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**NEO-LIBERALISM AND FUNDAMENTAL RIGHTS:  
HAYEK, FRIEDMAN, NOZICK**

**NEO-LIBERALISMO E DIREITOS FUNDAMENTAIS:  
HAYEK, FRIEDMAN, NOZICK**

**L. Barbosa Rodrigues**<sup>1</sup>

**Abstract:** This article examines some of the most relevant vectors and authors of neo-liberal thinking - and, therefore, anti-social and anti-socialist - regarding the Fundamental Rights subject.

**Keywords:** Hayek; Friedman; Nozick; Neo-liberalism; Fundamental rights; State; Welfare State; Equality; Liberty; Justice.

**Resumo:** O presente artigo examina alguns dos mais relevantes vetores e autores do pensamento neo-liberal - e, conseqüentemente, anti-social e anti-socialista - em sede de Direitos Fundamentais.

**Palavras-chave:** Hayek; Friedman; Nozick; Neo-liberalismo; Direitos fundamentais; Estado; Estado social; Igualdade; Liberdade; Justiça.

**I** - The development of the self-appointed Social State does not prevent the subsistence of the liberal ideology, which, progressively, builds alternative systems to the social model.

In fact, the neo-liberal model means a withdrawal from the liberal paradigm that inspires it.

On one hand, with the admittance, unconditioned and, perhaps, even

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broader, of the Fundamental Rights, themselves, and thus, with the emergence of the *rule of law*.

On the other hand, with the unequivocal acceptance of universal political rights, and so, of the inherent democracy.

Notwithstanding the focus on personal rights or, among them, a revaluation of property rights.

And, above all, the firm refusal of the so-called social rights - in fact, socialist rights.

**II** - Immediately after World War II, in the framework of an international economic conference in Mont-Pèlerin, Switzerland, was founded the *Mont-Pèlerin Society* (1947).

Among the most relevant promoters are included Hayek, Mises, Popper, Stigler and Friedman.

And, over the next three decades, this entity played an important role, especially in the context of its annual congresses, promoting reflection, affirmation and dissemination of neo-liberal political ideas<sup>2</sup>.

**III** - Hayek (1899-1992) is, unquestionably, the most influential author among the neo-liberals.

Hayek undertakes freedom, individual freedom, personal freedom<sup>3</sup>, as the value of values<sup>4</sup>.

Naturally, he admits the indispensability of power, and the necessity of the State<sup>5</sup>, nevertheless, at the same time, he demands a minimal limitation of the human autonomy<sup>6</sup>.

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<sup>2</sup> Similarly, Dixon, *op. cit.*, pp. 18 and 5: "the Mont-Pèlerin Society is, in a way, the mother-house of the neo-liberal *think tank*". "It played (...) an essential precursor role, structuring the intellectual opposition to any and all forms of State intervention".

<sup>3</sup> Hayek, *The Constitution of liberty*, p. 11: "the State in which man is not subjected to coercion by the arbitrary will of another or others is often referred to as 'individual' or 'personal' liberty"; and *The road to serfdom*, p. 280: "the guiding principle - that the only truly progressive policy is a policy of freedom for the individual - remains as true today as it was in the nineteenth century".

<sup>4</sup> Hayek, *The Constitution of liberty*, p. 6: "freedom is not only a particular value, but the source of the condition of most moral values".

<sup>5</sup> Hayek, *The Constitution of liberty*, p. 12: "the function of a policy of freedom must, therefore, minimize coercion, or its negative effects, even if it cannot eliminate it completely".

<sup>6</sup> Hayek, *The Constitution of liberty*, p. 11: the 'state of freedom' is the "condition of men to whom the coercion of some of them by others is reduced to the bare minimum in society".

Sustaining that the relocation of the men's freedom to the benefit of power and the State, whenever unnecessary, implies servitude, authoritarianism, or even totalitarianism, even when such power appears, formally, as a democratic one<sup>7</sup>.

Furthermore, he advocates the interaction between the different valences of freedom, stating that the loss of economic freedom implies, moreover, the loss of political freedom, and, also, the loss of one's own personal freedom<sup>8</sup>.

Hayek overcomes the concept of individual freedom to any possible idea of social justice.

Rejecting the compression of individual freedom in favor of a corporate solidarity.

First of all, because he envisions the group of individuals as a community, of natural, spontaneous, origin<sup>9</sup>, and never as a society, understood in a negotiated matrix.

Afterwards, because social solidarity appears to him rationally absurd, considering the absence of a criterion for the determination and subsequent implementation.

Ultimately, because this supposed solidarity does not even achieve what is intended, considering that, from the socialist model, it always leads to a greater economic inefficiency.

In this way, he fosters a wider range of rights, namely the denial of possible social rights and, consequently, more inequitable, or more socially unjust.

Hayek, consequently, rejects the so-called social rights, as well the socialism, or the Social State, models in which social rights find ideological anchorage<sup>10</sup>.

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<sup>7</sup> Hayek, *Law, legislation and liberty ...*, p. 36: "there will come a day when people will look at the idea of a group of men, even if authorized by the majority of citizens, to have the power to order everything they want, with the same horror that we feel today regarding most other forms of totalitarian government".

<sup>8</sup> Hayek, *The road to serfdom*, p. 38: "progressively, we abandon this freedom of economic issues, without which our personal and political freedom had never existed in the past. Although we were warned by some of the greatest political thinkers of the nineteenth century, by Tocqueville and Lord Acton, that socialism meant slavery, we gradually drew closer to socialism. And now that we have seen a new form of slavery appear before our eyes, we have forgotten so much of this warning that it does not even occur to us that both things are related".

<sup>9</sup> Hayek, *The road to serfdom*, p. 89: "there is nothing in the fundamental principles of liberalism that makes it a static creed, inflexible or immutable rules. The fundamental principle that in arranging our affairs we must resort as far as possible to the spontaneous forces of society, and least of all to coercion, is liable to an infinite variety of applications".

<sup>10</sup> Hayek, *The road to serfdom*, pp. 49 and 50: "few remember today that socialism, in its early days, was frankly authoritarian. The French writers who laid the foundations of modern socialism had no doubt that their ideas could only be put into practice by a strong dictatorial government. For them, socialism meant an attempt to 'end the revolution', through an intentional reorganization of society in hierarchical terms, and by the imposition of a 'coercive spiritual power'; and "it is

Nevertheless, he admits the possible existence of - what he labels by - a State security<sup>11</sup>, although, necessarily, a State security with a quite limited scope<sup>12</sup>.

IV - Friedman (1912-2006) stands out as the most influential continuer of Hayek's work.

He also defends the spontaneous nature of the community, in which each of the individuals who integrate it, seeks, freely, the satisfaction of their own interests<sup>13</sup>.

A selfish search, for sure, but, reflexively, conducive to a general, or largely majority, benefit<sup>14</sup>.

However, he accepts the need for limits on the individual freedom<sup>15</sup>.

Although, only as long as the adequate and democratic connection between represented and those who are their transient representatives and not in reverse<sup>16</sup>.

Similarly, he sees individual freedom as a system, or as an interrelated set of freedoms.

Therefore, the limits to economic freedom are likely to imply constraints in the related areas, such as freedom of expression, or freedom of the press<sup>17</sup>.

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extraordinary that the very socialism once identified as the greatest threat to liberty, but which had begun outright as a reaction against the liberalism of the French Revolution, has attained widespread acceptance under the banner of freedom".

<sup>11</sup> Hayek, *The road to serfdom*, p. 157: "there is no incompatibility of principle between being the State to provide more security the maintenance of individual freedom".

<sup>12</sup> Hayek, *The road to serfdom*, p. 156: "it is necessary to distinguish at the outset the two types of security: the limited, which all may have and which, therefore, is not a privilege, but a legitimate object of desire; and absolute security, which in a free society cannot encompass all and which should not be bestowed as a privilege. The first, security against extreme physical deprivation, the certainty of a minimum of support for all; the safety of a particular lifestyle (...), the security of a minimum income and the security of a certain income that is believed to deserve the person".

<sup>13</sup> Friedman, *op. cit.*, p. 198: "the values of a society, culture, social conventions, those things develop in the same way, through voluntary exchange, spontaneous cooperation, the evolution of a complex structure, through trial and error, acceptance and rejection".

<sup>14</sup> Friedman, *op. cit.*, p. 30: "Adam Smith says: an individual who seeks only his own profit is led by an invisible hand to defend a goal that was not part of his intention. Seeking to defend its own interest, it promotes, often more effectively, the interests of society".

<sup>15</sup> Friedman, *op. cit.*, p. 105: "freedom cannot be absolute. We live in a society of interdependence. Some restrictions on our freedom are necessary".

<sup>16</sup> Friedman, *op. cit.*, p. 68: "a society that preserves and expands human freedom, but that keeps the Government in its place, making it our servant and not letting it become our owner".

<sup>17</sup> Friedman, *op. cit.*, pp. 105 and 103: "freedom is a whole (...) anything that reduces freedom in one area of our lives is likely to affect freedom in other sectors." "Restrictions on economic freedom inevitably affect freedom in general, even in areas such as freedom of expression and the press".

Friedman, definitely, prefers freedom to any possible form of solidarity<sup>18</sup>.

Firstly, because the overlapping of solidarity in the confrontation with freedom implies State coercion, and this coercion jeopardizes freedom<sup>19</sup>.

And, because this State coercion appears, both, unsound, and ethically, unsustainable<sup>20</sup>.

Secondly, because this alleged solidarity is, on the long term, inefficient, or, in the limit, prejudicial to the very interests of its presumed beneficiaries.

Nevertheless, despite a vigorous opposition to socialism and the Social State, the idea of a minimum of solidarity, from a State source, is not entirely detached from its discourse<sup>21</sup>.

V - Nozick (1938-2002) stands out as Locke's follower<sup>22</sup>, much more than Hayek, or Friedman<sup>23</sup>, both former economists, converted, later, to political philosophy.

He proclaims an individualism of libertarian nature, an almost absolute individualism.

Whether in the face of power, or in the face of any remaining groups or individuals<sup>24</sup>.

Nozick, advocates, too, the diminishing of the State figure to a minimal State<sup>25</sup>,

<sup>18</sup> Friedman, *op. cit.*, pp. 183 and 202: "in its literal sense, equality of opportunities - in the sense of identity - is impossible". "A society that puts equality - in the sense of equality of results - prior to freedom will end up having neither equality nor freedom."

<sup>19</sup> Friedman, *op. cit.*, p. 202: "the use of force to achieve equality will destroy freedom".

<sup>20</sup> Friedman, *op. cit.*, p. 198: "very few people will believe in a moral code that justifies forcing people to do without much of what they produce to finance payments to people they do not know, for purposes they may not approve."

<sup>21</sup> Friedman, *op. cit.*, p. 168: "to increase individual responsibility (...) but (...) to ensure a network of salvation for all the people of the country, so that no one has to experience privation and misery."

<sup>22</sup> In the same direction, Luño, *op. cit.*, p. 41: Nozick "refers expressly to Locke".

<sup>23</sup> Analogically, Rosas, *op. cit.*, p. XV: "in the case of Nozick, the distributivism of the Social State, libertarianism, is fundamental insofar as it is based on a moral conception of the human person, in the aforementioned terms of self-ownership".

<sup>24</sup> Nozick, *op. cit.*, p. 21: "individuals have rights and there are things that no person or group can do to them (without violating their rights). These rights are so strong and far-reaching that they raise the question of what the State and its agents can do, if they can do anything".

<sup>25</sup> Nozick, *op. cit.*, pp. 191 and 393: "the minimum State is the most comprehensive State that can be justified. Any broader State violates the rights of people." "This morally preferential State, the only morally legitimate State, the only morally tolerable State (...) is the one that best accomplishes the utopian aspirations of countless dreamers and visionaries. It preserves what we can all keep from the utopian tradition and open the rest of that tradition to our individual aspirations".

or, even, to an ultra-minimal State<sup>26</sup>.

Even if that State continues to exist<sup>27</sup>, and even holds the monopoly of legal protection, except in exceptional situations, where the use of individual self-protection is inevitable.

But this State warranty is not available to all the individual parts of the community, but only to those who, freely, decide to acquire such guarantee services<sup>28 29</sup>.

This construction, therefore, excludes, on one hand, any form of private *vindicta*<sup>30</sup>, and, on the other side, detached, undoubtedly, any kind of anarchic construction<sup>31</sup>.

Nozick, despite his contiguity with Locke, anchored his theory in a quite different solution from the so-called social contract<sup>32</sup>.

Thus, organizational structures are called, here, protective associations, emerging from the will of individuals, and having as scope the defense of their own security<sup>33</sup>.

These associations, freely created in the earthly space, one, necessarily, stands out, called the dominant protective association, that is, the State<sup>34</sup>.

Nozick configures the State, the minimal State - or even the ultra-minimal State - as what he designates as framing the *utopia*<sup>35</sup>.

Inside it, individuals can organize themselves, as a community, in an all freeway.

They may, freely, choose any functional social model they deem appropriate<sup>36</sup>.

Furthermore: they can freely opt for models of severe - though never total - conditioning of their own freedom<sup>37</sup>.

Nozick presupposes the initial existence of a state of nature, in which those

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<sup>34</sup> Nozick, *op. cit.*, p. 392: "the framework for *utopia* we describe is the minimal State".

<sup>35</sup> Nozick, *op. cit.*, p. 382: "individual communities can have any feature compatible with the framework's operation".

<sup>36</sup> Nozick, *op. cit.*, p. 379: "although the framework is libertarian and *laissez faire*, individual communities within it do not have to be, and perhaps no community within it will choose to be so"; "many private communities may internally have many unjustifiable restrictions for libertarian reasons: that is, restrictions that libertarians would condemn if they were enforced by a central State *apparatus*. For example, paternalistic intervention in people's lives, restrictions on books that may circulate in the community, limitations on the types of sexual behavior (...). But it is just another way of drawing attention to the fact that, in a free society, a number of restrictions can be laid down by contract that the government cannot legitimately impose on them".

<sup>37</sup> Analogically, Rosas, *op. cit.*, p. IX: "Nozick proposes to us a mental experience which consists in imagining Locke's state of nature, in which there is still no marital *status*, but only individuals endowed with pre-political moral rights".

who integrate it have originating individual rights<sup>38</sup>.

And, among these, above all, a property right over themselves, a self-ownership right<sup>39</sup>.

Enhancing a cluster of rights, because it is not exhausted in the *proprio sensu* property right, including all others of which it is, naturalistically, the holder, from the right to life, to the right to integrity<sup>40</sup>.

This is why, by the way, he denies, at the outset, the existence of possible rights to defend themselves, which rights would be guaranteed and enforced by the State<sup>41</sup>.

Specifically, in Nozick's thinking, the right of private property is susceptible of individual acquisition through several mechanisms.

From an original perspective, the only conditioning to the acquisitive freedom is that the right has not been acquired with prejudice to the rights of the other individuals<sup>42</sup>.

From a subsequent point of view, that right may be assumed, by source, the contract, as the gift, the inheritance, or other, resulting in the legitimacy, only, of the

<sup>38</sup> In the same sense, Braga, *op. cit.*, p. 2: "it is not possible for libertarians to understand what a free society is without first formulating a coherent system of property rights. Freedom consists in being able to do what is wanted and, for that, property rights become indispensable, because only then can we do what we want with what we want and where we want it".

<sup>39</sup> In the same direction, Rosas, *op. cit.*, p. IX: "each individual owns himself - and not the property of another - and this implies the right to life, the freedom to do what he wants with himself, his body and his personal talents, and the right to property or property in the strictest sense, to the extent that it is in accordance with justice"; and Braga, *op. cit.*, p. 2: "a libertarian (...) he does not consider himself to accept a legal obligation to do military service, attend school, fasten seat belts, take part in a jury, and provide assistance to a person in danger. Nor is it intended to prohibit euthanasia, prostitution, blasphemy, negativism, sexual perversions, and trade of organs, on condition (...) that no coercion is exercised to obtain the participation of anyone".

<sup>40</sup> Nozick, *op. cit.*, p. 21: "the State cannot use its coercive instruments with the aim of forcing some citizens to help others, or to prohibit certain activities to persons for their own good or protection".

<sup>41</sup> In the same direction, Rosas, *op. cit.*, pp. XI and XIII: "any person is entitled to any initial acquisition, provided that, by that acquisition, he has not infringed the individual rights of others". This implies (...) that acquisition cannot be achieved through the use of force, or theft, for example". "In nozikian thought, the lokeian restriction comes to mean that any acquisition is morally permissible as long as it does not harm anyone".

<sup>42</sup> Analogically, Braga, *op. cit.*, p. 3: "the fairness of a property right is established when it was obtained by voluntary, tacit, or explicit, transfer, with or without material or monetary compensation, from the person who was previously its legitimate owner".



voluntary and unconditional nature of the transfer procedure of the ownership<sup>43</sup>.

In Nozick, the concept of justice connects, exclusively, with freedom and with property, and is separated, radically, from any virtual solidarity<sup>44 45</sup>.

In that context, for him is irrelevant whether there is an inequality, or even a profound inequality<sup>46</sup>, among the various individuals.

Moreover, Nozick's model of ultra-liberal justice is based, eschatologically, on human dignity.

So, the affirmation of dignity of some individuals cannot, in any possible case, imply a denial, or a severe conditioning, of the dignity of the remnants.

It cannot, in any case, make individuals an instrument to the arbitrary benefit of others, or some of these others<sup>47 48</sup>.

As can be seen, inevitably, in any maximum State, or in any average State, as is observe, necessarily, in any acknowledged Social State<sup>49</sup>.

Namely, through the multiple, common, and extended, forms of State confiscation of private property, *maxime*, in the form of a slavery labor<sup>50 51</sup>.

In the form of a not consented labor, and above all, a philosophically unsubstantiated labor, because violating the very dignity of the human person.

**VI** - Therefore, Fundamental Rights do not reflect any kind of historical determinism.

Fundamental Rights presume, rather, a permanent dialectic between juridical-ethical values.

Making prevail, in each moment, and in each space, the values of freedom, or, alternatively, the values of solidarity.

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<sup>49</sup> Similarly, Waldron, *op. cit.*, p. 82: "in this approach, social rights (if any) live in the interstices of property".

<sup>50</sup> Nozick, *op. cit.*, pp. 213 and 271: "the taxation of income from work is comparable to forced labor". "Retaining the results of work is tantamount to holding you hours and ordering you to perform various activities. If people compel you to do some work or unpaid work, for a certain period of time, decide what you have to do, and what purposes your work will serve, regardless of your decisions. This process by which they withdraw this decision makes them partial owners of their person; gives them a property right over it".

<sup>51</sup> Nozick, *op. cit.*, p. 217: "the principles of finalist redistributive justice, and most of the standardized principles, establish the (partial) ownership of people and their actions and work, on the other. These principles involve a shift from the classic notion of liberals to 'self-ownership' to a notion of (partial) property rights over other people".

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