescents are entitled to receive adequate stimuli for the development of their character, being free of semantics and emotional manipulation that would exploit them for purposes contrary to their best interests. Therefore, prevention policies should also be created in these areas, to ensure that the contents promote the integral development of persons entitled to the full development, free from all exploitation, according to the expression of the law from the perspective of full protection.

### 3.5. THE INTERFERENCE OF THE ENVIRONMENT IN THE EDUCATIONAL PROCESS OF CHILDREN

It was seen that children and adolescents are people in a peculiar development stage, according to the law. They are open to the educational universe intensely. They experience the irreversible moment of forming their personality. Thus, at this stage of life, the communicative incidences should not encourage conduct that negatively impact on their soul and character. Conversely, they should contribute to their evolution.

Here, room is made for the important finding of the peculiar situation of the child: the educational process aims to form him or her to act freely and

responsibly in society. Freedom, while the ability to self-determination to good, is the property of the human will. The free choice for virtue enhances the character and is a sign of maturity. The choice for vice denatures the very freedom because it imprisons the person in a habit that harms him or her physically, mentally, morally or socially.

The enemies of freedom are now no longer powers or identifiable characters, to which one can accuse since innocence, but proper habits which are not easy for us to recognize, because they have our secret complacency.<sup>10</sup>

Vice and virtue are terms of ethics, a human behavioural science. The media, TV, advertising and the behaviours of adult, in general, stimulate the child. According to the feelings that are associated with a given behaviour, he or she will assimilate subjectively as good or bad, and will aim to emulate or reject their behaviour. Feelings interfere with perception and decision, guiding his or her actions. Much of audiovisual programmes and advertising are associated with leisure, and cause pleasant sensations. Thus, they become more attractive for children. That is, through visual pleasure, communication enters into intimacy and mobilises children's actions. Thereafter, it interferes in the deliberative process.<sup>11</sup>

As for television, item IV of Article 221 of the FC requires that programmes respect ethical and social values of the person and the family. This rule is limited to a certain zone of influence on the child. Somehow, more restricted. But, moreover, Article 227 of the FC, and other prescriptions of the SCA, prescribe the duty of all to prioritise the interests and rights of children and adolescents. Therefore, it would not be acceptable to tolerate the overexposure of sexual stimuli in places where children and adolescents may come into contact with it.

#### 4. CONCLUSION

Studies to prove the harm of television content when not oriented to higher ends abound. Therefore, the law requires that television transmission of certain types of content that could be harmful to the child's education is prevented. This requires a prevention policy to come into effect that also affects the interests of adults. The same line leads one to think about the general atmosphere created with a culture of encouraging sexual behaviour. It is hard to imagine that sexual exploitation may decrease without changing the hyper-sensual environment within which new generations are to be brought up. But to change it requires

<sup>10</sup> D. INNERARITY, *Libertad como passion* Pamplona: EUNSA, 1992, at p. 15.

<sup>11</sup> A.J. PEREIRA JÚNIOR, *Direitos da criança e do adolescente em face da TV* São Paulo: Saraiva, 2011.

interfering with adult interests. There is a whole scope for review in order for public places to be better suited to the needs of children. With smoking, Brazil got to the point of prohibition in public venues for the benefit of the health of many. Why does the child deserve less attention, in what is a more serious matter? So, after 28 years of the Statute of Child and Adolescent in Brazil, it is believed that it is time for a breakthrough. Perhaps it is too late for children already victims of sexual exploitation, who have been co-opted by the hyper-sensual environment. But there is still time for the new generations, which will benefit from the corresponding prevention of comprehensive protection.

