

«Fraternity as Relational Principle, in Law and Politics» Sophia University Institute, Loppiano, Incisa Val d'Arno, Firenze (I)

Topics

1. Philosophy and cultures of fraternity

The idea of fraternity has been present since the origins of various civilizations. In each one of them it takes on a role of relational archetype, constituting a reference point in the elaboration of anthropological visions. The idea of fraternity generally arises in the centre of original religious narrations; its contents, expressed both in religious and secularized language, introduces in cultures elements of meaning which remain till today. Along history, then, a number of topics on fraternity, in religious or a non-religious context, are found.

Some civilizations have proposed a vision of universal fraternity, therefore encouraging relations among civilizations; and along with this the topic of political institutions suitable for a unifying universal dimension, but at the same time, capable of respecting and validating differences. This dynamic between unity and distinction is lived in relations among diverse geopolitical areas, and with multiculturalism inside single States. According to some, the concept of a 'universal' fraternity can be built only through the contribution that each culture can bring to it, understanding and communicating their own idea of it. The existence of 'diverse fraternities' seems not to invalidate the possibility of moving towards a universal fraternity which will not substitute, but rather, integrate the partial ones.

The idea of fraternity is constantly present within philosophical tradition and particularly within political philosophy. The French 'trierarchy' of 1789 synthesizes the complexity of the challenges which accompanied modern and contemporary political thought, through these principles - liberty, equality - which inspired the principal currents of political philosophy during the last two centuries. The insufficiencies and the weaknesses of contemporary political thought, facing epochal challenges, brings one to ask if fraternity itself could be the 'third leg' of the democratic table, without which the balance between liberty and equality will always be temporary and uncertain. Can one look at these three categories of the 'trierarchy' as real and proper 'categories of the political?'

There isn't only the absence of or forgetfulness of the idea of fraternity; there are various interpretations of fraternity itself which negate the possibility of its universality. It may be intended in a nationalistic sense, a sectarian one, or again, a class system. What is the relationship between fraternity and conflict?

And what is the relationship between fraternity and power? It seems as though fraternity does not accept horizontal relationships, that is, the expression of equality and the freedom of choice of lifestyle of each of its subjects at the same time. Does fraternity redefine in some way the image, the tasks, the methods of a sovereign power? And in what way and measure have the institutions already understood fraternity? History teaches us many ways of understanding

fraternity, but there is also a different, fundamental and original way of calling it: the 'sorority.' What relationship is there between fraternity and sorority?

2. Democracy and participation

Modern democratic forms appear for some time to have been under tension, from various points of view. There is a demand for a more intense relationship, of richer meaning between civil society and political institutions. Often, the political and administrative agenda, the political class in general, appears to be leagues from what matters to the citizens. Party activities and the unions are radically questioned.

The relationship between representation and participation must be considered very attentively. The inherent difficulties in the practice of participation need significant modifications in their enforcement and decisional processes. Even the formation and selection process for leadership, and among these are electoral regulations, turn out to be strongly conditioned by the large under-representation of minorities: women, generational groups, the culturally and socially weak.

We demand from the political sphere an adequate representation of the multiplicity of voices and social interests, even though exclusion and marginalization are operating factors still present. On the one hand, an ever greater specialization is needed to tackle political topics; while on the other we perceive the inadequacy of the technical approach which cannot replace political representation and its specific choices. The bigger challenges are of a political nature and there is a growing demand for cohesion and social equity, while cultural pluralism deepens, and conflicts take on new forms.

Some experiments and experiences in which fraternity has a significant role bring to the table a free and open confrontation between citizens, bringing about richer communication between institutions and society. These offer some indications to local systems of government, as well as national and international, to orient them towards a bigger and more extensive realization of the democratic process. The technological evolution of information and communication permits relational opportunities between social subjects both in democratic and non-democratic contexts; in both cases experiences are realized which indicate important developmental directions, coherent with the quest for greater democratic quality.

We should not leave aside significant experiences in education in fraternity and education through fraternity; they develop a capacity in the human being for constructive relationships and the acquisition of responsibilities necessary for practicing active citizenship and for the task of government.

But how does one translate fraternity into the language of different disciplines, of empirical science in particular? In what 'elements' can it be expressed? How do we make fraternity 'operational'? It seems that none of the terms employed by thinkers to translate fraternity inside various disciplines such as civil friendship, generalized trust, similarity, solidarity, reciprocity, etc., although they had some efficacy, were able to express in a complete way the contents which the idea of fraternity has taken on in the course of history. We feel the need, then, for new programs of research which, starting from the existing data would be able to offer useful elements to elaborate democratic theory. In a context which explores new dimensions in research, there is room to assess in what way fraternity can give a contribution to a definition of

democracy that would better correspond to the complexity of advanced political systems, a definition that would integrate diverse profiles of democratic organization, not only on a structural level but also with regards to the choices and attitudes of social and political subjects.

3. Friendship, fraternity, community: practices and concepts in international relations

International relations frequently use metaphors to represent situations of cooperation or competition, on which, from time to time, are brought to bear relevant factors such as *power, interest, and identity*.

The most recurring metaphor since the beginning of the affirmation of the modern State, has been that of friend/enemy, tied to a conception of sovereignty as internal supremacy and resistance to external interference. The 'remedy' to this situation of potential stall in interstate relations has been identified in the mechanism of alliances, as a frame of structured cooperation between political entities.

Nevertheless, the concept of alliance, however impenetrable in the sense of rationalization of the international system, ultimately represents a consecration of the friend/enemy logic, this 'ad hoc' alliance able at best to be transformed into a condition of co-belonging to an international organization with stable character and with permanence in time. In a way, specifically in its configuration of understanding, in order to guarantee a unified defense, an alliance constitutes a form of 'negative fraternity,' therefore justified by the necessity to face common threats.

However it is possible to trace a different tradition in international relations which, coming from an 'inclusive' base rather than an oppositional one to the notion of friendship, evolves in the direction of fraternity as a premise necessary to reconfigure a real and proper international 'community.' In classic ancient times, for example, there was a separation between the (international) 'of friendship and alliance, since the two modalities of relating were able to not coincide; an evident trace of this distinction remains in the contemporary expression 'friendly and allied countries.'

There is a general reluctance in international relations, as a discipline, to 'import' concepts such as fraternity, which are normally connected to the sphere of private relations and are non-conceptualized in publicized terms, and even less internationalized. The fundamental question is, on the one hand, to investigate *if* and *on what conditions* fraternity can represent an *interpretational* and *operative* category in international relations, and not only substantiate a normative perspective; and on the other hand, to study the possible implications of *policy* and of *polity* which the importation of such a category would have for the international system.

The expression itself of 'international community' constitutes a metaphor which, however, today, serves principally to sanction the prevalence of some guiding agents in the international system, ending by assuming a meaning very distant from the semantic content of the term.

In this context it is opportune to ask oneself if, and in what measure, the notion of community would be possible apart from that of fraternity, and if and in what way fraternity, intended as a non-utilitarian bond between the actors, could generate or be a vehicle for new forms of collective identity with stable characteristics, if not tied to interactions in specific fields of international cooperation. As an example, we could infer that multilateralism already represents, under the optic of fraternity, an end in itself, before being an instrument or compositional context in international disputes or a seeking cooperation on diverse topics of common interest.

4. Fraternity, the science of law, justice: a relational perspective

The law, in its specific normative function, is marked by cultural diversity, differences between legal orders, between *civil law* and *common law*. But the law is also the daily journey in relationships, of the 'reciprocity' between rights and duties, to which, however, does not always correspond an effective recognition. In the context of theory of law, a relevant role is assumed by the juridical dimension which focalizes the law in its *form*, that is, the norm in itself, distancing theory from practice, and norm from life. Notwithstanding this, to law is ~~are~~ recognized the function of disciplining the 'relations' which inform the social fabric; globalization itself imposes the quest for adequate answers to the encounter of many diversities. If reality underlines today, among many antimonies, the crisis of law and its inadequacies in front of technical progress, it becomes necessary perhaps to put at the centre of juridical science the 'relations' which belong to the proper function of law; relations which have their origins in the human person at every latitude. This is the opportunity to ask oneself about that *fraternity* (cf. Art. 1 Universal Declaration of Human Rights) which can concur to redesign the relational essence of law and become a positive factor for an authentic realization of the human person and of humanity.

In particular, law seems to have forgotten justice, although theories on justice continue to have relevance in the field of politics. To recover justice as a concern of law constitutes a necessary task; but throughout modernity it is not easy to meet with a notion of justice capable of founding law in an aprioristic way. To give relief to the juridical relations inside the law, can permit us to go beyond a vision limited to the norm and to open a space towards a 'relationality' intended as institutional, structural support towards relations. In this sense, the perspective of a 'justice inside the relation' appears adequate and useful. In order to achieve it, we must open the very tight field of law to a consideration of 'sociality,' that is, to that place where the whole of relations takes place. It is here that law meets the live and free interaction of the subjects (in the ambit of reciprocity). It is from this space that all the social sciences find their origin and it is here that law can enrich itself through interdisciplinary exposure and open itself to justice and fraternity.

The concrete historical cases of the most recent period in history offer a very wide and diversified frame of experimentation for the relational element and, in particular, for fraternal relations as a characterizing factor for the realization of justice. It has emerged, as an example, in the various experiences of 'restorative' justice which have taken place in countries involving genocides and crimes against humanity, cases such as South Africa after apartheid, or of Rwanda. Here, justice was particularly intended as *transitional justice* from a violation of human rights to a condition of respect for them. For this reason, it was necessary to bring about *reconciliation* through combined judicial and non-judicial strategies. The fraternal strategies, non-judicial, which point to the reconstruction of civil relations and to peace, have found an application in the field of personal reconciliation between the perpetrators of the crimes and their victims.

The field of contracts, work, commerce, consumers, present themselves as privileged areas of experimentation of fraternal strategies, made particularly necessary in times of economic crisis and in the event of natural calamities, as demonstrated by concrete cases.

But fraternal strategies tend to become a physiological element which is normal within a vision of a progressive improvement of the quality of relations among citizenry, which include the field of relations between geographical areas characterized by different levels of development. An ever greater relevance is taken on today by a vision of fraternity among generations, considering

as 'equal' and 'present' today, insofar as regards the guarantee of their rights, the citizens of tomorrow.

5. Fraternity and Constitutions

Constitutions of the States present different attitudes regarding fraternity. Some of them specifically mention it, putting fraternity among the founding principles of the Constitutional Chart. It is, however, not enough to formally proclaim the principle; it is equally important that a legal order be conformed to such a principle, adopting the appropriate systems to apply it, creating the conditions whereby the life of the citizens will truly be oriented towards fraternal relationships or, at least, so that their relevance not be impeded.

It is possible in fact that a legal order which does not use the term fraternity be laid-out in such a way as to be able to apply relevant aspects of it in social politics, in guaranteeing the rights of citizens, in balancing the rights themselves. But what really distinguishes a fraternal juridical rule from one which isn't?

In contrary, the proclamation of fraternity doesn't have to be accompanied by the juridical and institutional rules that would be required. One can also risk presenting an idea of fraternity emphasized with the strength of a State slogan and not be at all a producer of true fraternity, in that such a State can tend to occupy, through institutional provisions, that which can easily assume a 'vertical' nature (a welfare state), or places of action which should be left to the free action of citizens and the associations they form.

Fraternity elevated to ideology can even justify the true and real usurpation of liberty through force. The justification given for the Warsaw Pact for the invasion, carried out by its own troops, of the Republic of Czekoslovakia in 1968, is a historical example; the intervention, which clearly did not respect the sovereignty of Czekoslovakia, was presented as an intervention of help by the 'sister republics.'

But there are also opposite and positive examples, both at State level, and at the level of international organizations, of mechanisms which inspire correctly to the idea of fraternity. We can refer, for example, to the adoption of the asymmetrical representation of citizens of the member states of the EU at the European parliament, where the simple principle of proportional representation based on the number of inhabitants is not applied, but the smallest countries are still valued.

It seems then that the constitutional interpretation of fraternity cannot be separated from the historical experiences and from the juridical culture from which it springs. But is there a specific culture of fraternity to which the legal order could refer itself? Or, can we obtain from the diverse cultures of which we have experience, an idea of fraternity which could guide us in building future juridical systems?