

# CONTENTS

	<i>page</i>
<i>Preface</i> by <i>Fausto Gorla</i>	11
<i>Introduction</i> by <i>Adriana Cosseddu</i>	15
<b>I. The Principle of <i>Fraternité</i>: From the French Constitutions of the Revolutionary Period to the Constitution of the Fifth Republic</b>	
<i>Fernanda Bruno</i>	27
1.1. Introduction	27
1.2. Historical <i>excursus</i> on the French Constitutions of the revolutionary period	30
1.3. The French Constitutions of the second post-war period	34
1.4. The debate on the legal nature of the Preamble	36
1.5. <i>Fraternité</i> and constitutional jurisprudence	42
1.6. Concluding considerations	44
<b>II. Rethinking Legality in Contemporary Legal “Space”: A “Bridge” between Theory and Practice</b>	
<i>Adriana Cosseddu</i>	49
2.1. Challenges and complexities of today’s law: The scope of the research	50
2.2. A key to interpretation and a “privileged” observatory towards a “relational” paradigm from the Italian Constitution	61
2.3. Relationships and genesis of the offense: Criminal law perspectives	71
2.4. <i>Legality</i> as a principle and as a “value”: A constitutional reading “beyond” the crisis	83
2.4.1. Principles in criminal law	84
2.4.2. Phenomena of criminality	91
2.4.3. A constitutional perspective	97
2.5. Towards a <i>culture of legality</i> : Needs for safeguards and scope of prevention	103
2.6. Models of responsibility and the “network” of relationships: The emblematic case of economic activities	108
2.7. Towards the “roots” of legality: New pathways and “spaces” of fraternity	113

**III. Fraternity and Common Law: Liability for “Failure to Provide Aid”**

<i>Sergio Barbaro</i>	131
3.1. How does the principle of fraternity fit into Common Law? Solidarity, brotherhood and fraternity in the Anglo-American legal debate	132
3.2. Fraternity and legal duty to provide aid in Common Law	135
3.2.1. “The Neighbour Principle” and the duty to aid in English law	136
3.2.2. The “Good Samaritan Statutes” in the U.S.A.	140
3.2.3. The debate and the proposals of <i>de iure condendo</i>	145
3.3. The Canadian model: Tradition and evolution, the example of Québec	149
3.3.1. Canadian case law on the duty of care and omission to provide aid	149
3.3.2. Québec: An isolated case of “codification” of fraternity?	152
3.4. Fraternity and law: A feasible combination?	154

**IV. From the Liberal State to the Fraternal State: Fraternity as a legal category and the contribution of Brazil’s 1988 Constitution**

<i>Carlos Augusto Alcântara Machado</i>	157
4.1. Preliminary approach and research context	158
4.2. Freedom, Equality and Fraternity: Evolution and consolidation of the Fundamental Human Rights	160
4.2.1. Freedom Rights	160
4.2.2. Equality Rights	162
4.2.3. Fraternity Rights: The advent of Fraternal Constitutionalism	163
4.3. Dignity of the human person as the foundation of Fraternal Constitutionalism	171
4.4. From the Liberal State to the Fraternal State	175

**V. The Creation of the Fraternity Paradigm in the Brazilian Legal System: A few comments**

<i>Josiane Rose Petry Veronese</i>	177
5.1. Introduction	178
5.2. Rights and guarantees: The consolidation of democracy	181
5.3. The Brazilian constitutional model and fraternity	182
5.4. The Law and Fraternity Research Nucleus at the Federal University of Santa Catarina: The role of scholars	186
5.5. Fraternity as a legal category	187

	<i>page</i>
<b>VI. Fraternity as Value-Guarantor of Sustainability: A dialogue between legal protection and the inclusion of the “other”</b>	
<i>Olga Maria Boschi Aguiar de Oliveira – Mônica Nickenich</i>	193
6.1. Introduction	194
6.2. Fraternity: From oblivion to the consolidation of the Democratic State of Law in Postmodernity	196
6.3. Fraternity and the misconception of its oblivion after the French Revolution	198
6.4. Fraternity and its necessary rescue in Postmodernity	202
6.5. Sustainability beyond the economic focus	206
6.6. Fraternity as “value-guarantor” of Sustainability	211
6.7. Final Considerations	213
<b>VII. Fraternity and Relationships in the Law of the International Community</b>	
<i>Vincenzo Buonomo</i>	215
7.1. Introduction	215
7.2. An immediate observation: <i>Fraternity</i> and Human Rights	218
7.3. <i>Fraternity</i> as a relational dimension in the International Community	224
7.3.1. <i>Fraternity</i> and conflicts	228
7.3.2. <i>Fraternity</i> as an expression of the global dimension	230
7.4. Conclusions: <i>Fraternity</i> and the developments of international law	233
<b>VIII. The Rationale for Relational Justice (and understanding the principle of Fraternity)</b>	
<i>Antonio Márquez Prieto</i>	237
8.1. Beyond one-dimensional Law: The context of relational justice	237
8.2. Reciprocity as the central dimension, and sociality as the context	243
8.3. The relational principle of fraternity as the key to relational justice	251
<b>IX. The Relational Justice of Contract</b>	
<i>Rocío Caro Gándara</i>	259
9.1. Introduction	259
9.2. The failure of “classical” contract law	263
9.3. The relational approach to contract	267
9.4. The relational approach to justice	271
9.5. Towards a new (?) paradigm of contractual justice	273
<i>Index</i>	281