



From welfare state to savage capitalism: human rights and neoliberalism at the end of 20th century

Do estado de bem-estar social ao capitalismo de barbárie: direitos humanos e neoliberalismo no crepúsculo do século XX

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ABSTRACT

At the turn of the 20th and 21st centuries, the world experienced a process of profound material, economic, social and technological transformations. Trade liberalisation, labour deregulation and mass impoverishment were the hallmarks of this period. In neoliberalism, human and social rights are foreshadowed, but, from the outset, they are made to be ineffective. That said, from a dialectical-historical-materialist perspective, the present study revolves around the question of whether the political, economic and social phenomenon called neoliberalism is politically compatible with the practice of human rights. The hypothesis is that human rights would not be inured by the neo-liberal world project, insofar as savage capitalism relegates these rights to the place of ideals that are positively stated on the abstract level, but never put into effect in the world of facts. In conclusion, it is observed that Joaquín Herrera Flores' theory of human rights, the theoretical framework adopted, is not in harmony with the neoliberal world-system, because it is that one, in ideology and in practice, a call for constant struggle against exactly everything that this system represents, there being no room for rights as objects given by a mercadological-transcendental nature.

Keywords: human rights, welfare state, neoliberalism.

RESUMO

Na virada dos séculos XX e XXI, o mundo vivenciou um processo de profundas transformações materiais, econômicas, sociais e tecnológicas. Liberalização do comércio, desregulamentação do trabalho e pauperização em massa foram a marca desse período. No neoliberalismo, os direitos humanos e sociais estão renunciados, porém, desde logo, feitos para não se efetivar. Isso posto, numa perspectiva materialista histórica dialética, o presente estudo gira em torno do questionamento sobre o fenômeno político, econômico e social denominado neoliberalismo ser politicamente compatível com a prática dos direitos humanos. A hipótese é a de que eles não seriam afeitos ao projeto de mundo neoliberal, na medida em que o capitalismo de barbárie relega a esses direitos o lugar de ideais positivados no plano abstrato, porém, jamais efetivados no mundo dos fatos. À guisa de conclusão, observar-se que a teoria dos Direitos Humanos de Joaquín Herrera Flores, marco teórico adotado, não se coaduna com o sistema-mundo neoliberal, por se tratar aquela, na ideologia e na prática, de uma conclamação à luta constante contra exatamente tudo o que esse sistema representa, não havendo espaço para direitos como objetos dados por uma natureza mercadológica-transcendental.

Palavras-chave: direitos humanos, estado de bem-estar social, neoliberalismo.

1 INTRODUCTION

Since the mid-1970s, the capitalist world has experienced a process of profound material, spiritual, economic, social and technological transformations in the wake of what was proclaimed as "the end of history" (FUKUYAMA, 1992). The Soviet Union collapsed, the oil crisis broke out for the first time and the answers given by the social democracy of the Welfare State were no longer able to reverse the violent recession in which humanity had sunk.

This was the general framework in which certain revisionist theories of classical liberalism, for a long time relegated to the background (but existing since the 1930s), suddenly seemed to be the most capable of solving the urgent questions imposed at the end of the 20th century. The final equation, exemplarily outlined by authors such as Ludwig von Mises, Friedrich Hayek and Milton Friedman, was as follows: instead of less capitalism, more capitalism; instead of more social state, less social state and more penal-repressive state. In this new reality, social rights are foreshadowed, but from the outset, enclosed in a glass dome, available for display and viewing, infinitely locked away from the exercise of most individuals.



Here, in contrast to all of that, the human rights theory as cultural products, elaborated by the Spanish jurist Joaquín Herrera Flores. In his material perspective, this thinker elaborates the idea that human rights are not a material already given by nature or by any other abstract entity above men, but rather, they are processes of struggles and ruptures inscribed in a specific community, historical tradition and defined space-time. It is everyone's duty, in this vision, to fight for better living conditions and for greater dignity, not only for themselves. In a holistic interpretation of beings seen as eminently relational, it is necessary that one's freedom be the other's freedom, in a constant battle for the greater good, in the framework of fraternal solidarity between subjects.

In a dialectical-historical-materialist cadence, this article was conceived from the analysis of the Welfare State crisis in Europe, with the consequent neoliberal turn, located in the mid-1970s. The neo-liberal model of society was analysed in terms of its rationality and *modus operandi*, in order to confront it with the ideal outlined by a theory of human rights, more specifically, that one elaborated by Joaquín Herrera Flores.

The present study revolves around the question of whether the social-economic phenomenon known as neoliberalism is philosophically compatible with the practice of human rights, as conceived in the Joaquín Herrera Flores' formulation. In this regard, the hypothesis suggested was that, considering that human rights are material instruments of action for the most diverse social actors, conquered and maintained through permanent struggle, they would not be suitable for the neo-liberal world project, to the extent that the savage capitalism imposed by it relegates these rights to the place of ideals established on the abstract level, but never put into effect in the concrete world.

With this question in mind, firstly, the basic precepts of Joaquín Herrera Flores' human rights theory were outlined, the main theoretical framework of this article. Secondly, the historical period that immediately preceded and to a certain extent engendered neo-liberalism was analysed: the post-war Welfare State. Subsequently, the rise of neoliberalism was verified, especially with the first oil crisis in 1973, and the rationality inherent in its operation. Finally, on a fourth level, an examination was made of the opposition between the neoliberal paradigm and the philosophy of human rights in



Herrera Flores, in order to conclude, in an abstract evaluation, on the possibility or not of effective coexistence between human rights and neoliberalism.

2 BEYOND WORDS AND ABSTRACTIONS: THE MATERIAL PERSPECTIVE OF HUMAN RIGHTS IN JOAQUÍN HERRERA FLORES

Traditionally, human rights are understood as positive right, that is, prerogatives written in papers whose designation is that of declarations, letters, treaties, which become part of the legal system of the signatory national states.

Thus, modern constitutionalism has, in the promulgation of a written text containing a declaration of human rights and citizenship, one of its central moments of development and achievement, which enshrines the victories of the citizen over power.

In order to determine its historical origin, it is common to refer to the *Déclaration des droits de l'homme et du citoyen*, voted by the French National Assembly in 1789, in which the natural and imprescriptible rights (liberty, property, security, resistance to oppression etc.) were proclaimed. This document, however, was preceded by two major ones: the North American Bill of Rights, of 1776, in the context of the independence of the United States, and the English Bill of Rights, which enshrined the Glorious Revolution of 1689. Later, in the 20th century, given the atrocities committed during World War II, the Universal Declaration of Human Rights was originated, adopted by the General Assembly of the United Nations Organization on December 10, 1948 (BOBBIO, MATTEUCCI & PASQUINO, 1998, p. 58).

Quite differently from this classical conception, the Spanish jurist Joaquín Herrera Flores proposes a new understanding for this category. In a decolonial turn, he reformulates the concept, the grounds and the objective of human rights, drawing attention to the need to base oneself on an *impure* philosophy of law, taking into consideration at all times the historical-material realities in the struggle to understand human needs.

According to the author, in view of the post-Cold War global conjuncture, in which the extension and generalisation of the market - which exalts a fallacious "freedom" - make rights into business "social costs" to be suppressed in the name of



competitiveness, a theory is needed to be outlined from a new, integrative, critical perspective and contextualised in emancipatory social practices.

The traditional and hegemonic view of rights confuses the planes of reality and abstractions. In the Universal Declaration of Human Rights of 1948, the Preamble states, firstly, that human rights should be understood as an ideal to be achieved. In the Article 1, on the other hand, deals with a reality that has already been achieved, since "all human beings are born free and equal in dignity and rights". Rights, therefore, are supposed to be something that people already hold by the simple fact of being born, ignoring any specific social conditions or characteristics (HERRERA FLORES, 2009a, p. 27).

Such a reductionist liberal vision presupposes the existence of a metaphysical human condition from which universal prerogatives valid in all time and space would be derived. For the dominant theoretical thinking, rights are nothing more than rights themselves. They are merely a platform for obtaining more rights. In a simplistic and circular logic, the traditional discourse is summarised in the following formula: the basic content of rights is the "right to have rights". And this is not by chance, since it is the notion that is most beneficial to the prevailing logic of capital.

As Pierre Bourdieu (2001, p. 132-133) explains, capital is a force inscribed in the objectivity of things which determines that not everything is equally possible. The structure of distribution of the different types and sub-types of capital, given at a specific moment, corresponds to the immanent structure of the social world.

Therefore, to the relations of production that conform the different forms of capital - economic, social, cultural - correspond different forms of power - political, regulatory, symbolic - that ensure their production and social reproduction, being the idealised and abstract conception of human rights one of their main axes of legitimation.

As to the interpretation adopted here, human rights, rather than rights *per se*, they are processes, in the sense of an always provisional result of the struggles that human beings wage to attain the necessary goods for a dignified life. Therefore, they should not be confused with rights that have been established in the national or international sphere. A constitution or an international treaty do not create human rights, because admitting



that law creates law means falling into the fallacy of the most retrograde positivism that does not get out of its own vicious circle.

Human rights, from this point of view, do not arise from a Cartesian reflection on human nature, but in specific contexts of social, sexual, ethnic and territorial division of the human being. The validity of these rights as cultural products is not linked to an abstract evolutionary sphere towards moral progress in an ahistorical way, but to an efficacy or inefficacy when it comes to fighting against the way of dividing and hierarchizing access to the resources of life and dignity.

This does not mean, however, that the legal aspect is not relevant. What is proposed, in fact, is that, first, the goods required to live with dignity should be sought, with rights coming after the struggles for access to these goods. Rights thus participate in the process of the conquest and recognition of legal goods.

For all these reasons, human rights are, according to Herrera Flores, a cultural convention - since they are historically constructed and not given by nature. In short, they are social dynamics that tend to create the material and immaterial conditions necessary to achieve certain generic objectives outside the law, which, through a sufficient correlation of parliamentary forces, may be guaranteed in law.

These battles for goods arise from the fact that they do not fall out the sky, nor do they flow down rivers of honey in some earthly paradise (HERRERA FLORES, 2009a, p. 30), and they are invariably part of a broader process in which some people find it easier to obtain them, while for others it is more difficult or even impossible.

This is what Jacques Derrida (1992, p. 187-188) reiterates, when commenting on Franz Kafka's short story about the paradox of being "before the law". Standing before something presupposes a relation between that something and someone else, that is, a logical link between subject and object, in a context of alterity and accessibility. However, the law is never touched in the obscure Kafkaesque narrative, registering the finitude of the norm at the moment in which the life of the man who eternally waits beneath its gates comes to an end. The act of waiting for the law places it on a metaphysical pedestal, in the cloister of a hermetic and formidable miracle to be perpetrated by a divine act. The



law thus appears as categorical authority, as "the law of laws", sublimity without history, genesis, or any worldly derivation.

It must be understood, however, that the law is not external to men: it is intrinsic to themselves - it is not a noun, it is an act, it is a task to be accomplished in the here and now, in the physical and imperfect world. It is not the law that founds men; they are the ones who must found it, since it is not an intangible-theological phenomenon, but a performative act through which them, the human beings, institutes it (HERRERA FLORES, 2009b, p. 179).

Human rights as antagonistic cultural products are situated halfway between Kelsenian positivism, which is too skeptical-humanistic, and absolute transcendent, not being reduced either to mere guidelines for judicial decisions or to the starry sky of human indecision (HERRERA FLORES, 2009b, p. 178-179).

In this interpretative approach, there is no room for neutrality: there is full awareness of the processes of social, sexual, ethnic and territorial division of the human being. According to the "position" one occupies in such segregationist frameworks, one has greater or less access to education, housing, health, expression, environment, etc.

Having said that, the fundamental objective of the struggles for legal goods is none other than being able to live with dignity, which, in material terms, means generalising egalitarian processes for obtaining the material and immaterial goods that make up the value of human dignity. Lastly, systems of guarantees (economic, political, social and, above all, legal) must be established to commit national and international institutions to the fulfilment of what has been achieved (HERRERA FLORES, 2009a, p. 32-33).

Having made this initial digression on the profane and performative character of human rights, it's moved on to the historical understanding of the emergence of the phenomenon that is the object of the present study, neoliberalism, in order to confront it with the materialist thought of human rights developed by Joaquín Herrera Flores.

In this scope, it begins with what preceded neoliberal society in the West, in the course of 20th century events: the Welfare State that emerged in the post-war period.

3 THE GOLDEN AGE: CAPITALISM IN THE WELFARE STATE - FROM EUPHORIA TO DISENCHANTMENT

For most of the 20th century, Soviet communism proclaimed itself an alternative and superior system over capitalism, destined by history to triumph over it, and indeed its advance in the Western world was greatly feared by those who rejected it as a political-economic organisation. With the exception of the Nazi period, the international politics of the whole brief Twentieth Century after the October Revolution can be better understood as a secular struggle of forces of the old order against social revolution (HOBSBAWM, 2005, p. 63).

Undoubtedly, recovering from the damage of World War II was the priority of European countries in the aftermath of 1945. However, before that, there was a broad international mobilization against another problem: the collapse of the Great Depression in 1929 and the consequent misery of millions of people around the world.

At that time, a current of economic thought led by John Maynard Keynes came to argue that cycles of imbalance and crisis are inherent to capitalist economies, in which situations of full employment are "rare and ephemeral". Therefore, these economies would need to be balanced, which would imply the assumption by the state of complex functions in the field of promoting economic development, fighting unemployment, redistribution of income and social security (AVELÃS NUNES, 2003, p. 31).

With a view to this need, from the 1930s, and more substantially, in the post-war period, the rise of the so-called Welfare State was witnessed, based on economic intervention, redistribution of wealth, regulation of social relations, recognition of workers' rights and the implementation of public social security systems (AVELÃS NUNES, 2003, p. 34). The intervention of the state was, thus, legitimized in the search for greater social justice and equality among people.

About this new paradigm, Ignacio Sotelo (2010, p. 232) elucidates that the Welfare State guarantees, "from the cradle to the grave", a minimum income that ensures a dignified life to the citizen in all eventualities that arise, such as illness, disability, old age and unemployment. The author points out that it is the British model of the Welfare



State that is spreading throughout the rest of Europe, in which an existential minimum that is untouchable to all as an indelible part of human dignity prevails.

Finally, it was understood that the secret weapon of a society of popular wealth is full employment. Thus, in Marcio Pochmann's words (1999, p. 11), Keynesian policies promoted greater socioeconomic security for workers and, therefore, less social exclusion, imposing limits to the imminent risks of social fractures in capitalist economies since then. Industrialization developed at full speed and the world economy grew impetuously, which gave this period the designation of "golden years of capitalism" (1945-1970).

In the 1960s, it was clear that nothing like this had ever happened before. As Hobsbawm (2005, p. 257) explains, world production of manufactures quadrupled between the early 1950s and the early 1970s, and, even more strikingly, world trade in manufactured goods increased tenfold.

Thomas Piketti (2014, p. 463) outlines how social investments, progressive tax collection and financial stabilization allowed a significant increase in national wealth in Welfare State countries throughout the twentieth century.

Despite these notable achievements, this period was not exempt from criticism. Giovanni Arrighi (1996, p. 307), for example, hesitates to affirm that this was the best of all times for capitalism, in such a way that the expression "golden age" would be an exaggeration.

The fact is that, in spite of the socio-market wonders it perpetrated, the Welfare State model was unable to provide answers to the internal and external crises generated in its countries. The unbridled expansion of the markets led to an excess of capacity and factory production that could not be absorbed by the consumer market, leading to a loss of profitability in the manufacturing industries from the end of the 1960s onwards.

This was the root of the accelerated growth of financial capital from the end of the 1970s onwards, emphasises Robert Brenner (1999, p. 12). In this way, it was the great fall in profitability of the United States, Germany, Japan and the advanced-capitalist world as a whole - and their inability to recover - which was responsible for the secular reduction in the rates of capital accumulation. Low rates of capital accumulation have

entailed low rates of output and productivity growth; low levels of productivity growth have resulted in low percentages of wage growth. Rising unemployment resulted from low rates of output and investment growth.

The so-called crisis of Fordism-Keynesianism was the phenomenal expression of a more complex critical picture. In its deepest meaning, it was a structural collapse of capital.

With the unleashing of its structural crisis, the mechanism of regulation that was in force during the post-war period in several advanced capitalist countries, especially in Europe, was also beginning to crumble (ANTUNES, 2009, p. 33).

The dream of a humanized capitalism had faded. A long period of social-democratic government ended when the economic and social policies of the Golden Age seemed to fail, especially in the first oil crisis in 1973. As a result, a process of capital reorganisation and its political-ideological system of domination began; the most obvious contours of which are found in the advent of neoliberalism.

In this context, governments of the ideological right, committed to an extreme form of social egoism, privatization and *laissez-faire*, came to power in several countries around 1980. Among these, Ronald Reagan and the confident and fearful Mrs. Thatcher in Britain (1979-90) were the most prominent.

4 WHEN THE MONSTER COULD FINALLY SHOW ITS CLAWS: SPREADING THE NEO-LIBERAL MODEL OVER THE WORLD

In the enthusiastic post-World War II context, welfare policy acquired the form of social rights. What seemed impossible in the last decades of the 19th century was conquered in leaps and bounds, so that the reduction of the working day and social protection laws were the axis on which bourgeois society in Western countries could re-establish itself.

A reduction in poverty levels and greater income distribution were observed as a direct result of a systemic pattern of social integration. This conjuncture promoted a whole series of favorable conditions for the world of work, promoting an almost full

employment, with strong action of the unions and political parties committed to the workers (POCHMANN, 1999, p. 13).

If considered, also, the intense struggles for civil rights in the 1960s, especially those related to the black and feminist movements, it is possible to conceive, at least, the illusion, with some material support, that modernity would be a promising time of social welfare in a broad freedom regime (MENEGAT, 2012, p. 207).

Humanity was hopeful and incautious trusting in the natural progress of history. Nevertheless, contrary to what was imagined, the subjective mutations that neoliberal rationality operates, in the sense of social egoism, the denial of solidarity and redistribution can lead to reactionary or even neo-fascist movements (DARDOT & LAVAL, 2016, p. 9).

Furthermore, there is an inarguable contradiction. In the globalized world of the Third Industrial Revolution, on the one hand, there is the extraordinary progress of sciences and techniques, with new artificial materials that enable precision and intentionality. On the other, explains Milton Santos (2020, p. 19), unemployment becomes chronic, poverty increases and the middle classes lose quality of life. The average wage tends to decrease, hunger and homelessness become widespread on all continents.

Without a doubt, the last decades of the last century were years that left bewildered all those who, in the wake of the thirty glorious years after World War II, imagined that finally bourgeois society had reached a stage of equilibrium (MENEGAT, 2012, p. 205).

In the early 1970s, a worldwide scenario of rapidly rising prices (rising inflation) began, together with rising unemployment and falling (sometimes zero) rates of growth in gross national product. The era of stagflation had begun. In this era, the supporters of monetarism, taking advantage of the oil crisis, made severe attacks on the Keynesian archetype. This is when a current called neoliberalism gained unprecedented strength.

For David Harvey (2014, p. 12), neoliberalism is, first of all, a theory of political-economic practices. In it, human well-being can best be developed through individual entrepreneurial capacities, with an institutional framework centred on the right to private property, guaranteeing free trade. In this perspective, the role of the state is to preserve

this order of things by performing military defence, police and law enforcement functions to secure by force, if necessary, individual property and the proper functioning of markets. In the material world, this generates a law of the flexibilization jungle, in which a structural reform of the labor market is imposed, with decreased employment protection and increased instability and precariousness (AVELÃS NUNES, 2010, p. 197).

In general, it can be said that there was an empathetic reception to neoliberalism in practices and in political thought since the 1970s. Deregulation, privatization and withdrawal of the state from many areas of social welfare were the keynote of this period.

Not even the environment has escaped widespread privatisation. The neoliberal rationality assumes that “market mechanisms can provide better adequate solutions to environmental problems than governments and their command and control regulations” (GONÇALVES & DALLA VECCHIA, 2022, p. 2522).

In short, the economic measures implemented since the 1970s have sought to tighten monetary issues, raise interest rates, reduce taxes on higher incomes, deregulate the labour market, foreign trade and the financial market, alter the role of the state, privatise the public sector, reduce social spending and restrict trade union action, among others (POCHMANN, 1999, p. 15).

In this new state apparatus, freedoms reflect the interests of private property holders, business, multinational corporations and financial capital.

It should be noted that the first concrete experience of neoliberalisation occurred in Chile after Pinochet's "little September 11" coup, in 1973, supported by Chilean business elites threatened by Allende's trend towards socialism, as well as by US corporations, the CIA and Secretary of State Henry Kissinger. In the meantime, a group of economists known as "the Chicago boys", adherents of Milton Friedman's ultra-liberal theories, then a professor at the University of Chicago, were called in to help rebuild the country's economy (HARVEY, 2014, p. 17).

Thus, for decades, Chile served as a laboratory for neoliberal tests for countries of the global north that effectively applied the knowledge obtained from such experimentation, especially to support the subsequent adoption of neoliberalism in Britain (under Thatcher) and the United States (under Reagan) in the 1980s. Hence, not for the

first time, a brutal experiment conducted in the periphery became a model for policymaking in the centre.

Only in the late 1970s did the conservative attack succeed, with the victories of several right-wing governments in developed countries. Thatcher in England in 1979, Reagan in the United States in 1980, Kohl in Germany in 1982 and Schuler in Denmark in 1983 were, along with other right-wing governments that soon spread in other countries, the vectors of a historic break with the policies of post-war social integration (POCHMANN, 1999, p. 13).

The consolidation of neoliberalism as a new economic orthodoxy of public policy regulation at the state level in the advanced capitalist world occurred mainly through the United States and Great Britain. On that, Margaret Thatcher was elected with the firm obligation to reform the economy: the "Iron Lady" embraced the abandonment of Keynesianism and the idea that monetarist solutions were essential to cure the stagflation that had marked the British economy in that decade. Thatcher implemented a revolution in fiscal and social policies, and immediately demonstrated a strong determination to end the political institutions and practices of the social democratic state. This involved confronting union power, attacking all forms of social solidarity that undermined competitive flexibility, privatising public enterprises, reducing taxes, promoting entrepreneurs' initiative and creating a favourable business climate to induce the flow of foreign investment (HARVEY, 2014, p. 31-32).

On the other side of the Atlantic, as far back as 1979, Paul Volcker, president of the Federal Reserve Bank, promoted a draconian change in the United States monetary policy. The old commitment of the liberal democratic state to the New Deal principles - of Keynesian trait, with full employment as the central goal - was relegated in favour of an ethic aimed at containing inflation whatever the cost (including, in this calculation, the employment and income of citizens). Elected in 1980, the Reagan administration continued this endeavour, pushing for further deregulation, tax cuts, budget cuts and attacks on trade union power (HARVEY, 2014, p. 35)

It's equally important to say, for the limited neoliberal rationality, inflation is public enemy number one, which must be fought with the same vigour as terrorism, that

is, forcefully and inexorably. In this new bourgeois apocalyptic world of profits at any price, unemployment is no longer a concern of those in power, because, according to the old-new theory, with the free market, economies would spontaneously move towards stability.

A necessary precondition for neoliberalisation is the weakening (as in Great Britain and the United States), the overcoming (as in Sweden), or the violent destruction (as in Chile) of the forces of organized labour. It also depends on the power and autonomy of the corporations and their condition as a class to pressure the state authorities. This capacity is exercised directly through financial institutions, market behaviour, interruption of investments and capital flight. Indirectly, it is realised by influencing the outcome of elections, lobbying, bribing and corrupting, or, more subtly, by obtaining power over economic ideas (HARVEY, 2014, p. 126).

It can be stated that neoliberalisation was, from the beginning, a project aimed at restoring the power of the upper economic classes, after the crisis of capital accumulation characteristic of the end of the social era of liberalism in the twentieth century. In this sense, according to Boaventura de Sousa Santos (2002, p. 34), the increase in inequalities was so accelerated and so great in the passage from the 20th to the 11th century that it is possible to interpret these decades as a revolt of the elites against the redistribution of wealth which put an end to the period of a certain democratization of wealth that began at the end of the Second World War.

This process took place in a globalising and overwhelming way, relying heavily on surplus value extracted from the rest of the world through international flows and structural adjustment practices.

High interest rates translated into high unemployment rates and workers' bargaining power was weakened. The result was the precariousness of working conditions and relations, in a scenario in which the insertion of workers in the market becomes increasingly precarious and unstable (POCHMANN, 1999, p. 18).

In part, this is due to the fact that the adoption of neoliberal policies reinforces the predominance of the financial character over the productive in the process of capital accumulation (POCHMANN, 1999, p. 17-18). In England, the proliferation of financial

institutions led a debt culture to occupy the centre of social life. It should be added that once neo-liberalism became so pervasively entrenched in the English-speaking world, it became difficult to take away from it the considerable relevance it acquired over international capitalism.

In this orientation, Reagan and Thatcher took the evidence at their disposal (from Chile and New York City) and put themselves at the head of a class movement determined to restore its power. Their genius lay in creating a legacy and a tradition that drew succeeding politicians into a web of constraints from which it was not easy to escape. Their successors, like Clinton and Blair, could do little more than continue the good work of neoliberalisation, whether they liked it or not (HARVEY, 2014, p. 73).

Finally, Avelãs Nunes (2003, p. 51) brings the issue of external and internal enemies created by neoliberalism. Externally, there is the figure of the "terrorist", as personified in the early 2000s by Osama bin Laden. On the other hand, there is the internal enemy, that is, the criminal, the dissident, including in these categories any human beings of good will who wish to reform society by expanding the sphere of state social intervention.

In general terms, this is the doctrine that has predominated in the capitalist world since the 1980s. Neoliberalism and its core elements - favouring capital, repressing labour, demonising the Welfare State and the political, attacking equalities and exalting freedom (BROWN, 2019, p. 10) has become the predominant world rationale.

The notion that there are no alternatives has been consolidated, as capitalism has won the long historical battle around the narrative about the best option for human beings to organise themselves into society and distribute wealth. It remains to be seen whether all this pragmatism and this freedom reduced to individual enterprise and accumulation are in fact compatible with the socially conquered democratic liberties and the paradigm of human rights that the capitalist system claims to protect.



5 NEOLIBERALISM AND HUMAN RIGHTS: THE SUM THAT HIDES A SUBTRACTION

In truth, the so-called crisis of classical liberalism is not a recent phenomenon, which dates back to the end of the 19th century and the beginning of the 20th century. In order to try to solve the aporias created by the dogmatic principle of *laissez-faire*, several thinkers of liberal philosophy had already been, since the mid-nineteenth century, proposing revisions to the basic theory of liberalism, thought mainly by David Ricardo and Adam Smith, especially with regard to the belief in an autonomous self-regulating market.

In the search for a third way between pure liberalism and fascism, two main lines emerged: firstly, the *new liberalism* (or social liberalism), which predominated in the post-war period, in the economic current of Keynesianism, and, subsequently, neo-liberalism. Although of distinct biases, both had in common the same project: to confront what appeared at a given moment as “the end of capitalism” (DARDOT & LAVAL, 2016, p. 68).

Rejecting both classical *laissez-faire* and Spencerian social Darwinism (based exclusively on the survival of the “fittest”), the “new liberalism”, although without ever breaking with the capitalist worldview, proposed important social reforms and accepted the restriction of individual interests to protect the collective interest. This was the basic ideology which guided the so-called Welfare State throughout the 20th century. Neoliberalism, on the other hand - whose birthplace is the Walter Lippmann Colloquium held in Paris in 1938 (and later reinforced by the foundation of the Mont-Pèlerin Society in 1947 in Switzerland) - raises an alternative to the types of economic intervention and social reformism preached by the “new liberalism”.

In a first moment, neo-liberals are opposed to any action that hinders the game of competition between private interests. Thus, in the theory of the first neo-liberals, such as Walter Lippmann and Louis Rougier, the state should intervene not to limit the market by a corrective or compensatory action, but to decimate it competitively through a carefully adjusted legal framework. In this way, it is no longer a question of postulating a spontaneous agreement between individual interests, but producing the optimal

conditions for the game of rivalry to satisfy the collective interest (DARDOT & LAVAL, 2016, p. 69).

This initial neo-liberalism, thus, combines public intervention with a conception of the market centred on free competition. The administrative interventionism of the state is opposed to a legal interventionism: the law, in this line of thought, is a mere object of instrumentalisation of business exchanges. In this adjustment, property law, contracts, company statutes - in short, the whole enormous edifice of commercial and labour law - become central to the organisation of social life. The role of jurists is therefore essential to define, frame and perfect the regime of rights and obligations relating to property, trade and labour, as technical architects of capital. In this sense, it is up to the state to intervene legally in order to guarantee the real conditions of free competition.

In the great turn of 1980, the neoliberal current that obtained predominance was one in which "The government is not the solution, it is the problem", Ronald Reagan would say, paraphrasing Friedman (DARDOT & LAVAL, 2016, p. 209). A new wave invaded competitive capitalism around the 1960s and 1970s, after the patent failure of Keynesian regulatory policies and efforts for income redistribution, added to an increasing rejection of the Soviet model.

This more aggressive neoliberal faction took the lead in the solutions to the crisis of capitalism at the end of the millennium and, to a certain extent, recovered the old model of "frugal government". The arguments elaborated by Mises (1998) and Hayek (2010) against "bureaucracy" and the "omnipotent state" had an abundant success in the public opinion at the end of the century, and, far beyond the contradictions of the right wing, the collapse of the Soviet Union seemed to be the complete demonstration of the fiasco of centralized economies.

Thus, until the 1970s, unemployment, social inequalities, inflation and alienation were social pathologies attributed to capitalism; from the 1980s onwards, the same ills were systematically attributed to the state. Capitalism ceased to be the problem and became the universal solution (DARDOT & LAVAL, 2016, p. 209).

This does not mean that the law has lost, on this crossing, its role of negotiating state agent. As Marilena Chauí (access on: 8 Sep. 2021) argues, in neoliberalism, the

judicialisation of politics is greater than ever, because from the moment that everything and everyone is a company (even the state), it must be considered that in a company and between companies conflicts are resolved by legal means and not by political means. In other words, since the state is a business, conflicts are not treated as a public issue but as a legal (private) issue.

In this new rationality, the law - including fundamental and human rights - are nothing more than an order already given and stipulated by those who truly have the capacity of management. In neoliberal democracies, parliament is formed by a series of legislative CEOs, who, with their lobbying and collusion, guide the drafting of the law manuals in the most efficient way for the accumulation of wealth by the bourgeoisie. And anyone who dares to disagree with this must find themselves facing the repressive state apparatus. In neoliberalism, not only is revolution a police matter, but also any demand for minimal social reforms of the system that require positive state benefits.

The state, in this historical cut, is a two-faced state, which refers to the figure of a centaur: docile and flexible from the waist up (in relation to the owners of power and money); authoritarian and patriarchal from the waist down (both on the social end, as on the criminal end) (MINHOTO, 2020, p. 172). Not for nothing, mass incarceration is a phenomenon corresponding to this reality: the growing flow of disinherited families, marginalised citizens, unemployed youth, hopelessness and violence that accumulate in the segregated neighbourhoods of cities is answered with the hypertrophy of the State in its repressive functions (WACQUANT, 2018, p. 110). In such a way, it is not an exaggeration to conclude that neoliberal state is the one that punishes citizens for the social insecurity engendered by itself.

This whole picture, if not the exact opposite, at least, is far from what Joaquín Herrera Flores conceives as the ideal of a society based on human rights in its material perspective. Instead of sacred entities encased in a glass dome waiting for someone to rescue them, human rights, for Herrera Flores, are a continuous process, in what could be called a permanent revolution of ideas and practices.

As we have seen, rights are not, in this respect, something ready and finished, laws made by other men and in other times to which all must conform and wait their turn to enter the Kafkaesque gate.

This is because human rights, under this view of political resistance, constitute something more than the set of formal norms that recognize and guarantee them nationally or internationally. Human rights as cultural products form part of the ancestral human tendency to construct and ensure the social, political, economic and cultural conditions that allow human beings to persevere in the struggle for dignity as protagonists of their stories and beings with capacity and power to act for themselves (HERRERA FLORES, 2009b, p. 191).

The law is not an exogenous object, which is outside, but an endogenous thing, that is, a potency that depends on human action in the world, an action that is not only up to legislators and cabinet arrangements: it is up to everyone. This cannot wait for an imaginary, homogeneous and empty future - it is a matter of doing inscribed in the present time.

For this very reason, human rights have nothing to do with the development of some unconsciousness, world spirit or any other metaphysical plane. This is because what makes global history are the materially verifiable acts, although we should never forget the power relations in which they are situated. From this perspective, the system imposed historically by capital is contemplated as something transitory, not eternal (HERRERA FLORES, 2009b, p. 186).

In this sense, there is no transcendental guarantee, that is no sphere outside human interventions that makes possible the unfolding of a moral good above all else on all the contents of social action (whether this sphere be called History, Reason, God, Capitalism or Communism).

The great error, then, of the mentors of the organisation of capital was to put forward only ideal and abstract ways out, which function as apologetic mystifications. This tends to consolidate a fatalistic universalism that condemns everyone to a single imaginary, a single possible, grey world of techniques and machines, whose normative apparatus is just one more of them, reduced to an instrument at the service of market. In



this tetric reality, social rights are stillborn, because they are born to perish, to remain forgotten and dusty in one of the offices of neoliberal democracy.

In Herrera Flores' truly innovative perspective, human rights are not a point of arrival - they are processes. It is a creative carnival-style walk: the struggle of all (women, black people, LGBTQI+ people, native peoples etc.) for the suspension of the vertical hierarchical order, in which freedom loses its individualistic character.

As Giorgio Agamben (2004, p. 109) explains, the periodic festivals - the Saturnais of the classical world, the Charivari and the Carnival of the medieval and modern world - are characterised by the suspension and breaking of legal and social hierarchies: during these festivals, men dress up and behave like animals, masters serve slaves, men and women exchange roles and criminal behaviour is considered lawful. A period of anomie is thus inaugurated which interrupts and temporarily subverts the social order.

This is not entirely the case from this point of view, since Herrera Flores does not suggest a radical departure to the anomie level, but rather, to the construction of a kind of carnivalesque normativity.

In this sense, the author makes use of an ontology of human rights as norms of power, as processes that empower the weak or those affected by relations of structural violence. But these immanence planes will not come by themselves. We need the creation of social, economic, political and cultural conditions so that all men and women can assert their modes of existence (HERRERA FLORES, 2009b, p. 187-188).

Foucault would say that one should not demand that political action re-establish the "rights" of the individual, as Enlightenment philosophy defined them. It is necessary to "de-individualise" by multiplication, by displacement and through diverse agency, so that the group should not be the organic bond that unites hierarchical individuals, but a constant generator of de-individualisation (1977, p. 4).

This intensification of collective experience and life itself in the present moment, in a normative celebration for freedom, which is not solitary, but solidary, leads to assume the need to link ourselves actively and creatively with the world and with what exists, with no passivity nor blind acceptances of essences (HERRERA FLORES, 2009b. p. 187).



In that regard, we have that a new world is possible, but its architecture and its work need the hands of each one, in a joint work. By placing all men and women in the position of subjects in the task of realising human rights, Herrera Flores calls for the struggle, raising a true mission of rupture with the dominant neo-liberal order, in which the expected revolution against the means of oppression would not have a definite date and time to happen, but would be a permanent and immanent process.

It would be, finally, a revolution of thoughts and of small-big deeds in here and now, in which the weapons are the ideas and the barricades are the daily denial of the material, political and intellectual misery to which the savage capitalism installed at the end of the last century subjected and continues to subject the great majority of world's population.

Undoubtedly, it is not a simple undertaking, but it is extremely necessary to activate the emergency brake against the catastrophe to which the "civilizing" progress train of modernity is inexorably heading in this new Dantean phase of capital.

6 CONCLUSION

As explained, human rights from the perspective adopted here have a profane and performative character, in the daily struggle for better living conditions and social equality. Thereafter, the historical overview of the emergence of the neoliberal phenomenon in the Western world is traced, passing through the rise of the Welfare State in Europe in the post-war period, until the collapse of the Soviet Union in the 1980s and the emergence of a new capitalism, renewed in its destructive fury, in the spirit of competitiveness and in the ideology of individual enterprise, by which the state is freed from the obligation of helping those who are in a disadvantageous position in the race for "success". The market returns, therefore, to the pedestal of intangible, untouchable and self-regulating deity.

With this, we observe that Joaquín Herrera Flores' theory of human rights is not compatible with the world-system of neo-liberalism, because it is, in ideology and in practice, a constant struggle against exactly everything that this system represents: transcendentalist ideations, instrumentalisation of the state and the legal system in favour



of one class, inequality, verticalisation, neo-conservatism, accumulation by dispossession and the imposition of a single world reason for all human beings on earth. The revolution via human rights proposed by Herrera Flores is a permanent, immanent and creative battle against this whole order of things.

This is due to, in neoliberalism, citizens must conform and accept their roles previously defined by the God the Market, in conditions of underemployment, unemployment, misery and generalised misery. In contrast, human rights as a cultural product committed to material reality do not conform only to a theory, but also to a call for direct action in the world, constituting a true invitation to irresignation.

In this sense, Joaquín Herrera Flores suggests a carnivalesque and revolutionary action, since it is creative and suspends hierarchy and order: a revolution without an appointed time, since it must happen uninterruptedly, every day, by the hands of all and everyone, since it depends not on the individual, this selfish, alienated and universalizing modern category, but on the subject, understood as part of a long creative process, encompassing, unfinished and collective, without the dualisms and ties of modernity and without the tyrannical totalitarianism inscribed in neoliberal world reason.

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