



Dossiê:

# Efetivação e aplicabilidade dos direitos humanos: fundamentos e desafios

Jacqueline Lidiane de Souza Prais

Maurício Fontana Filho

Organizadores

 EDITORA  
PEIXE AZUL

## **Organizadores**

Jacqueline Lidiane de Souza Prais  
Maurício Fontana Filho

# **Efetivação e aplicabilidade dos direitos humanos: fundamentos e desafios**

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A Editora Peixe Azul, tem a felicidade de trazer à comunidade acadêmica e ao público em geral a nossa segunda experiência de publicação de um dossiê acadêmico.

O Dossiê "Efetivação e aplicabilidade dos direitos humanos: fundamentos e desafios", contou com a contribuição de 4 investigadoras e 2 investigadores, com formação em pós-graduação no Brasil e em Moçambique.

Essa publicação contribui como nosso desejo de criar um espaço para a participação na criação, avaliação e difusão das investigações e experiências científicas.

Esta tem sido uma rica experiência que agradecemos aos integrantes de nosso Comitê Editorial, que dedicaram parte de seu precioso tempo para realizar as avaliações e observações sobre os artigos enviados para este Dossiê.

Também ficamos muito agradecidos à equipe de organizadores deste Dossiê, que gentilmente compartilhou ideias e avaliações que contribuíram na sua produção.

Por fim, esperamos que a Editora Peixe Azul possa servir para que a comunidade científica possa ter acesso às pesquisas e pesquisadores aqui publicados, e deixamos o convite para que cada leitor possa fazer parte da iniciativa.

**Editor Chefe**

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## **APRESENTAÇÃO**

A obra **“Efetivação e aplicabilidade dos direitos humanos: fundamentos e desafios”** reúne estudos que abordam as questões dos direitos humanos nas políticas públicas, na formação docente, na prática escolar e nas ações sociais.

No ano de 2018, a Declaração Universal dos Direitos Humanos completou 70 anos. Este tema dos Direitos Humanos é recorrente e assume extrema relevância quando se esvazia seu sentido educativo e social. O problema grave do nosso tempo com relação aos direitos humanos não é mais o de fundamentá-los e sim protegê-los. Isso ocorre, principalmente em virtude dos desafios enfrentados socialmente. De tal modo, seja adequado ponderar que o grande desafio da questão é o caráter jurídico, tendo em vista que o Estado deve prover medidas para que esses não sejam violados e ainda efetivamente prestados, porque os direitos humanos só possuem eficácia definitiva quando são vivenciados.

Zelar e promover a dignidade humana com base nas políticas públicas é essencial para tornar a vida social menos injusta e violenta, pois é possível elaborar meios para uma aplicação mais eficaz e capaz de dialogar com todos os homens. O homem é um ser passível de ser humanizado e superar instintos egoístas e prejudiciais à sociedade, em detrimento disso é sempre importante defender a educação fundamentada em direitos humanos, devendo o homem estar preparado para a vida em sociedade. Esse processo educativo e formativo pode promover valores como solidariedade, justiça e respeito mútuo, pois a realização de tais valores permite a aptidão de viver com dignidade.

No Capítulo 1 **“LEITURA, MEMÓRIA E HUMANIZAÇÃO”** com autoria de Silvana Dias Cardoso Pereira, David da Silva Pereira e Jacqueline Lidiane de Souza Prais, o texto reflete a importância da leitura no processo de formação docente oferecendo uma contribuição aos estudos vinculados à leitura e suas relações com os princípios da Educação em Direitos Humanos na formação inicial de crianças em fase de alfabetização.

No Capítulo 2 **“A ESTRUTURA JURÍDICA E O ESTATUTO DA IGUALDADE RACIAL: ALGUNS COMENTÁRIOS ACERCA DA LEI Nº12.288/2010”**, a autora Vanessa Santos do Canto suscita questionamentos relativos aos atuais deslocamentos no que se refere às ações afirmativas com recorte racial desde a perspectiva do processo legislativo e discute sobre o racismo presente nas instituições brasileiras.

No Capítulo 3 **“A EDUCAÇÃO EM DIREITOS HUMANOS E A FORMAÇÃO DOCENTE: CONTRIBUIÇÕES PARA PRÁTICAS PEDAGÓGICAS INCLUSIVAS”**



escrito por Jacqueline Lidiane de Souza Prais, David da Silva Pereira e Silvana Dias Cardoso Pereira, os autores apresentam reflexões sobre a formação inicial de professores a partir dos pressupostos da educação inclusiva e da Educação em Direitos Humanos (EDH), bem como, a consonância entre a inclusão e os direitos humanos.

No Capítulo 4 **“URBANIZAÇÃO, FINANCIAMENTOS E SERVIÇOS PÚBLICOS NAS AUTARQUIAS LOCAIS EM MOÇAMBIQUE”** produzido por Jacinta Francisco Dias, analisa-se as fontes de financiamento de infraestruturas e serviços urbanos no município de Montepuez, Moçambique. O trabalho considera que a descentralização dos serviços urbanos, se acompanhada a um ganho de eficiência do município em gerar recursos financeiros, é um caminho possível para a viabilidade de projetos urbanos, visando o bem-estar da população.

No Capítulo 5 **“THE HOBBSIAN PREMISE IN DEFENSE OF AUTHORITARIANISM: PESSIMISM AS A GUARANTEE MECHANISM FOR THE SUBTRACTION OF INDIVIDUAL FREEDOM”** (tradução “A PREMISSA HOBBSIANA EM DEFESA DO AUTORITARIANISMO: O PESSIMISMO COMO MECANISMO DE GARANTIA DA DIMINUIÇÃO DE LIBERDADE INDIVIDUAL”), os autores Maurício Fontana Filho e Jacqueline Lidiane de Souza Prais investigam o impacto de premissas pessimistas no apoio à construção de políticas repressivas de Estado.

Ambicionamos que esta obra e os trabalhos que a constituem ofereçam uma contribuição aos estudos voltados para os aspectos que fundamentam e/ou apresentam desafios e possibilidades para favorecer a efetivação e a aplicabilidade dos direitos humanos. Assim, as pesquisas abordam e problematizam as diversas possibilidades e divergentes desafios enfrentados para consolidação dos Direitos Humanos como: políticas públicas, formação de professores, Educação em Direitos Humanos, práticas pedagógicas, ações sociais e análises jurídicas.



**THE HOBBIAN PREMISE IN DEFENSE OF  
AUTHORITARIANISM: PESSIMISM AS A GUARANTEE  
MECHANISM FOR THE SUBTRACTION OF INDIVIDUAL FREEDOM**

**A PREMISSA HOBBIANA EM DEFESA DO  
AUTORITARISMO: O PESSIMISMO COMO MECANISMO DE  
GARANTIA DA DIMINUIÇÃO DA LIBERDADE INDIVIDUAL**

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## ABSTRACT

We investigate the impact of pessimistic assumptions on the construction of repressive State policies. If Rousseau and Locke, through optimistic assumptions regarding the concept of man, erect their State models by encouraging political and economic freedom, and the limited State, Schopenhauer and Hobbes, through pessimistic assumptions, orchestrate their models of maximum and invasive State. The main objective is to expose the accumulation of power by the State as a corollary of a pessimistic stance. The research followed the hypothetical-deductive method through bibliographic research, data collection and analysis. The initial hypothesis to be defended claims the State is an institution that naturally demonizes the human figure in order to better control and govern it, through its fears and linguistic manipulation. The conclusion links the imposition of fear upon people with an increase in ruling power, with which, overburdening himself with prerogatives and immunities, the ruler starts to address the fears of the governed unit and, at the same time, decreases the margin for individual action.

**Keywords:** Human Rights; Individual freedom; Liberty; Pessimism; State.

## RESUMO

Investiga-se o impacto de premissas pessimistas sobre a construção de políticas repressivas de Estado. Se Rousseau e Locke, por meio de premissas otimistas quanto ao conceito de homem, erigem seus modelos de Estado incentivando a liberdade política e econômica, e o Estado limitado, Schopenhauer e Hobbes, através de pressupostos pessimistas, orquestram seus modelos de Estado máximo e invasivo. O principal objetivo é expor o acúmulo de poder pelo Estado como corolário de pontos de partida pessimistas. A pesquisa tem como método o hipotético-dedutivo por pesquisa bibliográfica, coleta e análise de dados. A hipótese inicial a ser defendida reivindica que o Estado é naturalmente uma instituição que demoniza a figura humana de modo a melhor controlá-la e governá-la, isso através dos seus medos e de manipulação linguística. Conclui-se ao ligar o império do medo nos povos com um acréscimo no poder do governante, o qual, sobrecarregando a si com prerrogativas e imunidades, passa a endereçar os temores dos governados e, ao mesmo tempo, decresce a margem de ação individual.

**Palavras-chave:** Direitos Humanos; Liberdade; Liberdade individual; Pessimismo; Estado.

## INTRODUCTION

Are illegal immigrants generally composed of murderers, thieves, rapists and terrorists? Such was the claim made by a United States democratically elected State leader in 2018. What is investigated in the present research are the foundations of repressive, arbitrary and exclusive policies. What gives life to the so-called politics of fear? What motivates preventive legislation to be created and pose effects upon society?

The research method is the hypothetical-deductive through bibliographical research and data collection and analysis. Conservative thinkers (SALVANY, 1949; SCHMITT, 2009; BURKE, 2016; GASSET, 2016; SCHOPENHAUER, 2018; SCRUTON, 2015; HOBBS, 2014) were analyzed in order to explore their theories of State and thereby understand their starting points. Others, with more liberal reasoning, were used only as a complement and for the purpose of problematization. The thinkers whose theories were chosen to write this section were selected for their relevance, accessibility and topicality. That is why, throughout the text, we use classic authors for logical development.

Our initial hypothesis points towards a natural inclination of State in the form of pessimist discourse that modulates people in a way as to facilitate repressive measures. The State, therefore, makes use of a specific discourse with the aim of subjugating and controlling the collectiveness.

The first section makes precise the meaning of a Hobbesian premise, starting to develop a work on human nature and what it entails on a matter of government. In the second, the authoritarian State is built, in a moral form, as much as in economical and political ones. In the third section, we explore the premises involved in the contractual classics and their theories of State, through which we develop an elaborated true meaning of Hobbesian premise and its impact on society.

Fear is a human behavior and a force that make it possible in the social context to implement and legitimize exclusive violent policies by instilling uncertainty in people's hearts, thus guaranteeing support for extreme attitudes that, in normal times, would never even be considered. We investigate the reasoning that supports them.

Based on these assumptions, we have organized this chapter in order to analyze the impact of pessimistic assumptions on the construction of repressive State policies, consequently allowing a reflection on the social relations that occur.

## THE HOBBSIAN PREMISE

In *Leviathan or the matter, form and power of an ecclesiastical and civil State* by Thomas Hobbes (2014), man is taken as a vile and power-hungry being, and the state of nature being considered a state of war for all men against all men. Based on this assumption, a State model, the absolute monarchy, with unlimited, indivisible and imprescriptible powers, is erected with the aim of stagnating the evils arising from human nature. The expression Hobbesian premise means a pessimistic starting point regarding the concept of a man who legitimizes arbitrary, despotic and invasive actions by the State.

The foundation of the rationality of intrinsically authoritarian authors such as Félix Sardá y Salvany (1949), Carl Schmitt (2009), Edmund Burke (2016), José Ortega y Gasset (2016), Arthur Schopenhauer (2018), Roger Scruton (2015) and Hobbes (2014) is based on pessimistic assumptions, from which also pessimistic speeches are erected in search of strong and restrictive institutions with the capacity to diminish the margin of individual action.

According to Schmitt (2009) theories of the State and political ideas could be analyzed in an anthropological aspect and categorized according to the criterion of assuming, consciously or unconsciously, a human being bad by nature or a good one. Evilness can manifest itself as corruption, weakness, cowardice, foolishness or even as brutality, impulsiveness, vitality or irrationality; while kindness, with the corresponding variations, such as rationality, perfectibility, maneuverability, educability and pacificism (SCHMITT, 2009).

The Hobbesian premise is a favorite of conservative thinkers. It indicates that men are professional, hedonistic, selfish, free and equal in society. Schopenhauer (2018) states that men are evil, and Ortega y Gasset (2016) that they are ignorant and, therefore, they need to have their spirits contained by the weight of the sword. To the extent that man is considered more prone to good, the less the need for institutional coercion in society, as if people were considered more prone to evil, the greater this need (SCHMITT, 2009).

For Mischel (2016), pessimism refers to the tendency to focus on the negative, to expect the worst or to make the darkest interpretations possible. Pessimistic starting points are the roots that legitimate preventive institutional repression, be it subjective repression by the Church or objective repression by the State. When people are seen as barbarians or inferiors, ignorant or incapable, justifications to deprive them of their freedoms are raised (SCHMITT, 2009).

What gives encouragement to speeches in favor of censorship and preventive military actions, restriction of sexual freedoms, association and assembly, opposition to suffrage, freedom of thought and belief, are the suspicions about what man will do when enjoying the aforementioned freedoms, which are taken by many as an abstract field of poisons and uncertainties. By vehemently believing the worst-case scenario, institutional structures are developed to address these fears. In other words, when attributing addiction to man, we also attribute coercive means to stop his addiction, that is, State actions (FONTANA FILHO, 2019).

The Church shapes the sinful concept of man in Sardá y Salvany (1949); the Hobbes Absolute State (2014) stagnates its evil intentions; the Ortega y Gasset Cultural Aristocracy (2016) prevents the masses from neglecting power. The premise makes the theory of State. Scruton (2015) states that the fallacy of what is good and better arises when the feeling of hope prevails over reason, related to the presence of an important choice to be made by a person. The Hobbesian premise, on the other hand, escapes this fallacy, because it presupposes not the best hypothesis, but the worst of them all.

FEAR IS THE MOST POWERFUL of human emotions. [...] where there is fear, the policy of fear arises. Namely, the deliberate use of the obvious desire that people have for protection to establish a permanent state of emergency that erodes and ultimately denies civil liberties and democratic institutions in practice. [...] in many countries we have entered a world in which children grow up in fear. And in which citizens accept that they are supervised and controlled electronically, that they are searched on their travels, that they are preventively detained, that are militarized in public space. Because these precautions are always in relation to "others", those whose ethnicity or religion makes them suspected of being suspicious. [...] what constitutes an exception for security reasons is becoming the rule that governs our lives. (CASTELLS, 2017, p.29, our translation).

When, in 2019, the President of the United States, Donald J. Trump, said that the illegal immigrants trying to enter Mexico were mostly thieves, rapists, murderers and terrorists, he, inherently in his speech, reflected a call for a greater invasion of the state and the removal of the freedoms of people who sought asylum in their country. It is a policy of fear. He pointed out an addiction that, if left defenseless, an unparalleled evil would be inflicted on the American people (FONTANA FILHO; PERSICH; TONEL, 2019).

Still, it is worth remembering the Nazi hatred directed by Adolf Hitler (2018) towards Jews, considered bad and guilty for the loss of the First World War by Germany, followed the same logic that would finally guarantee a state of continuous and irrecoverable exception (JACOBSON, 2018).

US Senator Ron Paul (2013) points that George W. Bush, at the time of the September 11, 2001 attack, in order to legitimize more incisive actions in the direction of

the war on terror, made use of a biased speech to consolidate the Iraqi people as being wholly bad. Those who disagreed would be taken as not true patriots. His inflammatory speeches would lead to a Congress approval of the Patriot Act, the legislation that materialized the State of exception.

The fact occurred during the Vietnam War. These Vietnamese people were demonized, as were the Soviets because of their antithetical policies to the North American ones, which guaranteed a greater margin on the part of the American State to impose policies of mass repression (MILGRAM, 1983).

In order to interact with a harmful pattern of men, a more significant abundance of rules is required to limit human conduct. Philip Zimbardo (2015, p.302, our translation) states that:

rules are formal and simplified ways of controlling complex and informal behaviors. They work by externalizing regulations, establishing what is necessary, acceptable and rewarded, and what is unacceptable, and therefore punishable.

Often, rules have an arbitrary life of their own, being the strength of legal authority even when they are no longer relevant. Some rules are essential for the effective coordination of social behavior; however, others are mere projections of the domination of those who create them.

The greater the freedom granted to man, the greater the impact of his nature on his environment, whether good or bad. Thus, freedom and crime are inextricably linked, so that if a man does not move in the sense of not being free, that is, if he is a servant, he, at the same time, will not commit crimes. Man will only act maliciously or beneficially when he is given freedom to perform such an action. Therefore, in order to better combat immoderate attitudes, freedom tends to be suppressed. This logic is formulated in the work *We* by Yevgeny Zamyatin (2007).

By extinguishing any possibility for man to do evil, any possibility for him to do good is extinguished at the same time, and the reason are limits. A jailed person will not kill one from outside, but at the same time, he will not act in any benevolent ways either. A man who is a servant of order is one who does not exercise his morals, but at the same time is one who does not act to the detriment of others (ZAMYATIN, 2007).

Legislation means trying to change human nature, but more than that, transforming each individual in a way that submits him to collective interests (ROUSSEAU, 2014). "In a good world, among good men, there is, of course, only peace, security and harmony



between all and all; in this scenario, priests and theologians as well as politicians and statesmen are superfluous.” (SCHMITT, 2009, p.70, our translation).

Incongruencies linked to human nature lead to coercive institutions to justify their most heinous acts as mere defense mechanisms, but who are their enthusiasts and what do they think of individual freedom?

## **FROM PESSIMISM TO AN AUTHORITARY STATE**

According to Sardá y Salvany (1949), moral and political freedoms are part of an infectious heretical ideology that corrodes the souls of peoples: liberalism. Such claims represent demonic sin and the enemy of the Catholic religion, because they pray on the supremacy of the faith by distancing man from God and the hegemony of the Church. It is a work orchestrated by Satan to tempt men. By liberalizing thoughts, ideas, interactions and beliefs, they would be demeaning the Catholic religion to just one religion among many; it would be to propel an infectious plague with disgusting exhalations of decomposition and gangrene: a mortal sin.

The defense of freedom is taken as a viler act than being blasphemous, thief, adulterer or murderer. The man for Sardá y Salvany (1949) is not a hero, which leaves room for his position, which trusts in the Church the role of taming this naturally wicked and violent savage. How to live in a diverse society when men are unable to coexist in harmony, but attack like savages in search of blood and wickedness?

Voltaire (2008, p.103, our translation) supports this justification by saying that “such is the weakness of the human race and such its perversity that, undoubtedly, it is better that it be subdued by all possible superstitions, as long as they do not cause murder, than to live without religion.” With this, the interest of a coercive force, the Church, is claimed to act as a mechanism capable of alleviating conflicts.

“Man has always needed a brake and, although it may have been ridiculous to make sacrifices to fauns, nymphs and naiads, it was far more reasonable and useful to worship these fantastical images of Divinity than to live in atheism. (VOLTAIRE, 2008, p.103, our translation). Burke (2016), on the other hand, claims the figure of the State as capable of restricting human intentions. He points that the government, as well as freedom, has a beneficial character, but by giving freedom, a gift from humanity, to those unable to deal with it, we would be removing a madman from the protective coercion and the total comfortable darkness of his cell and placing him in an injurious freedom, both to him and to the healthy.

This is the French revolutionary man of 1789: a wild animal; a freed madman whose instinct will dominate him in such a way as to make both his life and that of rational men hell on Earth. Thus, Burke (2016) believes that the French Revolution is represented by the victory of the sick over the dominant class; the victory of lunatics over those who held the keys to their protective madhouse.

For Burke (2016) the greatest of all the plagues that had wrecked France was individual freedom, this under the justification that freedom, for those able to interact with it, is a blessing, while for the incapacitated it is a curse; it is a tool for their slavery. Those in a position of irrationality will be servants of their own dependence and limitation. There is nothing more heinous than an anarchy of vile men. With that, the authors foment the idea that “the effect of freedom is to allow individuals to do what they like: let's see, then, what it will be pleasant to do before we risk compliments that very early, perhaps, should be converted into condolences.” (BURKE, 2016, p.30, our translation).

“Setting up a government does not require too much caution. Establish the seat of power, teach obedience, and the job will be done. Giving freedom is even easier. It is not necessary to guide; and it just requires you to let go of the reins.” (BURKE, 2016, p.252, our translation). Burke (2016) proposes that freedom grants expectations in need of satisfaction, which means, by being free, a man can do very much, act in a whole lot of different and diverse ways, and these may represent a threat to be dealt with. If the peoples are not in a favorable position to satisfy them, there is no need to talk about freedom granted to the peoples, otherwise they would be interacting with a corrupted form of freedom.

"Those who know what virtuous freedom is cannot bear to see it dishonored by incapable minds by virtue of the loud words that come out of their mouths." (BURKE, 2016, p.252, our translation). According to Hobbes (2014) out of human nature emanates a narcissistic and bad feeling, from which a State that is present in all spheres of individual life and capable of preventing the war of all men against all men that would result from freedom is legitimated. Every man desires power, man being a wolf in relation to other men.

When this premise is fixed, Burke's idea (2016, p.97, our translation) that “kings will be tyrants for politics when subjects are rebels in principle” becomes more understandable. There is nothing more sensible than proposing a model of Absolute State when there is such a vile human nature as the one pointed out by Hobbes (2014). Schopenhauer (2018) follows the same precepts:

Selfishness, by nature, has no limits; the man only has an absolute desire, to preserve his existence, to avoid any pain, any deprivation; what

he longs for is the greatest possible sum of well-being, it is the possession of all the enjoyments that he is capable of imagining and that he strives to vary and develop incessantly. Any obstacle that arises between his selfishness and his lusts excites his anger, his hatred: he is an enemy that must be crushed. He would desire as much as possible to enjoy everything, to possess everything; not being able to, he would at least aim to dominate everything. [...] Selfishness is colossal, the universe cannot contain it. Because if everyone was given the choice between the annihilation of the universe and their own loss, it is idle to say what the answer is. Each one considers himself the center of the world [...] To paint in a stroke the enormity of selfishness in an exciting hyperbole, I came to this: Many people would be able to kill a man to seize the fat of the dead and grease in the boots. I only have one scruple: is it really a hyperbole? (SCHOPENHAUER, 2018, p.100-101, our translation).

It is the logic shared by many conservative thinkers that "the world is hell, and men are divided into tormented souls and tormenting devils." (SCHOPENHAUER, 2018, p.26, our translation). The world being a place of penance for the guilty arrested in these surroundings and plagued by their own disabilities; being governed by chance and error, dominated by madness and evil, and asphyxiated by the continuous lie that is existence is a world that needs coercive institutions to regulate it (SCHOPENHAUER, 2018).

Schopenhauer (2018) goes further by pointing out that man's life is a perpetual struggle, not only against abstract evils, misery and boredom, but also against other men, with an opponent everywhere and life is a war without truce in which one dies huddled with weapons in hand. The world as not being a magic lantern that admires the colors of its mountains, forests, torrents, animals and plants, but an environment full of friction and suffering.

It is a field of carnage where anxious and tormented entities live devouring one another and where every carnivorous animal becomes the living grave of so many others and spends its life in a long series of martyrdoms; it is where the capacity for suffering increases in proportion to intelligence, and therefore reaches the highest degree in man (SCHOPENHAUER, 2018).

Schopenhauer (2018) and Hitler (2018) condition the solution to earthly evils as being unique: the despotism of the wise and noble, of a pure and true aristocracy, corollary of a generation composed of the union of men and women selected to breed the superior race of rulers. Marquis de Sade (2008), in his work *the 120 Days of Sodom* exemplifies who is this bad man who tends to legitimize invasive State models whose assumption is so claimed in political thought:

He was out of France, in a safe province, in the depths of an uninhabitable forest, within this forest in a redoubt which, owing to the measures he had taken, only the birds of the air could approach, and he was in the depth of the earth's entrails. Woe, a hundred times woe to the

unlucky creature who in the midst of such abandonment were to find himself at the mercy of a villain lawless and without religion, whom crime amused, and whose only interest lay in his passions, who heeded naught, had nothing to obey but the imperious decrees of his perfidious lusts. (SADE, 2008, p.45).

Unlike Sardá y Salvany (1949), who reveres the Church, and Hobbes (2014), who calls for the State, both in the face of an evil man who motivates coercive institutions to safeguard interests, Ortega y Gasset (2016) criticizes individual freedom in function of the existence of the masses: an intellectually inferior and quantitatively predominant pattern of man, but by no means malevolent in a sense of bias towards violence.

Again, the logic employed is that to grant freedom to a man who does not know how to interact with it would be to destroy society itself. Ortega y Gasset (2016) calls the masses *mass-men*, *middle-men* and the *wise-ignorant*, proposing that a State lacking institutionalized coercion in a wide sphere would give scope for this class of people to degrade everybody's life and values, as well as society itself.

Ortega y Gasset (2016) affirms that obedience will save the masses, while freedom confuses them amid an excessive number of different and complex choices. Because they are unable to choose effectively, they suffer. Thus, without an order, the masses have a life of pure empty availability. The existence of masses is the reason why Ortega y Gasset (2016) defends the Cultural Aristocracy as a system of government, that is, the government of the best men culturally, which would prevent the masses from demeaning the political environment through a low and biased political representation.

In other words, what Ortega y Gasset (2016) claims is that to command people who are unable to decide is to give them what to do; it is to put them in their destiny, preventing their inability and extravagance; it is to prevent their continuous and unavoidable incapacity. They go around the same place without knowing what to do on a path that leads to nothing; they live in a maze of choices which they are unable to elucidate or even recognize as existing. Order prevents the masses from wasting their lives and from living empty and aimless existences. Thus, it remains for the masses to obey, while for those who do not fit into their class, to rule.

All of this revolves around the expectations that freedom grants and the peoples' capacity to satisfy them. Most conservative thinkers, as mentioned along this text, when asked about who men are, will respond with pessimism; when asked about what constitutes freedom, a character of instability and danger will be linked to it; when asked about the requirements for a freed life, dense expectations will be formulated, that is, a pessimist approach is created and a strong and organized institution is imagined to interact with these freed persons.

A life in freedom creates expectations that, when dissatisfied as a reflection of the condition of the peoples, the Hobbesian premise tends to be raised as a justification for the invasion of the State in the political, economic and moral spheres. It is from the idea of a bad man that a model of repressive state is structured. Ample power is linked to the figure of the holders of political power in order to stagnate the danger that represents man. Laws act as impediments to the free flow of society.

They label men as *intolerant* and, as a result, establish a moral State that reigns values among their citizens; they rate men as *ignorant* and, as a result, an anti-democratic State is claimed; finally, they label men as *selfish*, taking their resources and making use of them in a mercantilist or interventionist State. The Hobbesian premise functions as an apparatus that guarantees the legitimacy of State power by removing individual power and transmitting it to government officials (NOCK, 2012).

As Burke (2016) says, the idea of the State is constituted in the State itself, which means that a State that taxes more and has more functions will be a more powerful State. Here is what Herbert Spencer (1982) says about State power to the detriment of the individual:

Moreover, every additional State-interference strengthens the tacit assumption that it is the duty of the State to deal with all evils and secure all benefits. Increasing power of a growing administrative organization is accompanied by decreasing power of the rest of the society to resist its further growth and control. (SPENCER, 1982, p.54).

“In every government in the world, the public person consumes and produces nothing. Where, then, does the substance consumed come from? From the work of its members.” (ROUSSEAU, 2014, p.97-98, our translation). When State power increases, social power decreases, with the Bolshevik, Fascist and Nazi states being the total conversion of social power into State power (NOCK, 2012).

Just as the State has no money of its own, it has no power of its own. “All the power it has is what society gives it, plus what it confiscates from time to time on one pretext or another; there is no other source from which State power can be drawn.” (NOCK, 2012, p.3-4). Therefore, any claim of power made by the State leaves society with less power; there is not and cannot be any strengthening of State power without a corresponding and equivalent loss of social power.

## **FROM THE STATE OF NATURE IN ROUSSEAU, LOCKE AND HOBBS TO THEIR RESPECTIVE STATE MODELS**

"I imagine men reaching the point where the obstacles, which are harmful to their conservation in the natural state, outweigh, by their resistance, the forces that can be used by each individual to remain in that state." (ROUSSEAU, 2014, p.29, our translation). Therefore, this primitive state of affairs would no longer be able to survive, and the human race would perish if it did not change its way of being. There is no other way for them to preserve themselves, but by forming a sum of forces that can overcome resistance, impelling them to form States (ROUSSEAU, 2014).

According to Jean-Jacques Rousseau (2014), the State had its origin through a social contract formed by men in view of their inability to deal with obstacles harmful to their health and conservation. Life in a primitive nature did not subsist, which motivated them to, in order not to perish, create coercive institutions capable of subjugating what previously preyed on their interests.

"What man loses by the social contract is natural freedom and an unlimited right to everything that tries and can achieve it; what he gains is civil freedom and ownership of everything he owns." (ROUSSEAU, 2014, p.34-35, our translation). Therefore, man gains security and peace, but loses the unrestricted freedom that he had. The social contract removes the authority that man possessed within the state of nature, being granted to an impartial entity.

The fundamental problem whose solution is provided by the social contract is represented by the incongruities of life in a state of nature from the perspective of Rousseau (2014), which will give rise to a State model in order to address its author's conception of evil. As Rousseau (2015) sees goodness in the natural man, his model of State will be built under the molds of this precept, amid the representativeness intrinsically linked to what he considers to be the State. "What is the purpose of the political association? It is the conservation and prosperity of its members." (ROUSSEAU, 2014, p.104, our translation).

"The social treaty has as its objective the preservation of contractors" (ROUSSEAU, 2014, p.50, our translation), which means that whatever is taken as a reason for the deterioration of peoples will be used as a propelling mechanism of the social contract and of the necessary measures to hinder such initial vices. In the state of nature, man has natural freedom, which is limited by the forces of the individual, as well as the possession of goods, a mere effect of force, only being recognized as worthless by others. Within State boundaries, on the other hand, man has civil freedom and ownership

of his assets, both of which are guaranteed by the authority of the sovereign (ROUSSEAU, 2014).

In Locke's (2012) view, within the state of nature the supervisor, the judge and the law enforcer were the individual himself. In civil society, each individual grant authority the power to supervise, judge and punish, thereby relinquishing their individual power of private judgment in favor of a new arbitrator: the community. Thus, what removed man from life in nature was the need for an impartial authority capable of providing protection over society, which could not be found except within civil society. From the vices of life in a state of nature arose States that, with coercive power, combat the incongruities that have given it cause to be.

The greatest objective of the social contract, for Locke (2012), is the preservation of the natural law. Man chooses to abdicate the state of nature and his absolute freedom because his enjoyment is uncertain and exposed to the invasion of others. He chooses, therefore, submission to the power of authority. Insecurity, fears and ongoing dangers weigh more than his absolute freedom when in the state of nature.

Natural law is not enough to regulate individual selfishness, hence the need for an authority that rules the norm through force. Natural law in a state of nature is represented by moral conduct, which means that Locke's (2012) natural man is limited by his conscience, but not enough, the representation of a State limited by natural law is necessary. In other words, the author's view of man being naturally conscious is what evokes his model of minimal and limited State.

According to Hobbes (2014), the state of nature represents reciprocal fear. It is a state of instability that motivates man to leave it, to enter civil society and to accept a common power as sovereign. The transition from the state of nature to the civil status represents the transition from a state of instability to a state of order capable of freeing the individual from a feeling of constant fear and torment.

When there is no common power capable of keeping men in respect, we have the condition that is called war; a war of all men against all. At that time there can be no place for the inventive faculty, as its results are uncertain; consequently, it is not possible to cultivate the land or navigate, imported goods that arrive by sea are not used; there are no comfortable constructions, nor machines to remove heavy weights (HOBBS, 2014).

Knowledge on the face of the earth will not be developed; neither computation of time, nor arts; there are no letters and no society; and what is worse: there will be great fear and danger of violent death. "Man's life, then, is lonely, poor, stunted and short." (HOBBS, 2014, p.96, our translation).

Hobbes (2014) claims that the origin of the State occurred at a time when man was able to abdicate his right to all things, opting for peace and security by accepting coercive and absolute power as sovereign, thus creating a social contract. With the State, the individual cries out for submission to authority in exchange for protection against the danger of imminent death and constant fear orchestrated by men naturally vile and thirsty for power within the state of nature.

In the state of nature all men are entitled to all things, not even the wisest or the strongest would live in peace because others could form groups and overthrow them. Because they have the right to all things, men live in constant war with their fellow men because they believe that their right is always being violated, after all, they have the right to everything, which includes the bodies of others and their belongings (HOBBS, 2014).

Unlike the representative State models of Rousseau (2014) or the minimal and limited state of Locke (2012), in Hobbes (2014) what appears as an unavoidable pillar of his theory of State is a pessimistic premise regarding the concept of man. From this, his absolute State model is built with the aim of addressing the evil of human freedom.

What determined the multiplicity of functions and powers linked to the State was the intensity and urgency of the needs of those who were in a state of nature. Thus, the more urgent and necessary man's needs are, the greater the sacrifices he will be willing to accept in order to have them met. Even the sacrifice of freedom can be seen as acceptable in the face of naked, homeless and insecure men.

When fear is instilled in people's hearts, they naturally choose to renounce their desire for freedom in order to protect themselves from possible evils. This is because "men made kings for men and not for kings; they placed chiefs in front of them so that they could live comfortably away from violence and outrages [...]" (MORE, 2014, p.37, our translation).

Is the state of nature a state of constant threat, very hideous as Hobbes (2014) points out, beneficial as proposed by Rousseau (2015) or just inconvenient as highlighted by Locke (2012)? What is in common is that, in all the cases announced, the State shows itself as the fruit of human need. From addictions within the state of nature, the protection of coercive institutions became imperative (MOLINARI, 2009).

The question to be asked is: how comprehensive is this need for a State? If the need gave life to the State, it is necessary to speak about the abstract that represents the term necessity and, as already explained, there are possibilities that inhabit this abstract, one of which is pessimism. If we face moral, political and economic freedom with pessimism, we will, as an inextricable corollary, tie to the State powers and functions that will act in an authoritarian manner and in decreasing social power (SPENCER, 1982).



Is the government instituted for the purpose of regulating trade – of dictating to each man where he shall buy and where he shall sell? Do the people wish to be told what religion they must believe, what forms and ceremonies they must practice, or how many times they must attend church on a Sunday? Is education the object contemplated? Do they ask instruction in the administration of their charities – to be told to whom they shall give, and how much, and in what manner they shall give it? Do they require that their means of communication – their roads and railways – designed and constructed for them? Do they create a supreme power to direct their conduct in domestic affairs – to tell them at what part of the year they shall kill their oxen, and how many servings of meat they shall have at a meal? (SPENCER, 1982, p.185-186).

The Hobbesian premise in the moral sphere acts as an assumption that people are intolerant, disrespectful and unable to interact in a moderate way with people of different colors, genders, sexualities, nationalities, religions, reasonable moral and philosophical conceptions and physical characteristics. In the economic sphere, it takes the form of men that are selfish, thirsty for power or disinterested in collective well-being as an end in itself. In the political sphere, it works under the assumption that people are politically ignorant or negligent, unable to elect their representatives and still less the representatives who would govern a collectivity.

In each of these areas of activity, the Hobbesian premise guarantees a present State. The moral state grants values and shapes the individual to the standard desired by the holders of political power; the interventionist state takes goods, feeds the public machinery and redistributes the rest, using little to satisfy the extensive society demands; the undemocratic State makes representation difficult and guarantees unrestricted powers to the government, canceling the idea of a State limited by Law while promoting the Law limited by the State.

## **FINAL CONSIDERATIONS**

The instinctive human need for protection gives life to the Hobbesian premise and repressive State models. Within the power game of the governors, this need is shown to be explored by the ingenuity and coercive dependence of the peoples. Rather, they choose to have their freedoms deprived of themselves than to succumb to the potential abstract of *aggression*.

Atheists, Jews, Soviets, Vietnamese, Iraqis, Mexicans, Arabs and all those considered by governments to be suspicious represent the determining factor in guaranteeing the power of repressive action: pessimism. Policies based on pessimism have a natural tendency to neglect the interests of individuals when electing collective

ends as imperative of persecution. At the end of the day, it is the individuals who will be persecuted.

The abusive nature of fear policies is already a contemporary brand under the new technological molds that enhance the invasion of the State in people's lives. George Orwell (1992) eloquently predicted this in his work, *Nineteen Eighty-Four*. Security cameras as a constant surveillance force are not only part of society, but part of individuals acting as a mechanism to defend their interests.

The feeling of self-preservation is rooted in man, which guarantees the effectiveness of the measures, but that does not mean that the appeal is irresistible. When moral, economic and political bestowal is present, opposition is not uncommon. They are presumptuous, but the only way to prove them wrong is in the sphere of freedom, maturity and satisfaction of the expectations that it demands. Until then, we will be servants of the imposing States and their violent prerogatives.

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# Efetivação e aplicabilidade dos direitos humanos: fundamentos e desafios

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