

---

## **HUMANIST CAPITALISM AS A SOLIDARY SUPPORT FOR OVERCOMING THE POST-PANDEMIC NEOLIBERALIST MODEL**

## **O CAPITALISMO HUMANISTA COMO SUPORTE SOLIDÁRIO DE SUPERAÇÃO AO MODELO NEOLIBERALISTA PÓS-PANDEMIA**

### **GONÇALO NICOLAU CERQUEIRA SOPAS DE MELLO BANDEIRA**

Doutor em Direito pela Universidade de Coimbra (2009). Mestre em Ciências Jurídico-Criminais pela Faculdade de Direito da Universidade Católica Portuguesa (2003). Professor do Departamento de Direito da Escola Superior (Pública) de Gestão do IPCA. Investigador Integrado no JusGov-Universidade do Minho.

### **ALEXANDRE MAGNO AUGUSTO MOREIRA**

Doutorando em Direito Empresarial e Cidadania pelo Centro Universitário Curitiba - UNICURITIBA. Mestre em Direito Processual Civil e Cidadania pela UNIVERSIDADE PARANAENSE – UNIPAR – Unidade Universitária de Francisco Beltrão – PR. Advogado, Coordenador e Professor do Curso de Direito da UNIPAR - Unidade Universitária de Francisco Beltrão – PR. E-mail: [alexandremagno@prof.unipar.br](mailto:alexandremagno@prof.unipar.br). Orcid: <https://orcid.org/0000-0002-4543-131X>. Lattes: <http://lattes.cnpq.br/0564249425313675>.

### **JEAN COLBERT DIAS**

Doutorando e Mestre em Direito Empresarial e Cidadania pelo UNICURITIBA, pós-graduado em Direito Criminal pelo UNICURITIBA, pós-graduado em Direito Civil e Processo Civil pela Católicas/SC. Advogado. Professor da UNICESUMAR. Orcid: <https://orcid.org/0000-0001-7266-3442>. E-mail: [jean@diasferreiraadvogados.com.br](mailto:jean@diasferreiraadvogados.com.br).



---

## ABSTRACT

**Objective:** this paper aims to establish theoretical contributions of humanist capitalism, as a support to overcome the post-pandemic neoliberalist model. As a research problem, the question arises: is the theory of humanist capitalism an effective measure to contain the post-pandemic neoliberal capitalist system?

**Methodology:** in this sense, using the hypothetical-deductive method, with qualitative research and bibliographic review, it is intended to discuss theoretical premises about the evolution from liberalism to neoliberalism, and, from this context, to serve as a theoretical support to defend capitalism humanist, as a theoretical current capable of balancing the post-pandemic phase, in the tension dialogue between equality and freedom, using fraternity as convergence, in search of the realization of human rights of the first, second and third dimensions.

**Results:** as a conclusion, it is defended the application of fraternity as a universal principle in the application of modern capitalism, as a way of overcoming the neoliberalist model, in the realization of human rights in a post-pandemic scenery.

**Contribution:** as a contribution, humanist capitalism considers itself a philosophical instrument in post-pandemic economic law, capable of establishing, through universal brotherhood, the dialectic between the fundamental principles of freedom and equality in the defense of human rights.

**Keywords:** Humanistic Capitalism; Liberalism; Neoliberalism; Human Rights; Pandemic.

## RESUMO

**Objetivo:** o presente trabalho tem como objetivo estabelecer aportes teóricos do capitalismo humanista, como suporte solidário de superação ao modelo neoliberalista pós-pandemia. Como problema de pesquisa, questiona-se: a teoria do capitalismo humanista é uma medida eficaz para conter o sistema neoliberal capitalista pós-pandemia?

**Metodologia:** neste sentido, utilizando-se do método hipotético-dedutivo, com pesquisa de natureza qualitativa e revisão bibliográfica, pretende-se discorrer premissas teóricas sobre a evolução do liberalismo ao neoliberalismo, e, a partir deste contexto, servir de sustentação teórica para defender o capitalismo humanista, como corrente teórica capaz de equilibrar a fase pós-pandemia, no diálogo de tensão entre igualdade e liberdade, servindo-se da fraternidade como convergência, em busca da efetivação dos direitos humanos de primeira, segunda e terceira dimensão.



---

**Resultados:** *defende-se, como conclusão, a aplicação da fraternidade enquanto princípio universal na aplicação do capitalismo moderno, como forma de superação do modelo neoliberalista, na efetivação dos direitos humanos em um cenário pós-pandemia.*

**Contribuição:** *como contribuição, o capitalismo humanista considera-se instrumento filosófico no direito econômico pós-pandemia, capaz de estabelecer por intermédio da fraternidade universal, a dialética entre os princípios fundamentais da liberdade e da igualdade na defesa dos direitos humanos.*

**Palavras-chave:** *Capitalismo Humanista; Liberalismo; Neoliberalismo; Direitos Humanos; Pandemia.*

## 1 INTRODUCTION

It is observed in theoretical studies, and in the reflections from practical activities, a growing criticism of the liberal and neoliberal capitalist model, surpassed by the harmful effects caused by the individualistic attitude, the concentration of wealth in economic conglomerates, to the detriment of a mass living together with misery, at the mercy of one's luck.

The result of this is observed through the invisible war experienced by the pandemic of the New Coronavirus (COVID-19), which brought to light, the absence of limits of the human being in disrespect to essential rights enshrined in Constitutional and international norms, of which highlighted, the right to life in relation to the pandemic crisis.

In view of this problem, it is intended to discuss in this paper, a theoretical approach on humanist capitalism, from the perspective of the studies of Wagner Balera and Ricardo Hasson Sayeg, as a foundation for the overthrow of economic neoliberalism, especially for the experiences of post- pandemic.

The hypothetical deductive method will be used as a method, due to the provisional hypothesis presented: humanist capitalism as a tool for the effectiveness and overcoming of the post-pandemic neoliberal model. In addition, qualitative research will be carried out, with a bibliographic review referring to national and international texts and legislation.



---

As a study premise, it starts from the theoretical evolution from liberalism to neoliberalism as the essence of regulation in the capitalist market, and, based on these economic models, to discuss its effects at the time of the experienced pandemic.

In addition, as a form of proposal the hypothesis presented, it is intended to use the theory of humanistic capitalism, as a solution tool to the neoliberal system in decline, especially as a solution to the economic and social problems caused by the New Coronavirus pandemic.

## 2 FROM LIBERALISM TO NEOLIBERALISM

As an assumption of theoretical study of neoliberalism, it is necessary to establish certain theoretical contributions about the evolution of liberalism, until reaching the ideals of neoliberalism, object of analysis, and an integral part of the problem of the present research.

When talking about liberalism and liberal thinking, freedom is reported as a fundamental pillar (LEMOS, 2020). Liberalism was born due to the excess of abusive practices of state power, the lack of balance in religious ideology, and, mainly, the search for civil rights (MERCHIOR, 2011). It was a question, therefore, of establishing a rational balance between limitation and division of authority, highlighted in Benjamin Constant's celebrated speech at the Ateneu Real de Paris in 1818, which demonstrated the dichotomy between the liberalism of the ancients (distribution of power political among all citizens - freedom), and modern (security in private enjoyments - freedom according to the guarantees agreed by the institutions) (BOBBIO, 2000).

In this way, it is contextualized in the difficult task of equalizing freedom between citizens and society, in the almost unrestricted exercise of their activities, and, at the same time, providing the State with a way of restricting or limiting attitudes without confronting their respective freedom. granted.

As a complement, the schools of thought of freedom were divided under three ideologies: the English School, which preached freedom as the absence of coercion



---

(negative freedom), enshrined as everything that the Law allows for the simple fact that it does not prohibit (independence)<sup>1</sup>. In turn, in the French view, freedom was identified with self-determination, politics as a reflection of personality autonomy (Jean-Jacques Rousseau) (autonomy), and, for Germans, positive freedom, as the possibility of personal fulfillment, a development not on political bias, but on human potential (personal fulfillment) (BOBBIO, 2000, p. 40).

Historically, the French Revolution of 1789 opened a new rationality, in opposition to the ideals of the Police State, as a way of establishing a new social order, in the need of the bourgeoisie to liberate production and profit from the sphere of ownership and domination government (VAZ, 1990, p. 20).

In this context, the State moves from a conception of maximum state interventionist and holder of political and economic power and control, to a conception of night guard, far from the spotlight of political-economic activities and the behaviors specific to individualism (VAZ, 1990, p. 22). The identity of a "(...) State of liberal, atomistic, individual<sup>2</sup>, perfectly competitive capitalism"<sup>3</sup>, are manifested in expressions that fit to characterize the individuality of the countries that adopted a liberal policy at the end of the 18th century and during the 19th century, for example, in the theoretical contributions of Stuart Mill and Adam Smith (VAZ, 1990).

Therefore, far from any State intervention, in the activity of regulating the economy, the popular expression "invisible hand" functioned as a convergent approach on the part of society in achieving the balance and rationality of the economic market, made possible by the motto (VAZ, 1990) *laissez faire, laissez passer*<sup>4</sup>.

---

<sup>1</sup> Thought proposed by Hayek (1983), when conceptualizing freedom as the state in which man is not subject to coercion by the arbitrary will of another, defining it, as a complement in the classical tradition, as the "independence of the arbitrary will of another". In addition, freedom refers to the relationship with one's neighbor, which will only be transgressed by the coercion of man by man.

<sup>2</sup> At the economic level of a Liberal State, Manuel Vaz (1990) characterizes as informative assumptions, the presence of small individual companies, enjoying these, prerogatives of absolutely free activities (freedom of initiative) - free individual enterprise - in perfect competition between them, without them being able to control prices, qualifying the consumer as the holder of economic power and price control.

<sup>3</sup> Sayings proposed by Manuel Vaz, when identifying the figure of the State in classical liberalism.

<sup>4</sup> In the translation of the expression let it do, let it pass, in the complementation "*le monde va de lui même*" (the world goes by itself), in the words of Manuel Vaz (1990), it is a motto, a requirement, a proposal by Adam Smith, when investigating the Cause and Nature of Nations (1776), preaches the exclusion of any limitation before society. Natural freedom as a dogma presented, allowed complete



---

Relevant point in the theoretical contributions on liberalism, concerns the collision between equality and liberalism. Antithetical values are considered in the expression presented by Norberto Bobbio (BOBBIO, 2000), to the point of considering the impossibility of fully realizing one of the rights, without sacrificing or limiting the other.

In this sense, freedom and equality call for convergence in favor of liberal doctrine, through the use of equality before the Law and equal rights. Equality before the Law inserted as a constitutional prescription, cited as an example, the French Constitution (s). On the other hand, equality of rights, confirmed in the Declaration of the Rights of Man and of the citizen of 1789<sup>5</sup>. Therefore, while equality before the Law is characterized in a specific way (such as the right to equality in Access to Justice), equal rights determine the wide range of guaranteed fundamental rights, among them, the right to freedom, equality, and the correlation with property rights (BOBBIO, 2000).

As an opportunity, it is noteworthy that it is not the intention of this essay to exhaust theoretical contributions about liberalism, but only to demonstrate the evolution of the concept of an economic and political activity, with minimal intervention by the State in the regulation of markets and in the exercise of power, as a way of allowing the free exercise of society in economic activities.

Despite being characterized by the idea of individualistic capitalism, especially to the maximum attachment to individual satisfactions, to the detriment of the solidarity result, liberalism cannot be exploited for not achieving benefits<sup>6</sup>. This economic

---

freedom, without interference with individual interests, in the sense of opposing free competition in the market.

<sup>5</sup> In this sense, Article 1: "Men are born and are free and equal in rights. Social distinctions can only be based on common utility". DECLARATION OF HUMAN AND CITIZEN'S RIGHTS. 1789. Available at: <[http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudos-de-apoio/legislacao/direitos-humanos/declar\\_dir\\_homem\\_cidadao.pdf](http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudos-de-apoio/legislacao/direitos-humanos/declar_dir_homem_cidadao.pdf)>. Accessed on 02 dec. 2020.

<sup>6</sup> In the 18th century, intellectuality was linked to liberalism, which motivated the propulsion of political and economic freedom, with the consequent decline of absolutist monarchies, the separation of church and state, the emergence of the constitutional regime in the United States. Despite criticisms of the exploitation of the poorest, there is a notorious existence of unprecedented population growth, an increase in the expectation and quality of life (material aspect) of the population (STEWART JR., 1995, p. 21).



---

regime<sup>7</sup> confronted the oppressive and absolutist sovereign state, provided improvements in social life for certain layers, and caused the rise of the bourgeoisie (LEMOS, 2020).

Mises (2010, p. 41) position, in defense of liberalism, when mentioning that, thanks to liberal thought, it remained for the modern age, and, using the Author's expressions, why not say about contemporary reality, the great mass of future generations can enjoy a higher standard of living than that experienced by previous generations<sup>8</sup>.

Under these considerations, it is relevant to clarify that the preliminary study of liberalism will serve as a path to the subsequent topics due to the logical consequence, that is, the neoliberalist ideals.

## 2.1 BRIEF NOTES ON NEOLIBERALISM

Historically, neoliberalism is mentioned as a controversial concept. There was no consensus among supporters of the time, from the first meeting of the Mont Pèlerin Society (1947)<sup>9</sup>, to the proposed ideals of the Chicago School, London School Economics, and Manchester School. The same idea of minimal state intervention in the markets was shared, however, the opinion was not unanimous regarding the role of state legitimacy in political and economic guidelines (ANDRADE, 2019, p. 211).

---

<sup>7</sup> For a classic defensive view of the regime, liberalism cannot be seen on the exclusive idea of the benefits of wealthy classes (capitalists, entrepreneurs) to the detriment of other classes. Liberalism has always sought the good of all, and not the specifics of a social group. Historically, liberalism was the first social movement that promulgated the well-being of all, and therefore seen by the ignorant and unjust, to those who preach only the ideology of class distinction (VON MISES, 2010, p. 39).

<sup>8</sup> Free labor is compared by Mises (2010, p. 53), as that capable of creating greater wealth for the whole, than slave labor and favor of masters. This statement in favor of liberal thought compares the life of a worker of the modern age, more advantageous and pleasant than that of a pharaoh in Egypt, since the pharaoh, even though he commanded thousands of slaves, the free worker does not depend on anything, but on its effort to achieve results.

<sup>9</sup> Harvey highlights the rise of neoliberal theory, as an antidote to threats to the capitalist social order, in solving its problems. A group of economist scholars (among them Ludwig Von Mises and Milton Friedman), joined efforts alongside the renowned Austrian political philosopher Friedrich von Hayek, to create the Mont Pelerin Society, pointing out as the foundation of society's discourse in favor of liberalism: freedom of thought and reflection, the essence of dignity and freedoms, the struggle for private property in the market, that is, reviving freedom, through the free initiative of the markets (HARVEY, 2008).



---

The term gains relevance with the reforms in Chile (Pinochet Government) in 1978<sup>10</sup>, when it comes to be named in a pejorative way by certain scholars due to the wave of market deregulation, privatization and declining welfare in the world. From 2000 and with the world crisis of 2008, precise studies about the function and structure of neoliberalism stand out, with emphasis on David Harvey, Foucault, in the proposal of seeking the limits, continuity and alternatives for neoliberalism (ANDRADE, 2019).

Conceptually, neoliberalism is classified by the idea of intervention of the minimal State, a theory that intends to propose in practice the political and economic ideology, based on human well-being within its individualities, providing the entrepreneurial capacity and in an individualized way among the institutions, in the search for the consolidation of private property, free market and trade rights (HARVEY, 2008).

The respective theory proposes to the State the role of exceptional intervenor, whose task is to maintain the quality and integrity of money, the structuring of military forces, for the faithful guarantee of the right to private property, and, if necessary, the use of forces for the correct functioning of the markets. In this sense, once the markets are created, the State must intervene in a minimal way. For David Harvey, the State does not have satisfactory information to understand market signals, so that large private groups may distort market interventions (HARVEY, 2008).

As a contemporary concept to Harvey's disposition, there is no way to make the idea of neoliberalism exclusive, due to austerity monetary economic policy, the mercantilism of social relations (privatizations) or the dictatorship of financial markets. The concept is rational under the political bias, and is translated by the imposition "(...)" on the part of governments, in the economy, in society and in the State itself, the logic of capital until it becomes the form of subjectivities and the norm of stocks (DARDOT; LAVAL, 2019).

---

<sup>10</sup> For David Harvey, it is complemented that the first experience of neoliberalization occurred in Chile, after the Pinochet coup, sponsored by Chilean business elites, supported by American corporations, the CIA and Secretary of State Henry Kissinger. The conduct was the reprimand of social movements, unions and popular groups, opening markets without restrictions (HARVEY, 2008).





---

The Keynesian ideas of the interventionist state, on the rise in the 1930s, were opposed to neoliberal ideas. For neoliberal thinking, state decisions regarding investment and capital accumulation were biased, aimed at protecting interest groups (unions, environmentalists), and more, because as stated, these decisions could never be imposed on negotiations by large companies. groups involved in the market (HARVEY, 2008).

Therefore, as an evolution to liberal thought, neoliberalism is marked by profound changes in the field of action and legitimacy of State intervention in politics and economics, the result of freedom and private action in the markets, in the incentive to capitalism through free competition. However, it is essential to establish some considerations of the negative effects of neoliberal policy, especially in times of crisis, for the purpose of justifying the objectives of the present work.

## 2.2 THE RELATIONSHIP BETWEEN NEOLIBERALISM AND THE EFFECTS OF THE COVID-19 PANDEMIC

It is important to establish as a study assumption, the justification of the problem presented. The emergence of the crisis brought about by the pandemic of the New Coronavirus (COVID-19) is used as a basis, as a way to demonstrate in reflex, the harmful effects provoked in the economic policy in face of the neoliberalist model developed until then.

To this end, we will analyze the problem created by neoliberal political thinking that, in times of health crisis<sup>11</sup>, cause countless losses of life as an instrument of market regulation. In a national context, the countless victims in the Samarco accident (Empresa Vale - Minas Gerais), which victimized people and caused natural disasters of immeasurable proportions, in addition to the deleterious effects of the pandemic, in

---

<sup>11</sup> Boaventura de Sousa Santos demonstrates the normality of the exception for the word crisis. Due to neoliberalism (the dominant version of capitalism), the world has been experiencing a situation of continuous crisis. The crisis is exceptional and temporary, and is commonly explained by the factors that cause it. And what to do with the permanent crisis? The objective of the permanent crisis is not to be resolved, setting itself as objectives - to legitimize the scandalous concentration of wealth - to boycott effective measures to prevent ecological catastrophe. The pandemic aggravates a situation that society was already experiencing. (SANTOS, 2020).



---

the absence of interruption of economic activity, stand out (FERNANDES; PAULA, 2020).

To those who are opposed to neoliberal thinking, from a perspective of public health analysis, respective ideology, or whatever it may be, the political choice culminated in economic inequality in the face of free competition, precarious work, the fragility of public services and assistance (health, social security), which caused a significant difficulty to the population, under an aspect of established social vulnerability (NUNES, 2020).

The reflexes of the individualist ideology, evolving the neoliberal conception, at the same time that they provide favorable conditions for the increase of capital, concentration of income and power, materialize in contrast, in social inequality, in the fragility of the poorest classes. While some lives are protected, others are played out on their own (VERBICARO, 2020).

For the critics of the neoliberal theory, the observation made in recent years, especially in Brazilian lands, is to go against the idea of the common good, of solidarity, in search of a conception for itself, based on rules of consumerism, geared to immediate pleasure and desire<sup>12</sup>, without analyzing the macro context of losses that imminent consumption may cause at a global level, in reverse of otherness, of the cooperation of efforts (VERBICARO, 2020).

It is essential, therefore, to adapt the political-economic thinking, imbued in society, from a humanistic and solidary perspective, in the interest of economic activity, under an inter-subjective, cooperative and coordinated context, in compliance with the real principles listed in a Democratic State.

Neoliberalism<sup>13</sup> must be overcome by otherness, by cooperation, so that, in a humane way, equality in its formal and material sense can prevail, without wasting, the

---

<sup>12</sup> The concept of consumption is replaced by the archetype of satisfaction of needs, in favor of consumption by desire, something extremely volatile, ephemeral, so that the object of desire is constantly subject to the impossibility of satiety. (BAUMAN, 2001, p. 96).

<sup>13</sup> Neoliberalism believes in minimal state intervention, and, according to Adam Smith's invisible hand, the world can follow the tide of its dynamics and savagery. It is, therefore, an abominable idea - man cannot be destroyed, reinvented. The destroyed, are the dead and the excluded, considered to be plagued by hunger and misery that add up to more than a billion human beings, and it is not that the market absorbs them: they disappear from the earth in the face of a finite life. (BALERA; SAYEG, 2011).



---

interests of free initiative, private property, free competition, and others constitutional rights that act in convergence and for a just and solidary society<sup>14</sup>.

### 3 HUMANIST CAPITALISM: RELEVANT CONSIDERATIONS

When establishing as premises, the central idea of liberalism, with the evolution of neoliberal thought and its consequences for society in times of crisis, it is pertinent to discuss, theoretical contributions to the answer to the provisional hypothesis presented.

In this sense, the justification of humanist capitalism as a foundation for the overthrow of neoliberal thinking in the post-pandemic period. Thus, what should be thought for the coming decades, in a context of regulation of political and economic activity, in order to avoid repeated health and economic crises? Is it possible to avoid, in other words, minimizing new occurrences such as what is now experienced, in a context of crisis?

Humanist capitalism is a theory developed by Ricardo Hasson Sayeg and Wagner Balera, with the purpose of establishing a study of capitalism under a fraternity aspect defended by Christianity<sup>15</sup>. Therefore, the study of capitalism is defended from a human rights perspective, starting from constitutional precepts and ideology from the fraternity, preached by Christianity (PESSOA; SANTOS, 2016).

In other words, by a Christian humanist idea, capitalism manifests itself through a symbiosis between the Universal Law of Fraternity adapted to economic law

---

<sup>14</sup> The Covid-19 pandemic is a test of the quality of democratic institutions, the quality of medical and health services and the strength of social ties and solidarity. Only a policy of truth and transparency can overcome this challenge, as well as the informed participation of everyone in this journey that requires thoughtfulness, sensitivity and proactivity. (MENDES, 2020).

<sup>15</sup> "(...) it is necessary to bring the human Christian perspective to capitalism, whose guiding thread, after all, is a chorus of Pope Paul VI, who affirmed that it is "necessary to promote total humanism. What does he become if not the integral development of the whole man and of all men? A limited humanism, closed to the values of the spirit and to God, the source of true humanism, could apparently triumph. Man can organize the earth without God, but without God he can only organize it against man". (BALERA; SAYEG, 2011).



---

(PESSOA; SANTOS, 2016, p. 206). This message of fraternity led by Jesus Christ, in opposition to the beginnings of the Hellenic civilization, which preached the reach of rights to certain citizens (excluding the poor), was carried out in a universal way, in which human dignity encompasses the equality of the relationship between men, of whom they are not only equal, but brothers to each other, an absolute value of Christian humanism (PESSOA; SANTOS, 2016).

Modern capitalism, remodeled by neoliberalism is a figure to be combated by humanist capitalism, since the philosophical legal framework of this theory is materialized by the Universal Declaration of Human Rights, a transnational source that enshrines the defense of man and his dignity, with the purpose of structuring States and International Organisms through consolidated economic foundations, against the excesses of the globalized economy (SOLIMANI; SIMÃO FILHO, 2017).

The theoretical defense provided by Balera and Sayeg is relevant when emphasizing the substratum for the theory of humanist capitalism based on Jesus Christ, and in the use of fraternity as a founding idea, when mentioning that the word fraternity is not understood exclusively to Christianity, but the collectivity is extensive, regardless of the religious conviction that reserves each human being as an essence (PESSOA; SANTOS, 2016, p. 208).

Fraternity<sup>16</sup>, as an instrument for the realization of humanist capitalism, is proposed as a solution to the tension between freedom and equality, so that the fraternity-freedom-equality triad goes hand in hand, and at the same time interdependent in the capitalist environment, in seeking to make the protection of subjective natural rights, human rights, materialized and taking into account the dignity of the human person in the dimensions of democracy and peace (BALERA; SAYEG, 2011).

---

<sup>16</sup> The normative category of the fraternity is based on the Brazilian legal order, conceived from the unfolding of social reality, through the materialization of external relations of mutual respect, so that it is a principle that incorporates a dimension of inclusion of rights and reduction of inequalities, taking into account the purposes of the rule inscribed in item I of article 3 of the Federal Constitution, in the construction of a free, just and solidary society. (BUZZI; OLIVEIRA, 2015, p. 10).



---

Humanist capitalism became evident in Brazil, through the proposal for a Constitutional Amendment (PEC 383/2014)<sup>17</sup>, which aims to amend article 170 of the Federal Constitution, especially in the inclusion of item X by discriminating: “To art. 170, of the CF, should be added to item X, with the following wording: “X - prevalence of human rights” (SAYEG, 2012, p. 11).

In the dissertation of one of his writings, Sayeg emphasizes the legal perspective of the term “fraternal”, a constitutional claim to anthropophilia, in the measure of a society that overcomes anthropocentrism, removing man from the center of the universe, making him an integral part of a whole through a universal connection. This universal connection occurs through a universal law, represented in it by the fraternity (SAYEG, 2012).

In this context, humanist capitalism develops from a revolutionary theoretical perspective, concerned with the human being, not as the center of any and all relationships, but as an integral part of a gender society. For the theory, man should be seen as responsible for guaranteeing and enforcing his rights, but above all, given the primacy of the dignity of the human person, of fraternity, interconnected to freedom and equality, as a way to build the amalgamation of a society, just, egalitarian and fraternal.

### 3.1 HUMANIST CAPITALISM AS A SOLIDARY INSTRUMENT TO THE POST-PANDEMIC NEOLIBERAL CAPITALIST MODEL

Having established the essential theoretical foundations of the theory of humanist capitalism, it is necessary to point out the provisional hypothesis to this essay, as a way of answering the problem presented at the beginning of the writings.

---

<sup>17</sup> Currently on the agenda of the Constitution and Justice and Citizenship Commission. Available in: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=606656>. Accessed on 04 dec. 2020.



---

Humanist capitalism, as a foundation for overcoming the post-pandemic neoliberal capitalist model.

Through this theoretical discourse, the intention is to overcome the purposes of neoliberalism in a scenario of crisis caused by the coronavirus (COVID-19). The presented idea is justified by humanist capitalism, a solidary and fraternal thinking, with the replacement of the overthrown idea of a failed neoliberal capitalist system, given to individualist ideals.

It is crucial to point out the theoretical ideals of humanist capitalism, proposed by Wagner Balera and Ricardo Sayeg, in defense of the humanist philosophy of economic law, in the theoretical transfer of the universal Law of fraternity to economic law, whose objective is to establish by means of fraternity, through the three subjective dimensions of human rights, the tension dialogue between freedom and equality (BALERA; SAYEG, 2011).

The triad of rights already mentioned, must establish a perfect convergence of dialogue in favor of the dignity of the human person<sup>18</sup>, in creating opportunity for people, so that the transition from the individual and selfish forms of capitalism to a higher stage of social coexistence occurs. , solidary, with a focus on human rights (BALERA; SAYEG, 2011).

For the solution between the Social State, Liberal State<sup>19</sup>, or even for the ideals of a neoliberalism, the Brazilian State is not classified as liberal, not even considered as the holder of economic leadership in a central market economy (Social State). In the dictates of article 170 of the Federal Constitution, Brazil observes the outlines of an economic order filtered in the valorization of work and in free initiative, assuring to

---

<sup>18</sup> The dignity of the human person is seen as a principiological essence in two directions. The first, a subjective public right (of the citizen), embodied by an individual's right before the State, against the whole of society, and, in the same way, a constitutional charge (duty) of the State to protect citizens from their dignity in society or certain groups. (NERY JUNIOR; NERY, 2017).

<sup>19</sup> In the model of the Liberal State, the public power was strongly linked to the Law, and performed its acts within the exact limits prescribed therein, so that it abused when it went beyond the limits of the Law. absence of legal prohibition. The Welfare State the individual starts to securitize rights (health, education), whose effectiveness depends on the direct attitude of the State, allowing greater freedom of action by the State. It is the materialization of the first dimensions of human rights (first and second). (KNOERR; KNOERR, 2017, p. 371).



---

all the Social Justice, with clear objectives of building a free, fair and solidary society, respecting social rights (BALERA; SAYEG, 2011).

This guideline that the Federal Constitution preaches, boils down to the neoliberalism of a humanistic market economy, with emphasis on the protection of social rights. Capitalism as an economic regime, based on free initiative and private property, with a view to achieving the fundamental objectives of the Constitution, using as a standard, the realization of first, second and third generation human rights (BALERA; SAYEG, 2011)<sup>20</sup>.

Humanistic capitalism, therefore, is a theory that recognizes legal science as inter-multi-trans-disciplinary, based on the fundamental premise, universal brotherhood, correlated with the areas of anthropology, biology, philosophy and physics. As a result, the humanist purpose in capitalism enshrines the application of all dimensions of human rights, in a position contrary to neoliberal capitalism, thus overcoming the neutrality between the economic order and human rights<sup>21</sup>.

For the post-pandemic effects, it is essential that the capitalist system conceives the idea of uniting efforts to regulate the market, so that the State must provide assistance in favor of citizens, with a view to the realization of human rights, and, in turn, the human being, must be concerned with the constitutional pillars, in order to build, through the free initiative of the market, the consolidation of the constitutional dictates of a just and solidary society, moving away from the individualistic interest, in the search for the blinded by profit.

---

<sup>20</sup> In the constitutional economic order, state intervention is seen as an exception, given the fundamental principles of the democratic rule of law, based on the construction of a just and solidary society, in order to qualify the State as an economic regulator and maintainer of free competition, de-characterizing any economic leadership that may compromise free enterprise in the market. (NERY JUNIOR; NERY, 2017).

<sup>21</sup> In short, humanist capitalism proposes a legal conception from a quantum perspective, based on quantum physics, relating the positive right to matter, human rights to energy and realism to density. In this way, the application of the law goes beyond the legal text, energy is the spirit of the legal system, and this spirit is what causes the relationship with the dignity of the human person, including human / fundamental rights: an analysis of the precept of law, internally (subatomic), in an analysis of hermeneutics, in its historical, valuative and cultural spirit (DE LIMA, 2021, p. 98/106).



---

#### 4 FINAL CONSIDERATIONS

It is concluded, therefore, that it is inevitable not to reconcile the neoliberalist economic system with the problems caused by the coronavirus health crisis. The consequences of the pandemic are not recent, as other health crises, including historical ones, such as the Spanish flu, have already been experienced.

However, the crisis is spreading and becomes global when it comes to the New Coronavirus (COVID-19), given the notorious ease of spreading the virus, and the difficult task of containing its spread.

Allied to this, there is a system in decay in neoliberalism, despite the form of conduct free of economic regulation structure, specific to individualisms, and lack of due state assistance, especially in health, which now stands out because of the pandemic.

Therefore, as a way of overcoming the collapse of neoliberalism today, in this essay, the defense in favor of humanist capitalism for the current future was used, as a system of economic regulation based on the fraternity, in accordance with the constitutional principles of building a free, just and solidary society.

In fact, it becomes an arduous task, to withdraw this theoretical discourse, in order to implement it in practice, however, it is essential to have the initiative of reconciling through fraternity, from men-men, to brothers-brothers, the formula for the tension between freedom and equality.

Therefore, the recognition of fraternity is defended, under the humanistic bias, in order to materialize the human rights of the first, second and third dimension, so that, based on the observance of such rights, it is possible to speak about economic activity, and consequent regulation of markets.

If the solution is aimed at minimal intervention, or from the perspective of the Social State in economic activity, the premise of protecting constitutional interests in favor of social rights is defended, for the eradication of poverty, for equality of rights, and, so that everyone can have access, in other words, the realization of human rights as a social guarantee.





---

To think of fraternity is to rethink the individualistic character, for the materialization of a solidary idea, of a cooperative attitude, based on interest towards others, alterity, as prevalence of individuality and selfishness.

Through a fraternal attitude, one can speak of evolution or the overcoming of individual capitalism, for the march of fraternal capitalism, where everyone wins, in a cooperated and coordinated way.

## REFERENCES

ANDRADE, D. P. O que é o neoliberalismo? A renovação do debate nas ciências sociais. **Revista Sociedade e Estado**, v. 34, n. 1, jan-abr 2019, p. 211. Available in: <https://doi.org/10.1590/s0102-6992-201934010009>. Accessed on: 2 dec. 2020.

BALERA, Wagner; SAYEG, Ricardo Hasson. **O capitalismo humanista: filosofia humanista de direito econômico**. Petrópolis: KBR, 2011.

BAUMAN, Z. **Modernidade Líquida**. Tradução de Plínio Dent-Zien. Rio de Janeiro: Zahar, 2001.

BOBBIO, N. **Liberalismo e democracia**. Tradução Marco Aurélio Nogueira. São Paulo: Brasiliense, 2000.

BRASIL. Constituição da República Federativa do Brasil: promulgada em 5 de outubro de 1988. **Brasília, DF**: Presidência da República. Available in: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Accessed on: 4 dec. 2020.

BRASIL. Proposta de Emenda Constitucional nº 383/2014. Lex: Brasília, DF, 20 de fevereiro de 2014. Available in: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=606656>. Accessed on: 4 dec. 2020.

BUZZI, G. C.; OLIVEIRA, F. C. A funcionalização da atividade empresarial na perspectiva da fraternidade. Anais do XXIV Encontro Nacional do Conpedi – UFS, Aracaju, 2015, p. 10. Available in: <http://conpedi.danielor.info/publicacoes/c178h0tg/o9e87870/Pew8B7U5AZ6EzAu4.pdf>. Accessed on: 4 dec. 2020.

DARDOT, P.; LAVAL, C. Dardot e Laval: a nova fase do liberalismo. 2019. Viento Sur – traduzido pelo IHU. Available in: <https://outraspalavras.net/outrasmidias/dardot-e-laval-a-nova-fase-do-neoliberalismo/>. Accessed on: 2 dec. 2020.



---

DE LIMA, E. G. **A aplicação quântica do direito sob a ótica do capitalismo humanista**: a não neutralidade entre o capitalismo e os direitos humanos e fundamentais. 129 f. Dissertação (Mestrado em Direito) – Pontifícia Universidade Católica de São Paulo PUC-SP, São Paulo, 2016. Available in: <https://sapientia.pucsp.br/handle/handle/7074>. Accessed on: 10 jan. 2020.

DECLARAÇÃO DOS DIREITOS DO HOMEM E DO CIDADÃO. 1789. Available in: [http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudos-de-apoio/legislacao/direitos-humanos/declar\\_dir\\_homem\\_cidadao.pdf](http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudos-de-apoio/legislacao/direitos-humanos/declar_dir_homem_cidadao.pdf). Accessed on: 2 dec. 2012.

FERNANDES, V. J. A; PAULA, B. L. S. de. A velha novidade da pandemia: neoliberalismo, meio ambiente e COVID-19. **Ciências Sociais Unisinos**, São Leopoldo, v. 56, n. 2, 2020, p. 131-142. Available in: doi: 10.4013/csu.2020.56.2.02. Accessed on: 2 dec. 2020.

HARVEY, D. **O neoliberalismo**: história e implicações. Tradução Adail Sobral, Maria Stela Gonçalves. São Paulo: Loyola, 2008.

HAYEK, F. A. **Os fundamentos da liberdade**. Supervisão e introdução de Henry Maksoud. Tradução de Ana Maria Capovilla e José Ítalo Stelle. São Paulo: Editora Visão, 1983.

LEMOS, A. G. de S. Do liberalismo ao neoliberalismo: liberdade, indivíduo e igualdade. **Inter-Ação**, Goiânia, v. 45, n. 1, 2020, p. 108-122, jan/abr. Available in: <https://www.revistas.ufg.br/interacao/article/view/61148>. Accessed on: 2 dec. 2020.

MENDES, J. M. O neoliberalismo e o estatismo autoritário em tempos de crise: a pandemia do COVID-19 e a força da confiança e da solidariedade. **Recherches & éducatons** [En ligne], HS | Juillet 2020, mis en ligne le 21 juillet 2020, consulté le 04 février 2021. Available in: <https://journals.openedition.org/rechercheseducations/9276>. Accessed on: 4 jan. 2020.

MERCHIOR, J. G. **O liberalismo antigo e moderno**. Tradução de Henrique de Araújo Mesquita. 3. ed. ampl. São Paulo: É Realizações Editora, 2011.

NERY JUNIOR, N.; NERY, R. M. de .A. **Constituição Federal Comentada e legislação constitucional**. 2. ed. em e-book baseada na 6. ed. impressa. São Paulo: Editora Revista dos Tribunais, 2017.

NUNES, J. A pandemia de COVID-19: Securitização, crise neoliberal e a vulnerabilização global. **Cadernos de Saúde Pública**. v. 36, n. 5, maio 2020. Available in: <https://www.scielosp.org/pdf/csp/2020.v36n5/e00063120/pt>. Accessed on: 3 dec. 2020.

JUCÁ, F. P.; KNOERR, F. G.; MONTESCHIO, H. Direitos humanos e inclusão social. **Revista jurídica**, Curitiba, v. 4, n. 53, 2018, p. 478-507, p. 493. Available in: DOI:



---

10.6084/m9.figshare.7642913. Accessed on: 4 dec. 2020.

KNOERR, V. S; KNOERR, F. G. A formação do Estado na contemporaneidade a partir da revolução russa – um século determinante dos novos rumos da sociedade e do direito. **Revista de Direito Brasileira**, São Paulo, v. 18, n. 7, set./dez. 2017, p. 363-373. Available in: <https://www.indexlaw.org/index.php/rdb/article/view/3315/2861>. Accessed on: 5 dec. 2020.

PESSOA, F. M. G.; SANTOS, M. F. O capitalismo humanista como um elemento para o desenvolvimento: um regime econômico em consonância com os direitos humanos. **Revista de direito, economia e desenvolvimento sustentável**, v. 2, n. 2, 2016, p. 1-17. Available in: <http://dx.doi.org/10.26668/IndexLawJournals/2526-0057/2016.v2i2.1411>. Accessed on: 4. dec. 2020.

SANTOS, B. de S. **A cruel pedagogia do vírus**. Coimbra: Almedina, 2020.

SAYEG, R. Uma proposta de emenda constitucional para o capitalismo humanista na constituição federal. **Revista Jurídica da Escola Superior do Ministério Público de São Paulo**. São Paulo, v. 1, 2012. Available in: [https://es.mpsp.mp.br//revista\\_esmp/index.php/RJESMPSP/article/view/14](https://es.mpsp.mp.br//revista_esmp/index.php/RJESMPSP/article/view/14). Accessed on: 21 nov. 2020.

SOLIMANI, C. H.; SIMÃO FILHO, A. A função social da empresa: o capitalismo humanista e a eticidade na busca da justiça social. **Revista eletrônica do curso de direito da UFSM**, Santa Maria, RS, v. 12, n. 3, 2017 p. 990-1021. Available in: <https://periodicos.ufsm.br/revistadireito/article/view/27774/pdf>. Accessed on: 21 nov. 2020.

STEWART JR., D. **O que é o liberalismo**. 5. ed. rev. e aum. Rio de Janeiro: Instituto Liberal, 1995, p. 21.

VAZ, M. **Direito econômico: a ordem econômica portuguesa**. Coimbra: Coimbra Editora, 1990.

VERBICARO, L. P. Pandemia e o colapso do neoliberalismo. **Voluntas**, Santa Maria, v. 11, p. 19, jul 2020. Available in: <https://periodicos.ufsm.br/voluntas/article/view/43490>. Accessed on: 3 dec. 2020.

VON MISES, L. **Liberalismo Segundo a Tradição Clássica**. São Paulo: Instituto Ludwig Von Mises, 2010.

