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**PHILOSOPHICAL  
BASES OF COMPANY  
LAW: PARADOXES OF  
VALUES, REASON AND  
ETHICS**

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**Abstract:** Searching for the meaning of philosophy in Business Law requires an interdisciplinary study of the elaborations of philosophical thought that are linked to the historical advance of philosophy originating from ancient to contemporary philosophers. Thus, this article proposes to verify the existence of philosophical bases in Business Law, bringing the voice of thinkers to business and commercial activity. The methodology used, with a deductive approach, involved a review of the available literature and documents. Finally, it appears that looking for the vision of the company within the philosophical thought is fundamental for the construction of the legal norms that discipline the activities of companies and entrepreneurs, using this same vision to understand how this thought can collaborate with the socioeconomic problem. of contemporaneity.

**Keywords:** Company, Philosophy, Thoughts, Reason, Ethic.

## INTRODUCTION

Historically, the Philosophy of Law is situated in the field of legal sciences, in its strict sense, and is especially focused on investigations about theories and methods that can be used in the relationships and institutions linked to it, making use of the theoretical contribution to approaches techniques and pragmatics.

However, seeking the meaning of philosophy in Business Law requires an interdisciplinary study of the elaborations of philosophical thought that are linked to the historical advance of philosophy originating from ancient to contemporary philosophers.

We can refer to the formation of a philosophical thought in Business Law and perceive a relationship between philosophy and business in an intense way, as in the bases of Western thought and the systematization

of knowledge, especially with philosophers such as Thales, Anaximander, Heraclitus, Pythagoras, Parmenides, Democritus, Protagoras, Socrates, Plato, Aristotle, Epicurus, Pyrrhus, Seneca, Plotinus, as an example, or in the conceptions of medieval philosophy whose conflict was centered between the truths of faith and the truths of reason (Avicenna, Scotis Erigena, Averlado, Tomas of Aquinas) and in the course of the 14th to the 16th centuries Machiavelli's Renaissance philosophy, for example.

In the historical-philosophical period after modern philosophy, it is possible to verify a conception that followed the bet that reason was the foundation of scientific knowledge and the promotion of progress (Francis Bacon, Descartes, Hobbes, Locke, Spinoza). The "enlightenment" that was practiced between the 18th and 19th centuries allowed, from the "philosophy of enlightenment", the foundation of the theoretical assumptions that gave support to the legal sciences, especially with philosophers such as Rousseau, Montesquieu, Kant, as example. Contemporary philosophy, practiced from the 19th century to the present day, reviews the bet on reason, that is, reason is in crisis, especially with philosophers such as Hegel, Comte, Marx, Engels, Nietzsche and many others.

The authors propose to revisit the basic foundations of ancient and medieval philosophy that may reflect on the complex approaches that involve Business Law in particular, drawing a parallel with modern and contemporary philosophy to eventually understand the nature of the set of factors that flow into the dilemmas and anxieties of contemporary socio-economics and at the same time exercise a reasoning that leads us to the respective solutions.

To reach the proposed objective, we opted for the deductive method, through the methodology of qualitative and bibliographic

research to promote the analysis of the proposed subject, based on the teachings of ancient to contemporary philosophers, as well as the vast national and foreign literature, articles and digital magazines, incorporated into the subject in question.

Above all, with the scope of reflecting on the philosophical bases in Business Law, this work was divided into three sessions. The first one will draw a parallel between the philosophical roots and the paradox of values in the company, highlighting the historicist approach of ancient philosophy, power and ethics, as well as medieval (scholastic) and renaissance philosophy. Then, it will seek to discuss the transformation of values of philosophical thoughts and discuss reason in the philosophical period between modern and contemporary philosophy. At the end, the third section will be in charge of highlighting the meaning of philosophy in Company Law, understanding how all intellectual production of those periods correlated to business activity can collaborate with our present.

### **IN ITS ETYMOLOGICAL ORIGIN, THE EXPRESSION “COMPANY” IN PORTUGUESE IS DERIVED DIRECTLY FROM THE LATIN**

In its etymological origin, the expression “company” in Portuguese is derived directly from Latin: *EMPREHENDERE*, formed by *EM-*, “em”, with *PREHENDERE*, “take, capture, bring before oneself, hold” and from the Italian *IMPRESA* “activity to which a person engages”.

As the Spanish economist Jesús Huerta Solo (2010) explains:

In short, enterprise is synonymous with action, and in France a long time ago, in the High Middle Ages, the term entrepreneur was used to designate people in charge of carrying out important actions, usually related to war, or of carrying out tasks. major projects related to the construction of

cathedrals. In Castilian, one of the meanings of the term company, according to the *Diccionario da Real Academia Espanhola*, is that of “an arduous and difficult action that begins with courage. Since the Middle Ages, the term began to be used to designate the insignia of certain orders of chivalry that indicated the intention, under judgment, to perform a certain and important action. Thus, the sense of enterprise as action is necessarily and inexorably linked to an entrepreneurial attitude, which consists precisely in continually trying to seek, discover or create new ends and means (all this in line with the etymological meaning of *in prehendendo*, that we have already seen).

It can be said that the realization is the basis of the study of the company that takes care of the mercantile content. Therefore, entrepreneurship implies striving to accomplish and make reality and not just a doing (MAMEDE, 2021, p. 1).

Hence the meaning of the company associated with philosophy as it seeks not only to discover, but to create new means and purposes for certain achievements within the context of historical evolution in the face of the relationships and activities of human behavior in the mercantile phenomenon.

In this aspect, the philosopher Plato, in his work, “the banquet”, adds:

If, indeed, after acquiescing to a lover, on the assumption that he was rich and in view of his wealth, he were subsequently deceived and did not obtain pecuniary advantages, because the lover proved to be poor, it would not be the less shameful for that; for such a type seems to reveal just what he has of him, that for money he would serve any one in any business, and that is not beautiful. (PLATO, p. 16).

In the business context, obtaining pecuniary advantages is closely linked to the fact that the entrepreneur acquires a certain good or service that can be profitable for him. In the words of the thinker, agreeing with a lover, supposing that he is rich and

later on having revealed himself to be poor, would not be less shameful, it is the classic representation of the lucrative activity.

The patrimony specified in the quote above, that is, a lover, is the material asset arranged for the achievement of the objective, considering wealth (profitable purpose). On the other hand, the activity carried out with him could seek a type of production of appropriable wealth, that is, profit, given that “for the money he would serve anyone in any business”.

It is imperative to highlight the treatment given to slaves, who were seen as a bargaining chip, object, merchandise or res. Historically, on the African continent, the trade in people who became enslaved was present since the ancient Egyptians. People became slaves in Africa mainly because of wars or debt. By the mid-17th century, slavery had been consolidated as a racial category. This is because black slaves and their descendants were officially the property of their owners and children born to slave mothers were also considered slaves.

Thus, as property, slaves were regarded as cargo or goods, and treated as such, being transported for commercialization as a type of commodity or units of work and sold in popular markets, alongside other products and services.

In a dialogue written by the Philosopher Plato, in his work “O Politico”, we can verify the commercial treatment given to slaves:

FOREIGNERS - From our point of view, the lowest among the servants present themselves to us with a function and a character that is absolutely contrary to what we imagine. SOCRATES THE YOUNG: Who are they? FOREIGN - Those that we buy or acquire in a similar way. We must, no doubt, call them slaves, and they have not the slightest share in royal art. SOCRATES THE YOUNG: Undoubtedly. STRANGER - And then? The free men who voluntarily dedicate themselves to the service of those

just mentioned, playing, between agriculture and the other arts, the role of intermediaries and compensators, whether in the markets or from city to city by land or sea, exchanging currency, whether they are called money changers, merchants, shipowners or dealers, do they have any political pretensions? SOCRATES THE YOUNG Perhaps so, at least the commercial one. [col. b pg.237] FOREIGNERS - In any case, there is no danger that these employees and interested parties, who we see offering their services to anyone who presents themselves, will never have a share in the real function. (PLATÃO, p. 50-51).

Indeed, slavery was seen as a commercial activity, a sad experience of the time, in which the slave was a good that must provide the services that its owners ordered and also meet certain needs. The trader who traded in the slave market could be said to have constituted a true “company” in which he gathered, at that time, all the notions that allow the legal understanding of the elements that constitute a company today, which are: organized structure, activity professional, specified assets, profitable purpose and social identity (MAMEDE, 2021, p. 5).

The explanation of such a parallel is based on the fact that this type of commerce had an organized structure, that is, it structured the good considered material (slave) for sale and, from then on, constituted more capital to invest in the “company”. Professional activity is characterized by the “profession” exercised by slave traders who, through the purchase and sale of serfs, carried out continuous actions to achieve the declared objective.

The specified patrimony was the gathering of all the slaves which the trader called himself the owner, organized by age, weight, height, teeth, strength and other specific characteristics that only the merchandise of that trader possessed. The lucrative purpose, on the other hand, took place with the activity carried out (buying and selling slaves) whose

objective of the trader was the production of appropriable wealth, that is, profit.

In turn, the social identity exercised by the slave trader at that time was not social in any way. However, through the parallel drawn here, we can say that he exercised the aspect of “company” and “entrepreneur” and his existence was thus recognized in his environment, including for his habituality.

The various forms of slavery will always be part of a disgusting moment in human history. Despite an accepted practice in antiquity, permanent servitude was abolished from society and gradually it was possible to overcome the phase of inexistence of human rights, opening space for the recognition of fundamental rights and guarantees.

The permanent struggle for the rights of freedom, equality and fraternity set the tone for the beginning of the three dimensions of fundamental rights, guaranteed by the Constitutions, inaugurating the notion of obedience to civil, social, labor and benefit rights.

In the current Democratic State of Law in which we are inserted, the protection of fundamental rights has the scope to protect the integrity and dignity of the human person, notably because they are based on the generation of constitutional principles established in the Carta Marga of 1988.

Thus, as well discussed by Helena Regina Lobo da Costa (2003, p. 35-36), human dignity must be treated as a legal basis and its burden plays an important role in limiting the power of the State and fulfilling fundamental rights, and by be approached as one of the foundations of the Federative Republic of Brazil, aims to respect and promote a dignified life, totally different from the one portrayed here in the slaveholding period.

On the other hand, in “The Republic”, the Philosopher Plato makes us reflect on people who, despite having civil capacity, cannot

become entrepreneurs:

SOCRATES: Seeing this sort of thing, my friend, these misfortunes, and sharing them, being deprived of patrimony and fearing for his own person, I think that he soon knocks from the throne that had raised ambition and arrogance in their souls. Then, humiliated by his poverty, he turns to business and, little by little, at the cost of hard work and savings, he accumulates assets. Don't you think that then he will place on that inner throne the spirit of cupidity and avarice, which will make him, in his heart, the Great King, girding him with the fiara, the necklace and the scimitar? I'm afraid so, I think so. (PLATÃO, p. 355).

In the collated dialogue, the question brought by the thinker is in the sense that if those ambitious and arrogant who lose their throne and soon turn to other means of maintenance (business), they would no longer be drunk by the spirit of ambition and pettiness, conduct once View?

Indeed, the law makes it difficult for certain people to exercise the business. According to Fábio Ulhôa Coelho, those prohibited from entrepreneurship are fully capable, which distinguishes them from those who do not have legal capacity, and can practice legal acts and businesses, however, they are prohibited by the legal system in force from exercising their professional activity.

By the way, in the search for business understanding through the philosopher, it can be said that the Brazilian Federal Constitution of 1988 is responsible for substantiating the validity of the prohibitions of those who are prevented from being an entrepreneur, in its art. 5th, XIII. The Civil Code, in turn, also deals with the matter in its art. 1011, §1, and adds that: “The administrator of the company shall have, in the exercise of his functions, the care and diligence that every active and honest man usually employs in the administration of his own affairs”.

As rightly pointed out by Coelho (2016, p. 26), “the main case of prohibition of exercising a company that matters to commercial law, today, is that of the bankrupt not rehabilitated”. According to the author, once the bankruptcy has been judicially decreed, the entrepreneur can only carry out business activity after the rehabilitation is decreed by the magistrate, which is also linked to the fact that the entrepreneur has been convicted of a bankruptcy crime or not, because in the first case (conviction) the bankrupt must obtain the declaration of extinction of his obligations and his penal rehabilitation, observing the expiry of the period for that, and in the second case (no conviction in bankruptcy crime) it is enough for the bankrupt to seek the declaration of extinction of obligations to be considered rehabilitated.

In the same line of reasoning, Pedro Durão (2021, p. 50) clarifies that legislation is intelligent when it covers all the main existing situations on the subject as well as safeguards the maintenance of the company in adverse cases or situations subsequent to its creation in order to preserve the greater interest of economic activity and generation of wealth as well as employment of business activity in society.

In the same work, the thinker discusses the probative conduct that the King must have to honor his dignity, a conduct required by Brazilian civil legislation:

SOCRATES: As for the rational and courageous spirit, I suppose it throws them to the ground, on either side of this king, and there, having reduced them to slaves, does not allow the former to have other points of interest and research than be the means of increasing his fortune, let the second admire and honor something other than wealth and the rich, and put his dignity in something

other than the possession of great goods and the means of obtaining it. Adimant: There is no other road by which a man can pass more quickly and more safely from ambition to avarice.

In this aspect, the impediments to the activity of an entrepreneur seek, in essence, to stop the superb, abusive or illegal conduct, typical of a “Great King with an ambitious soul”, as Plato well translated, since once developed repeatedly by certain entrepreneurs within the scope of business and commercial activity, may cause damage capable of extinguishing the legal entity.<sup>1</sup>

This way, the probative conduct, without greed and greed, is what is determined by those who carry out their own activity as an entrepreneur, because, for Plato, “justice does not consist in remedying injustice, but in maintaining the original fair situation” (LEITE, 2006, p. 62).

Bringing to the debate issues related to power, human and business conduct, Aristotelian thinking about ethics is a value that we must bring to the fore. In Aristotelian realism, ethics is a theory of virtue, that is, ethical principles would be determined by the virtuous character of a person, with wisdom being the most important virtue.

In the Nicomachean Ethics, the philosopher Aristotle, adds:

Virtue being, therefore, of two kinds, intellectual and moral, the former, as a rule, generates itself. and it grows thanks to teaching—so it requires experience and time; while moral virtue is acquired as a result of habit, whence its name was formed by a slight modification of the word (habit). From all this it is also evident that none of the moral virtues arises in us by nature; for nothing that exists naturally can form a habit contrary to its nature. For example, a stone which by nature moves downwards

1. In summary, one can, therefore, extract from these dialogues that the city must be ordered by just laws and that such justice of the city is only possible if it is inhabited by righteous citizens. Fair citizens make the city fair. In order to have fair citizens, it is necessary to have a fair education, from the family environment to social and institutional life, guided, in particular, by a philosophical education, which is capable of teaching the correct and wise use of reason for discernment. of the actions.

cannot be given the habit of going upwards, even if we try to train it by throwing it ten thousand times in the air; neither can fire be accustomed to be directed downwards, nor can anything which by nature behaves in one way behave in another. (Aristotle, p. 27).

Nowadays, the Aristotelian ethical approach has been used in a significant way in business. This means that a good company is not only one that aims at profit, but also offers a rewarding environment, in which its employees can develop their specialized knowledge and also their virtues. Even the word collaborator and non-employee is a trend, as is the concern with the company's social and environmental responsibility and sustainable development.

The ethical sense of human life, brought by the thinker, is the pillar of the central idea of sustainability. Concerns about the environmental impacts on our planet are the scene of several debates around the world since the unbridled development of today can compromise the needs of future generations.

It is a good idea to think of ethics as a guideline for all projects and actions related to sustainability, and it is imperative to demand a sensitive and reflective attitude from entrepreneurs to avoid the sustainability fad, and elevate it to mandatory projections in company strategies.

In Brazil, business ethics has been gaining considerable proportions for a long time. In 2003, the Brazilian Institute of Business Ethics was founded, whose main scope was to foster ethical values, principles and practices from children to adolescents who will be future entrepreneurs, employees and executives of the companies.

Developing ethical awareness in the company is linked to creating safe channels of corporate responsibility as well as structuring areas and routines to manage the (non)compliance with issues related to ethics.

In the business world, amoral and corrupt conduct is closely linked to money as many adopt the posture of seeking economic success at any cost. In contrast to these negative factors, Aristotle teaches that frankness would be in the search for a virtuous life, however, the middle ground is difficult to find:

From what we have just said it follows that it is not easy to be good, for in all things it is difficult to find the middle ground. For example, finding the middle of a circle is not for everyone, but only for those who know how to do it; and likewise anyone can be angry, give or spend money—that is easy; but to do it to the person who suits him, in the measure, at the time, for the reason and in the way he suits, this is not for everyone. (Aristotle, p. 42).

In fact, making the entrepreneur keep in mind the search for ethical and moral foundations when he needs to persuade people, seek solutions to problems to sell his product and make a profit is not an easy task, but ethical behavior is something individual of the human being for more influenced by societal standards.

On frankness and money, the Thinker adds:

When it comes to giving and receiving money, the middle ground is liberality; excess and deficiency, respectively, prodigality and avarice. In this kind of action people exceed and are deficient in opposite ways: the prodigal exceeds in spending and is deficient in receiving, while the greedy exceeds in receiving and is deficient in spending. (Aristotle, p. 37).

As we saw earlier, the slave trader could be an entrepreneur and meet the standards that existed in that type of society. Today, the foundations of business ethics can be closely linked to philosophical issues, including understandings brought about by the Aristotelian approach to happiness.

This way, it is possible to understand that as ethical behavior is individual of the human

being and that society and its institutions could not be considered ethical or not depending on the historical context in which they are inserted. Therefore, only individual human action would be susceptible to moral valuation, notably when power and ethics must walk in an egalitarian way to exert a change in individual mentality that can raise the ethical standards of the business environment.

## **MEDIEVAL (SCHOLASTIC) AND RENAISSANCE PHILOSOPHY**

When touching medieval philosophy, we undoubtedly need to make comments about Christianity. In fact, initially, Christian doctrine did not have a legal or political meaning, but only a religious one, and it was not intended to be a philosophy either. (LEITE, 2006, p. 96). It so happens that the Christian doctrine produced concrete effects both in Politics and in Law.

Flamarion Tavares Leite explains:

The idea of justice is completed with the idea of love or charity, principles of faith. Justice takes on an ethical content in the individual's conscience, it becomes a living and existential relationship between man and God. As far as the state is concerned, it is subject to the idea that all power emanates from God, and whoever resists the state resists God. With Christianity we are faced with the affirmation of Law and the State as a manifestation of the divine will. (LEITE, 2006, p. 97).

In turn, it is possible to affirm that in terms of philosophical thought, the medieval period was dominated by Christianity, that is, the Church was superior to the State. Throughout the Middle Ages, Christian thought was successively dominated by patristic and scholasticism. In the first period, Patristics was characterized by the reflection brought by the "Church Fathers" as well as by the absence of distinction between

Philosophy and Theology, with Saint Augustine being the main supporter of this way of thinking. In addition, the Alexandria School deserves to be highlighted with the thoughts brought by Clement.

The Scholastic period was characterized by the investigation of theological problems that passed through philosophical questions. The great discussions revolved around creation, the universe and the relationship between faith and reason, with emphasis on Saint Thomas Aquinas.

On the clashes between the truth of faith and the truth of reason brought by Saint Thomas Aquinas, Flamarion Tavares Leite explains:

The philosophy of Saint Thomas Aquinas is the culmination of medieval Christian thought. For him philosophy is a theoretical science, distinct from theology, which is revealed matter. Philosophy is rational: it exists to solve the world's problem. Despite this, the influence of faith on the problems of reason is clear. [...] Thus, Saint Thomas Aquinas overcomes the ambiguous positions of his predecessors, who, when approaching the question of the relationship between faith and reason, Theology and Philosophy, confused them. (LEITE, 2006, p. 123-124).

After this brief theoretical contribution, for a better understanding of the period in question, it is imperative to highlight that it was also in the medieval period that commerce was strongly influenced by the Church, which may have been one of the causes that contributed to the delay in the commercial and economic development of the time, notably because the former condemned, to a certain extent, usury and always feared and distrusted the involvement of merchants in commercial businesses that could generate huge profits.

In fact, the thinkers of the Middle Ages preached brotherhood and condemned hypocrisy and greed. In this context, in the



work "The City of God", Saint Augustine wrote:

The empires of the East shone for a long time. That is why God willed that there must be one in the West who, although later in time, was even more brilliant in scope and power. It was a concession that God made to such men to repress the serious evils of many peoples, to them who, for the sake of honor, praise and glory, devoted themselves to the service of their country, sought this same glory there and did not hesitate to put salvation first, smothering the greed of money and many other vices to this one vice, that is, of the love of glory. (AUGUSTINE, p. 514).

For this reason, for a long period of time, medieval trade was a wandering activity, in which the merchant followed the route of the products, the sale being made through the direct exposure of the articles in stores, markets and fairs. The fairs, in turn, were meetings between merchants who came, in many cases, from different parts of Europe to, in a period of weeks, buy and sell their products. One of the most important fairs of the time was that of Champagne, Italy.

Within the business vision in the context of the medieval philosophical period, the commercial activity performed by merchants can be highlighted. They are responsible for initially exercising banking activities, transforming themselves into rich and powerful men.

In this moment, the development of commercial activities at fairs was fundamental for the introduction of currency as a basis of exchange (buying and selling) of goods. As the fairs began to carry out the exchange between different places on the European continent and the world, different currencies were used in negotiations.

The merchant, like other members of the urban population (the artisan, for example), did not fit into the social qualifications prevailing in the Middle Ages, that is, he did

not obey the triad: warriors, farmers and orators. Expansive trade required a different social type from the triad that founded the feudal system.

On the differentiation given to the merchant in the feudal period, in the same work Saint Augustine adds:

In Catechesis, it is to be admired the concern to adapt to the mentality and to the culture or lack of culture of each one: to the presumptuous and more or less sybaritic and mocking city man, he had to speak in a different way than he used to with the rustic who still mixed to his rude Latin many Punic phrases; He did not address the bloated grandeur of the learned man as he addressed the humble man who, tired of listening to him standing up, yawned with boredom and unceremoniously sat down on the floor; the language he used for the merchant was not the language he used for the peasant, craftsman, or sailor. (AUGUSTINE, p. 65-66).

The merchant was nothing more than a businessman at that time. By entrepreneur we can understand as the professional who carries out an economic activity in an organized way, for the production and circulation of goods and services (art. 996 of the Civil Code). He is responsible for managing and directing, with the primary purpose of obtaining economic benefits.

In fact, it is said that the merchants were the drivers of a new activity provided by the commerce of the fairs: the money changers, who were nothing more than traders who specialized in the exchange of different currencies. They played an important role in commercial development, as banks and bankers emerged from this currency exchange activity in a way that new payment systems were created, such as bills of exchange and bills of exchange.

Furthermore, as he was, at the same time, a navigator and a merchant, the merchant needed to develop skills that contemplated

these two branches of his activity. For that, there was a certain intellectualization required by the experiences of navigation and commerce.

Indeed, the careful study of navigation techniques, the exact manipulation of instruments used in nautical guidance, the mastery of calculations, knowledge of the origin and quality of products, among others, were requirements that made the merchant an essentially different character in the medieval context, that is, outside the submissive gaze of the Church.

Saint Thomas Aquinas, in his work “Tratado da Lei”, also discussed the role of the merchant as a diverse social type:

But on the contrary, Scripture says (Rom 7:23): I feel another law in my members, which is contrary to the law of my spirit. SOLUTION. — As we have already said (a. 2; q. 90, a. 1 ad 1), the law is essentially in the subject that regulates and measures; and, participatively, in what is measured and regulated. So that every inclination or ordination existing in one who is subject to the law is called participative law, as is apparent from the above (a. 2; q. 90, a. 1 ad 1). Now, in two ways there can be an inclination in the subjects of the law, coming from the legislator. Or because this in them directly causes an inclination and inclines, at times, diverse to diverse acts; It can thus be said that one is the law of soldiers and the other that of merchants. Or, indirectly, when the legislator, depriving one of his subjects of a dignity, I say, consequently, pass to another order, becoming, as it were, subject to another law. Thus, the soldier, deprived of the militia, will be subject to the law of farmers or merchants. (AQUINO, p. 14).

In turn, from the historical context in which the merchant was located, parallel notions of what it is to be an entrepreneur are inserted, through the conceptualization brought by our Civil Code.

The first one concerns professionalism. Here we can highlight the habituality in the

exercise of the business activity developed in addition to the personality and the monopoly of information. In fact, the merchant did not carry out his tasks sporadically, on the contrary, he organized himself in an itinerant or fixed way with the aim of directly exposing his products for proof and sale in stores, markets or fairs.

Personality, on the other hand, was characterized by the very presence of the merchant in the purchase and sale of the exposed products, a figure that directly controlled their business and, consequently, had a monopoly of information on the origin of the products or services they offered, as well as on the navigation techniques.

Another notion of businessman allied to the figure of the merchant concerns the economic activity he performed. Concerning this point, Coelho teaches us (p. 14-15) that “if an entrepreneur is the professional practitioner of an organized economic activity, then a company is an activity; production or circulation of goods”. The merchant, in turn, sought to generate profits by exploiting commercial activity through the purchase and sale of goods and later through the exchange system. He was the mediator between the products that came from other continents and the buyers of the medieval fairs.

On this point, it is imperative to highlight the emergence of a new commercial administration system, which used interest rates and the decimal system. This is because with the internationalization of commercial activities that the fairs provided, these innovations led to a rationalization of commercial activities and were fundamental for the beginning of the rational capitalist system that included rates, interest, capital, banks and profits.

Therefore, since the activity of circulating goods is that of commerce itself, that is, going

to get the good directly from the producer and bringing it to the consumer, we can imagine the activity performed by the merchant as that of an entrepreneur whose objective was to be an intermediary in the supply chain. flow of goods and exchange from the Middle Ages.

On the other hand, the Philosophy of the Renaissance, headed by thinkers like Machiavelli, projects the entrance of modern times. As Leite explains (2006, p. 133) “Modern times begin with the Renaissance, the Reformation and the Counter-Reformation, which constitute a historical-cultural set that marks a stage in the history of the Philosophy of Law”. And further, he concludes the understanding that “with Modernity, the axis of gravity of Philosophy becomes man”, that is, modern thought focuses on the throne of the human subject and no longer on divinity, as in Medieval Philosophy.

In his “The Prince”, Niciló di Bernado dei Machiavelli (better known as Machiavelli), taught the ruler the means to perpetuate himself in power, regardless of the observance of ethical rules, that is, the ends would justify the means when the objective was the perpetuation on the throne. In this sense, Machiavelli adds:

Note here that a prince must be careful never to make an alliance with one more powerful than himself in order to attack others, except when necessity compels him, as was said above, because, conquering, he becomes his prisoner; and princes must flee as far as they can from being at the discretion of others. [...] A prince must also show himself to be a lover of virtues, giving opportunity to virtuous men and honoring the best in an art. At the same time, it must encourage its citizens to peacefully carry out their activities in commerce, agriculture and any other occupation, so that the farmer does not fear to adorn his properties for fear that they will be taken from him, while the merchant be sure to carry on your trade for fear of fees; he must, moreover, institute prizes for those

who wish to do such things, and for those who think in any way to aggrandize their city or their state. (MACHIARELLI, p. 89-90).

And later, it is concluded:

Moreover, he must, at convenient times of the year, entertain the people with feasts and spectacles. And, because every city is divided into arts corporations or social groups, it must take care of these corporations and groups, meet with them sometimes, give proof of humanity and munificence, always holding firm, notwithstanding, the majesty of his dignity, behold, this must not be lacking in anything. (MACHIARELLI, p. 90).

Alongside these teachings, we can consider the “State” as a “company” and entitle the “Prince” as an “entrepreneur”. In this scenario, nowadays, it is known that the perpetuation of the entrepreneur in the company has limits built by modern Commercial Law, mainly with the advent of the Law of Judicial Recovery and Bankruptcy (Law 11.101/05).

It means to say the emergence of the Principle of Preservation of the Company in which the conservation of the activity rests as a basic value and not only of the entrepreneur, that is, the focus became the preservation of the company, comprising the production of goods and services, jobs and the interest of creditors. For Durão (2021, p. 34) the Principle of Preservation of the Company, listed in art. 170, sole paragraph of the Federal Constitution, “designates legal measures for entrepreneurial preservation”. Therefore, by its implementation and observance, the practice of entrepreneurial freedom and the respectability of the business would be protected.

As a practical example, there is the family holding, which can be used as a mechanism for structuring and preserving the assets, serving even as an instrument of succession planning since it could minimize conflicts in the relationships between future heirs,

harmonizing, therefore, the interest of that particular family group.

Thus, we can boldly reverse the roles listed in the aforementioned work by the Pensador and consider the “State” as the entrepreneur and the “Prince” as the company in such a way that it would be up to the latter to “perpetuate” the activities (create mechanisms) whose purpose would be to of preserving the patrimony, not necessarily linked to the preservation of the figure of the entrepreneur, all in compliance with the Principle of Preservation and the Social Function of the Company.

### **PHILOSOPHICAL THOUGHTS: TRANSFORMATION OF VALUES**

The evolution of humanity in all its characteristics is irrefutable proof of how the exercise of philosophical thought directly collaborates with cultural improvement, just as we can observe the biological evolution of human beings. The ecosystem of ideas that have spread over time has always been fed by reasoning from philosophy, and the reasonable harmony between what was produced in the philosophical system and the entire evolutionary context of society is clearly perceptible, perhaps denoting a symbiosis between humanity and philosophical thought.

This reciprocity, in a very clear way, is perceived in the economic sciences, as we look at the economic history of humanity, placing it side by side with what was produced by the thinkers of each of these times. As much as it is argued that the process of transforming values is an unconscious phenomenon, it is credible that these agents of transformation, which we call here philosophical thinkers, seek to guide evolution in a reflective and rational way.

This sense of orientation produced by philosophy is directly correlated with the constant mutation of social values seen as dogmas. Concepts such as property and all

the elements that surround it have undergone constant revitalization throughout human history, since going back to Roman Law, where these concepts had contours of an individual nature. This entire evolutionary chain was accompanied and without a shadow of a doubt driven by the constant philosophical production that fed and will always feed a regular transformation of values.

### **MODERN PHILOSOPHY: REASON AND PROMOTION OF PROGRESS**

Observing the legacy left by ancient and medieval philosophy, it is clear that the philosophical basis of what we know today as Business Law, is presented to us by the protagonists of modern philosophy. The works of Hobbes and Locke are fundamental to progress, leaving in previous eras what Norma Padilha and Rosangela Vecchia called the “old regime”:

Classical political thought will accompany this process of formation from the 15th century onwards, with Machiavelli, until it was consolidated in the works of Hobbes, Locke and Rousseau, authors whose central idea is the Social Contract that founds the State. To survive the threats of nature, primitive man seeks to live in society. In life in society, conflicts of interest arise and man gives up the freedom he had in a “state of nature” and creates the State by “contract”. The purpose is to guarantee and protect the right to life and property. All the power of the State emanates from the people, and it is in the service of the collective interests of these people that the State must act.

[...]

The profound transformations in Europe accompany the decline of the feudal mode of production and its progressive replacement by the capitalist mode of production. The growth of commerce gave birth to a new class formed by rich merchants - the bourgeoisie. The Protestant Reformations confront the power and hegemony of the

Church and the Pope. Feudalism is dying. The great navigations, mercantilism, the accumulation of wealth in Europe created the historical conditions for the development of the new mode of production. Craft work is progressively being replaced by divided work. The artisan becomes a wage earner. The bourgeoisie, now owner of the means of production, achieves economic power and confronts the structures of the “old regime”. The nascent capitalism transforms life in society and demands new forms of state organization. (PADILHA and VECHIA, p. 3).

These transformations are confused with the progress that flows into the current perceptions of Business Law, which necessarily involves a series of elements, such as the conception of the Liberal State, Social Contract and Property. This philosophical production leads us to perceive the rupture of the old idea that man would be an essentially social being, demonstrating, therefore, that the individual would suffice by himself. This way, the understanding arises that individual wills under the coordination of a social contract justified the formation and legitimacy of the State, creating the idea of subjective rights related to freedom and property, as natural unfoldings of the human condition.

The old regime that was basically carried out by the monarchy would give way to natural advances perceived throughout history. The so-called Bourgeois Revolutions of the 17th century aimed to aim at elements that today are confused with the so-called “first generation human rights”, as noted by Carlos Weis, who quotes Canotilho:

According to Canotilho, human rights of liberal inspiration are essentially those of autonomy and defense, having the character of norms for the distribution of competences between the State and the individual, with a clear expansion of the domain of individual freedom, starting from the theoretical postulate the pre-existence of such rights in relation to the State, to

justify the impossibility of it interfering in the individual orbit, except to guarantee the very prevalence of the maximum possible freedom for all. Due to these characteristics, the rights originated in this period are often also called individual rights. (WEIS, 2006, p. 38).

This reference leads us to realize that in the Liberal State, the limit of state power was based on the recognition of the fundamental rights of the citizen, having freedom and property as absolute values. It must be noted that the concept of freedom and property appear as the foundation of Business Law, and it is imprudent to imagine business activity that distances itself from the use of property and the exercise of autonomy.

Very clearly, Locke’s work is an essential component of what we can imagine as the fundamental rights. The English philosopher presents property as an intrinsic right to man, understanding that it is prior to the institution of civil society and, therefore, closely correlated to the very essence of the human being. Placing it on the side of the rights to life and liberty, Locke makes a perfect correlation between property and the state of nature.

In relation to Hobbes, Ana Frazão de Azevedo Lopes, shows us that the thinker understands that individualism is the idea of self-interest and that man was not naturally inclined to love other men, on the contrary, the state of nature in where man was, put him in a state of constant war, justifying that the only way to establish peaceful coexistence was through the social contract, which was also adopted by Locke. As a result of this scenario, Hobbes demonstrates very clearly that the social contract is an essential instrument to guarantee fundamental rights, including freedom and private property, generating the conception that man must give up a portion of such rights in the face of State so that it provides the peace and security necessary for life in society.

## REDEFINING THE ILLUMINIST MODEL

On what is conventionally called the Enlightenment, it is necessary to promote the due emphasis on the production of Jean-Jacques Rousseau and Adam Smith. Contemporaries, both played a prominent role and promoted significant implementations regarding the modern economy and the development of fundamental rights.

From the second half of the 18th century onwards, the rise of commercial societies generated great political, social and economic effervescence. The Industrial Revolution, even without being called that, was too discreet to be perceived as a revolution and little by little it transformed the shape of the world, shaping it through the constant commodification and urbanization of social relations.

In this context, Adam Smith and Jean-Jacques Rousseau are presented to us as divergences from the flourishing world. Being contemporaries, the changes of their time did not go unnoticed by either mind. Rousseau was seen as a philosopher who saw the injustices of the new world, each day more decayed and corrupt. Smith, on the other hand, has been interpreted as a propagandist of the economic system that has established itself and, over the years, has become a symbol and almost a literal synonym of capitalism.

Despite living at the same time and experiencing the same social phenomena and reflecting on them, we realize that in the debate between Rousseau and Smith they seek to understand what the common good would be, always correlating it to the exercise of rights considered fundamental.

Rousseau, who can be considered as the last natural law scholar, was an adherent of contractualism, which was different from what was thought by Hobbes, who had submission as an essential element and distant from that contract of association by Locke's sustained

consent. Rousseau understood that the social contract would be a broad and unrestricted alienation, thus including powers, goods and properties, all in the name of the general will, as noted by Flamarion Leite who cites Rousseau's own work:

Thus, the State, in order to have legitimacy, must be born of a contract by which every individual alienates himself and his rights to the community: "These clauses, when well understood, can all be reduced to one: the total alienation of each individual, associated, in all its rights, with the whole community. [...]. In short, each one giving himself to all does not give himself to anyone". Closely related to the concept of social contract is the general will, which must be obeyed by all. However, it is not the will of all, but the will of each, that which in the will of every individual must coincide with the will of others as members of society: "There is usually a great deal of difference between the will of all and the general will. This concerns only the common interest; the other, to private interest, and is nothing more than a sum of private wills". (LEITE, 2013 p. 149).

Citing him as the father of democracy, the author Aníbal D'Auria presents Rousseau's proposition as a clear outline of contemporary democratic ideals, arguing that the philosopher's proposal,

[...] derives from a kind of national engineering, where it is no longer a question of designing institutions for a people, but of a people with no dissimilarity of values/interests. This national engineering is directly associated with the Roussonian doctrine of civil religion: it is about forming a compact society, homogenized in values and interests and founded on a community of beliefs (2), especially on the dogma of the sanctity of the social order and laws. (D'AURIA, 2004, p. 67).

Rousseau's understanding presents us with freedom that is extremely correlated with the idea of a social contract, as it is established

as a result of the general will. This way, as society establishes itself before a contract, it necessarily becomes an entity endowed with sufficient strength to repel the evils that could then weaken freedom and property, both exercised selfishly.

In his work “*Emílio ou da Educação*”, Rousseau discusses the path that must be followed by man in order to reach the right conditions to then have his natural freedom, evolving to what was called civil freedom, arising from the construction of desire. Society, using the aforementioned social contract as a tool. Education, as explained in the aforementioned work, would be capable of leading each one of men to the stage of civilization in which direct democracy was possible, with the people being identified with the sovereign, and the government with the actions of those chosen as magistrates, to execute what was determined by the general will as an expression of the freedom of each in the form of law.

Regarding the thought of the Scotsman, Adam Smith, we can see that in his most important work: *The Wealth of Nations* essentially preponderates a theory of economic progress, clearly based on the understanding that the wealth or well-being of nations is identified with its annual per capita product, which is determined by the productivity of “useful” or “productive” labor, understood as that which produces a surplus of value over its cost of reproduction; and by the ratio between the number of workers employed, productively engaged in relation to the total volume of the population (SMITH, 1996, p. 469).

Forerunner of the free market and commercial societies, Smith believed that reversing the moral corruption of modernity would be essential so that society could enjoy the benefits of capitalism without suffering from its misdeeds. The Scotsman truly

represents the starting point for the scientific approach to phenomena such as production, consumption and distribution of goods and services, always having as one of its tenets to believe that the primary objective of a society is to generate happiness for the majority of its members.

Moving away from Rousseau’s proposition, Smith preaches free trade and state interference in matters of a private nature, resulting from a full separation between Public Law and Private Law. Under this liberalist view, what the author called the “invisible hand” emerges, this being a natural phenomenon of the economic process, where the market itself, over time, would correct its imperfections, this event being something better than the interference of the State.

Despite moving away from what Rousseau understood as the ideal model of political and economic society, Smith showed a clear tendency to correlate his thinking with what we know as the fundamental rights. Despite praising the so-called productivity, the philosopher contributed to the maturation of fundamental rights such as property and freedom. Understanding that state intervention would be inopportune to the economic growth of a society, he elevated freedom to a fundamental element.

From this economic point of view, Smith combined an appreciation of the productive potential of specialization with the doctrine of natural freedom of his time. The inalienable rights to life, liberty, and the pursuit of property, in John Locke’s original formulation (to be transposed into the United States Declaration of Independence, written in the same year as the publication of *The Wealth of Nations*, as ‘life, liberty, and the pursuit of happiness’), placed at the center of his analysis the idea of natural freedom that was so important to the rising commercial classes. The link between political freedom and economic freedom was

both a continuation of moral philosophy and a departure from it.

It must be noted that it is extremely important to realize that Smith's work is a defender of fundamental rights, specifically freedom, in the most varied aspects related to the economy, where recognizing oneself as an individual was constituted as the key to recognizing the collective.

## **CONTEMPORARY PHILOSOPHY: REASON IN CRISIS**

In a similar way to that perceived when accessing Smith's ideas, here we perceive again a contraposition of philosophical ideas presented by the Scottish thinker. Karl Marx and Friedrich Engels developed extremely antagonistic thoughts in relation to the production of the 20th century. XVIII, through criticisms about the epistemological constructions of economic liberalism. Among the conceptions inaugurated by Marx and relevant to the present day, we have the one that perceives that the characteristics of the social relations existing in the capitalist mode of production or in market economies do not necessarily come from the humanistic essence, suggesting that they stem from historical conditions. experienced by this society, such as the degree of development of the productive forces.

Marx's thought is primarily to make strong criticisms of the capitalist construction conceived in previous periods, making clear the social discrepancy between classes. In Aníbal D'Auria's work, the censorship is extremely clear:

In fact, for Marx, the material basis of society is nothing more than a system of economic production where some work and others live outside work; that is, some produce the goods necessary for subsistence and enjoyment of life, and others appropriate these goods without contributing to their production. This fact, which is simple

and clear, is not self-evident. common because of the dissimulating role played by ideology. ideology, for Marx, is something like a smokescreen that prevents the proper perception and understanding of social reality; it is a complex set of moral, religious, political, cultural and pseudoscientific beliefs that play a reproductive role in the current situation of exploitation (D'AURIA, 2004, p. 35).

The thinking of Marx, Engels and the socialists of the 19th century played an important role in the historical construction of fundamental rights, since everything that was being presented and in the ways that were put into practice, extolled freedom, property and so many other rights, but they were not fully universal as they were only fully enjoyed by society. Now, it was a matter of selfishly privileging a certain class to the detriment of another that effectively served only as an instrument to achieve those ends.

It was within this context that claims for second-generation rights emerged, thus claiming the universalization of these rights, such as education, public health, freedoms such as association and assembly of labor rights.

Also responsible for a remarkable intellectual production was John Stuart Mill, considered one of the last representatives of the classical school of political economy, he traced some important conceptual elements, such as salary and profit. The philosopher at certain times took a stand on the side of liberal-socialism, also noting that socialism would only be possible if people reached a satisfactory moral and ethical state, intellectual improvement coming from elements such as education, independence and freedom from common sense. Mill, understood that it was essential that the spirit of prosperity sprouted internally in all those who were protagonists of the work, also arguing that in a scenario of contrariety, the



individual struggle for profit would prevail.

Agreeing with Marx, he points out a series of flaws in capitalism, but unlike this, he sees that with the appropriate adjustments it could thrive. Mill's *Principles of Political Economy*, first published in 1848, the year of the revolutionary upheaval in Europe, was the dominant text in economics for nearly half a century.

Mill reached an interventionist position, even in the field of production. He was the first prominent economist to argue that the automaticity of the labor market was not sacrosanct. The wage fund theory employed by Senior and other classical economists assumed that labor wages were fixed in total by the size of the money set aside (the wage fund) and available for that purpose. This amount, which was fixed at any time, was used to pay wages. More workers could only be paid by reducing the amount each one received. Almost all classical economists accepted the wage fund doctrine. In 1869 Mill repudiated it. That year, in a book review, he argued that wages were determined by the struggle between workers and capitalists. The thesis would revolve around the understanding that there was a specific fund for the payment of salaries. Capitalists could increase their profits if they had the power, and workers could make gains through organized struggle. Such a retraction allowed Mill to declare that unions could raise wages and favor the organization of workers.

Mill made numerous and important contributions to economics, presenting us with an extremely technical analysis of supply and demand, perhaps inaugurating a conception linked to international trade at a very significant level of understanding.

But all commerce, whether between nations or individuals, is an exchange of commodities, in which the things which they respectively have to sell also constitute their means of purchase: the supply brought by the one constitutes their demand for what is

brought by the other. So supply and demand are just another expression for reciprocal demand: and to say that value will adjust to match demand with supply is in fact to say that it will adjust to match demand on one side with the demand on one side. demand of the other. (MILL, 1943, p. 152).

Mill's relevant legacy is seen in his famous work *Principles of Political Economy*, when since his time, he tried to approach the issue of insolence in an avant-garde way, adding what would be the role of the law that takes care of the subject:

The law is obliged to take care that insolvency is not good pecuniary speculation; that men will not have the privilege of risking the property of others without their knowledge or consent, appropriating the profits of the enterprise if it succeeds, and if it fails, throwing the loss on the rightful owners; and that they will find no answer to being unable to pay their just debts, spending their creditors' money in personal indulgence. (MILL, 1943, p. 259).

The author's understanding is in the sense of perceiving the great risk that falls on the property of the creditor company in the face of fraudulent insolvency, maintaining that dishonesty is possible and must be reprimanded by law.

## **CONFLICTS AND SOCIAL INEQUALITIES: ECONOMIC SOLUTIONS AND THE STATE**

Thought and debated by great thinkers of philosophy such as Rousseau, inequality is an omnipresent and contemporary element. The philosopher sought to understand the historical origin of social inequality, performing, rather, an abstract analysis of the human being in the state of nature, pointing out that natural naivety and good faith were replaced over time by immorality.

This way, man in a state of nature, being limited only by the strength of individuals, would be free and independent of obligations

towards his fellow men. In this scenario, physical differences would not be enough for men to imprison and oppress their fellow men.

I conceive, in the human species, of two types of inequality: one that I call natural or physical, because it is established by nature and which consists in the difference in age, health, strength of the body and the qualities of the spirit or soul; the other, which can be called moral or political inequality, because it depends on a kind of convention and which is established or, at least, authorized by the consent of men. This consists of the various privileges that some enjoy to the detriment of others, such as being richer, more powerful and honored than these, or even being obeyed by them (ROUSSEAU, 1978, p. 235).

Considering the impossibility of returning to the natural state, contemporary society lives with the dilemma and incessantly seeks to at least alleviate the effects of this social imbalance that has accompanied humanity since it came to be understood. Achieving this understanding is of paramount importance as the disorder that affects society in various aspects is closely linked to social inequalities embedded in various forms.

The unreasonable use of property and capital clearly demonstrates that any and all relevant economic benefits are concentrated in those who hold the domain exclusively for the multiplication of profits, completely disregarding aspects related to the individual as a social entity and protagonist of this productive process. The heap of wealth practiced without any zeal for the next, serving only for personal satisfaction, is clearly a descendant of irrational neoliberalism that multiplies the number of people who are still deprived of the minimum vital.

Neoliberalism led the world to a broad and global market economy, in a concrete resumption of the classic liberal economic theories of Adam Smith, pushing the planet

to an escalation devoid of humanity in its essence. Neoliberal capitalism leverages itself through the classic economic expression, according to which the “invisible hand” of the economy marks out alternatives through its own dynamics.

The harmony between Capital and Fundamental Rights seems to us to be one of the great goals to be achieved. Concepts presented by neoliberalism that maintained that the simple deregulation granted to markets would be something decisive for the expansion of economic growth, while condemning the intervention of the State in the economy, seems to us to be insufficient. The so-called “invisible hand” is constantly weakening.

The initial understanding is that any economic and trade solution must have the State itself as an effective participant. The hand that must minimally regulate economic activity is the one that effectively has powers and legitimacy to protect general interests, in a harmonious and effective way. Far from what the absolutists thought, the State must at least participate according to its attributions to help lead the process to a satisfactory result.

## **THE FUNCTION OF THE COMPANY AS A INSTRUMENT FOR THE EFFECTIVENESS OF FUNDAMENTAL RIGHTS**

For all the historical overview exposed throughout this work, it is inevitable to realize that the socioeconomic evolution was accompanied and driven by the emergence of some elements that, given their high degree of relevance, gained the status of principles, and their presence is essential to the exercise of democracy.

Considering man an essentially social being, it is evident that, in the development of societies, he would form groups to better

develop tasks. From this need arose the creation of fictitious entities called legal entities. The legal entity endowed with personality, arises to unite individual efforts in search of a common ideal that goes beyond these individual efforts. It is an abstract entity in personification, but concrete in rights and duties that comes to life independently of its creators.

Approaching what was exposed by Adam Smith about the division and specialization of work as a productivity tool, we have the perception that the sum of efforts in search of an objective would be a natural tendency in the process of society evolution.

With the exercise of this reasoning, it is understandable that the legislator extends to the legal entity, here treated in the figure of the company, a range of rights here conceived as the fundamental, and the recognition of this personality to the legal entity supports numerous rights to this being and becomes a facilitator to hold them accountable.

The Federal Constitution affirmed the so-called individual rights through the well-known "rol of article 5", consecrating the right to life, liberty, individual security, physical integrity, equality before the law, intimacy, among others; that is, individual rights take on the guise of fundamental rights.

These rights fulfill the role of protecting the person against forms of disrespect arising from the State or even from business activity. In the same way, they are called equal rights precisely because they provide people in vulnerable situations with the realization of the liberties and rights protected. Considering the universe of relationships that permeate the social sphere, the company can no longer be seen from a uniquely individual standpoint, as it is rigorously inserted in a context that exceeds the limits of the owners' sphere of interests. Therefore, it is necessary to evaluate how the company's performance

process takes place in order to promote the social function. As Viviane Coêlho Séllos-Knnoer maintains:

The responsibility of the rulers is added to the social responsibility of companies in the private sector and to the awareness of society, since it is of common interest that fundamental rights are implemented, allowing everyone not only to seek but also to access happiness, especially in what refers to quality basic education, preventive public health and effective clinical and hospital care and safe housing, aiming at the formation of citizens committed to the organization of society and workers trained to raise and educate their children without allowing them to be victims of abuse, making democracy effective. (SÉLLOS-KNOERR, 2015, p. 6).

The current legal scenario delegates to the State that, through its rules, it demands from the company an action aimed at social objectives, in the sense of realizing the social function. As stated by Fábio Konder Comparato, regarding the social function,

The institution of the welfare state has, however, imposed two major legal consequences for the organization of companies. On the one hand, the exercise of business activity is no longer based on the ownership of the means of production, but on the quality of the objectives pursued by the agent; being that the legal order assigns to individuals and, especially, to entrepreneurs, the obligatory accomplishment of social objectives, defined in the Constitution. (COMPARATO, 2005, p. 296).

In contemporary Brazilian society, the company, undeniably, has a character of essentiality, since it is seen as an institution responsible for the production of goods and services, and responsible for the daily revenues collected by the State, which enable government investment in social improvements.

By applying constitutional principles, more precisely by valuing the human being

and the concern with the social aspect, there is a conflict between the traditional paradigm of the company, especially the search for profit, and the interests of society, which go far beyond the simple generation of jobs, production of goods and services, or payment of taxes. This adequacy involves the business conduct in transferring its activity so that, at least indirectly, it provides society with a range of elements committed to justice and social equality.

It is salutary to emphasize that the social function of the company comes from the principle of the social function of property, where production goods must necessarily extrapolate their obvious and primary purposes to flow into a much broader perspective, thus breaking the barriers of interests arising from business ownership. That is why the generation of jobs, taxes and wealth constitute a small fraction of what is correlated with the social function of the company, in addition to the adoption of practices related to the sustainability of production and respect for consumer rights. There is no doubt about the need, currently, for the company to develop, together with its economic function, a social function, committed to reducing inequalities in the Brazilian reality. It is the balance between profit and the constitutional principle of human dignity.

The exercise of ethics before others presents us as a social element to solve part of everyday problems. These values were considered by Adam Smith as the foundation of every social and economic context, where it would not be possible to dissociate morality from the functioning of the market.

It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard for their own interest. We address ourselves not to their humanity, but to their self-esteem, and we never speak to them of our

own needs, but of the advantages that will accrue to them. (SMITH, 1996, p. 74).

The profit of business activity must be inseparable from the obligation of the social function measured by a solidary ethic where the simple dissociation between property, profit and responsibilities for the impacts of business activity are inadmissible as a way of maximizing profits and socializing losses. The essence of the capitalist model must be revisited in the light of the precepts discussed above, mainly in the sense that the dissociation mentioned above is, in our first conception, the central cause of the social and economic problems of the sec. XXI. This point of view is in line with the understanding given by Fábio Konder Comparato.

Now, the material “spirit” of capitalism – to use Max Weber’s famous expression again – consists, as Karl Marx rightly warned, in transforming everything into merchandise: goods, public offices, administrative concessions and even people, such as wage workers or the consumers. Here we are faced with a radical dehumanization of life. The capital, as a supreme value, is transformed into a fictitious person, said among us a legal person, and in other legislations a legal person. Men, on the contrary, when stripped of possession or ownership of material goods, are degraded to the condition of living commodities, when not excluded from capitalist society as dead weights. In other words, the complete inversion of the Kantian ethical principle: people come to have a price and, this way, lose their intrinsic dignity. (COMPARATO, 2011, p. 175).

This way, the relationship between the company and the realization of fundamental rights is clear. The essence of business activity itself requires awareness in favor of responsibility towards others, social function and solidary ethics. Otherwise, business activity will be compromised in the face of the effects of the anomie produced by inequality and the scarcity of natural resources. The

functioning of the organization depends both on individual well-being and on the satisfaction of social interests. Humanized activity is fundamental for the realization of fundamental rights, especially when considering the current scenario of economic globalization where the State in the realization of rights is entangled in the scarcity of resources captured by the performance of financial markets.

## **FINAL CONTRIBUTION**

The great challenge of organized society, among other objectives, is to enable social justice and respect for human dignity, reduce social inequalities and offer equal opportunities to all. The historical framework produced over time presents itself as a valuable legacy so that today we can subsidize what would be the ideal tool to achieve such goals.

Since the beginning, as explained here, all the principles that govern the socioeconomic evolution of humanity have been undergoing evolution. The great Thinkers left as a legacy teachings that can be studied in the light of Business Law with the aim of transforming the way of undertaking.

The parallel between the philosophical periods and the entrepreneurial vision taken from each thinker, is relevant for the construction of the legal norms that discipline the activities of companies and entrepreneurs, using this same vision to understand how this thought can collaborate with the socioeconomic problem of the contemporaneity.

Thus, when the liberal State gave space to the Social State and emerged from the need to mitigate social inequalities, the highlight came to the accumulative force of capital to the detriment of the workforce that challenges the institutional means to seek a fair distribution of income in a movement

to advance from the Neoliberal State to the protection of the Welfare State.

The challenge of correctly applying the principle of the social function of property and the company is confused with enabling a better distribution of income for less social inequality, imposing positive obligations on companies in the sense of having social benefits as their objectives and not just the to make a profit at any cost.

Neoliberalism led to globalization which, in turn, imposed a new way of life on the world. Globalization has brought great changes to the world, both good and bad, but its implementation resulted from the support of neoliberal countries, and together with large corporations, economic mechanisms were created that led to development, but also to the concentration of wealth. The world was led to globalization and it has been suffering the consequences of the economic crisis that began in 2008, with great concern on the part of governments to resize economies for developmental progress.

The neoliberal perspective of the capitalist world needs to be revised to place the human being as the center and end of the destination of the existing resources on the planet and not just the means, a simple object at the service of economic power. All intellectual production produced by the great thinkers must serve as inspiration in the search for answers that are configured as urgent.

The Company must be observed both from the point of view of humanist capitalism and of the new entrepreneurialism, when ethical and moral values are added to the exercise of commercial activity.

The search solely for profit to the detriment of any other concern, a strand of classical liberalism found in Adam Smith, defender of liberal capitalism, must be thought of together with new ideologies that are better suited to the social values sought in contemporaneity.

The dignity of the human person, the social values of work and free enterprise and other constitutional principles must be constituted as an unshakable foundation for state entities, natural persons and companies.

For the development of a minimally humanistic socioeconomic environment, the entities listed above must exercise the

subsumption of our factual reality to the constitutional legal system to which we are subjected. The normative and constitutional legacy of the national legal system already has in its tracks the founding principles and assumptions of an economic law built throughout history, and it is up to us to promote its correct and fair application.

## REFERENCES

ARISTÓTELES. **Ética a nicômaco**. Tradução de Leonel Vallandro e Gerd Bornheim da versão inglesa de W. D. Ross. 4. ed. São Paulo: Nova Cultural, 1991.

BRASIL. **Constituição da República Federativa do Brasil (1988)**. Disponível em: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm). Acesso em: 22 fev. 2022.

BRASIL. **Código Civil (2002)**. Disponível em: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/110406compilada.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm). Acesso em: 24 fev. 2022.

BRASIL. **Lei 11.101/2005**. Disponível em: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2005/lei/l11101.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11101.htm). Acesso em: 01 mar. 2022.

COELHO, Fábio Ulhoa. **Manual de direito Comercial: direito de empresa**. São Paulo: Editora Revista dos Tribunais, 2016.

COMPARATO, Fabio Konder. **Capitalismo: civilização e poder**. Coimbra: Editora Faculdade de Direito da Universidade de Coimbra, 2011. Disponível em: [https://digitalis-dsp.uc.pt/bitstream/10316.2/24694/1/BoletimLIV\\_Artigo2.pdf](https://digitalis-dsp.uc.pt/bitstream/10316.2/24694/1/BoletimLIV_Artigo2.pdf). Acesso em 23.02.2022.

COMPARATO, Fábio Konder; SALOMÃO FILHO, Calixto. **O poder de controle na sociedade anônima**. 4. ed. Rio de Janeiro: Forense, 2005.

COSTA, Helena Regina Lobo da. **A Dignidade da Pessoa Humana: Teorias de Prevenção Positiva**. São Paulo: Revista dos Tribunais, 2008.

D'AURIA, Aníbal A. **Análisis Político: Poder, derecho y democracia**. Buenos Aires: La Ley, 2004.

DURÃO, Pedro. **Empresa & Human Rights**. 2. ed. Aracaju: DireitoMais, 2022.

DURÃO, Pedro. **Direito Empresarial**. 2. ed. Aracaju: DireitoMais, 2021.

FILHO, Gerson Pereira; BERNARDO, Isadora Prévide. **Justiça e Ética como fundamentos do direito na filosofia antiga**. v. 9. n. 18, p. 329-350, Belo Horizonte: jul./Dez. 2018. Disponível em: <http://periodicos.pucminas.br/index.php/>. Acesso em: 24 fev. 2022.

LEITE, Flamarion Tavares. **Manual de Filosofia Geral e Jurídica: das origens a Kant**. São Paulo: Malheiros, 2013.

MAMEDE, Gladston. **Manual de Direito Empresarial**. 15. ed. Baueri: Atlas, 2021.

MAMEDE, Gladston. **Holding Familiar e suas Vantagens: planejamento jurídico e econômico do patrimônio e da sucessão familiar**. 13. ed. São Paulo: Atlas, 2021.

MILL, Jonh Suart. **Principles of Political Economy with some of their Applications to Social Philosophy**. São Paulo: Nova Cultural. 1996.

NADER, Paulo. **Filosofia do Direito**. 27th ed. São Paulo: Grupo GEN, 2020.

PADILHA, Norma Sueli; VECHIA, Rosangela. **Direito de propriedade e função social da propriedade: os desafios propostos pelo estatuto da cidade**. [200-?] Disponível em: <[http://www.publicadireito.com.br/conpedi/manaus/arquivos/anais/campos/rosangela\\_vecchia.pdf](http://www.publicadireito.com.br/conpedi/manaus/arquivos/anais/campos/rosangela_vecchia.pdf)>. Acesso em: 17 fev. 2022.

PLATÃO. **O Banquete**. Disponível em: <https://web.archive.org/web/20201026221745/http://revistaliteraria.com.br/PlataoOBanquete.pdf>. Acesso em: 27 fev. 2022.

PLATÃO. **O Político**. Disponível em: <https://www.efuturo.com.br/materialbibliotecaonline/635Politico.pdf>. Acesso em: 27 fev. 2022.

PLATÃO. **A República, livro I**. Disponível em: [https://www.baixelivros.com.br/ciencias-humanas-esociais/filosofia/arepublica#google\\_vignette](https://www.baixelivros.com.br/ciencias-humanas-esociais/filosofia/arepublica#google_vignette). Acesso em: 28 fev. 2022.

ROUSSEAU, Jean Jacques. **Discurso sobre a origem e os fundamentos da desigualdade entre os homens**. Tradução de Lourdes Santos Machado; revisão de Lourival Gomes Machado; introdução e notas de Paul Arbousse-Bastide. Coleção Os Pensadores. São Paulo: Abril, 1973.

SANTO AGOSTINHO. **A Cidade de Deus**. V. I (Livro I a VIII). Tradução, de J. Dias Prereira. 2. ed. Lisboa: Fundação Calouste Gulbenkian, 1996, p. 249-257. Disponível em <https://docero.com.br/doc/ns1svc>. Acesso em 28 fev. 2022.

SÉLLOS-KNOERR, Viviane Coêlho. **A Responsabilidade Social Empresarial e a efetivação dos programas nacionais visando a erradicação da exploração do trabalho infantil como questão de dignidade humana**. Disponível em: <<http://www.anima-opet.com.br/pdf/>>. Acesso em: 15.jan.2016.

SOTO, Jesús Huerta de. **A Escola Austríaca**. 2. ed. São Paulo: Instituto Ludwig von Mises Brasil, 2010. ISBN 9788562816116. Disponível em <https://pt.wikipedia.org/wiki/Empresa>. Acesso em: 22 fev. 2022.

SMITH, Adam. **A Riqueza das Nações: investigação sobre sua natureza e suas causas**. São Paulo: Nova Cultural, 1996.

WIES, Carlos. **Os Direitos Humanos Contemporâneos**. São Paulo: Malheiros, 2006.

VASCONCELLOS, Manoel. **Filosofia Medieval: Uma breve introdução**. Pelotas: NEPFIL online, 2014. 118 p. Série Dissertatio-Incipientis. Modo de acesso: Internet ISBN: 978-85-67332-20-8. Acesso em 1 mar. 2022.