

CHILDREN'S RIGHTS UNDER THE PRISM OF FRATERNITY AND CARE |
DERECHOS HUMANOS DE LOS NIÑOS Y ADOLESCENTES BAJO EL
PRISMA DE LA FRATERNIDAD Y EL CUIDADO | DIREITOS HUMANOS DAS
CRIANÇAS E ADOLESCENTES SOB O PRISMA DA FRATERNIDADE E DO
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ABSTRACT | The research aims to discuss the values of fraternity and care from a legal and sociological perspective, mainly from the perspective of human rights, in order to think of them as vectors for the rights of children and adolescents. Its main focus is the thought produced in Latin America and Brazil on the subject. It problematizes post-modernity from the sociological perspective of human rights and the rights of children and adolescents. A bibliographic research was used, with qualitative analysis, and the deductive method.

KEYWORDS | Children. Human Rights. New constitutionalism. Post-modernity.

RESUMEN | *La investigación objetiva discutir los valores de la fraternidad y del cuidado bajo el prisma jurídico y sociológico, principalmente bajo el sesgo de los derechos humanos, para pensarlos como vectores para los Derechos de los Niños y adolescentes. Tiene como recorte principal el pensamiento producido en América Latina y Brasil sobre la temática. Problematiza la posmodernidad bajo el sesgo sociológico de los derechos humanos y derechos de los niños y adolescentes. Se utilizó de investigación bibliográfica, con análisis cualitativo, y método deductivo.*

PALABRAS CLAVE | *Niño y Adolescente. Derechos Humanos. Nuevo constitucionalismo. Posmodernidad.*

RESUMO | *A pesquisa objetiva discutir os valores da fraternidade e do cuidado sob o prisma jurídico e sociológico, principalmente sob o viés dos direitos humanos, para pensá-los como vetores para os Direitos das Crianças e adolescentes. Tem como recorte principal o pensamento produzido na América*

Latina e Brasil sobre a temática. Problematiza a pós-modernidade sob o viés sociológico dos direitos humanos e direitos das crianças e adolescentes. Utilizou-se de pesquisa bibliográfica, com análise qualitativa, e método dedutivo.

PALAVRAS-CHAVE | *Criança e Adolescente. Direitos Humanos. Novo constitucionalismo. Pós-modernidade.*

1. INTRODUCTION

In the last decades of the 21st century, the advent of the phenomena of globalization and transnationality provoked great social changes. Progress driven by the emergence of new technologies and innovative industrial techniques, advances in communication, science and other areas, has benefited human life in terms of economic development, increased life expectancy, shortening of linguistic and territorial boundaries, among other scopes. On the other hand, these transformations synthesized social relations to superficiality: human interactions became more fragile, volatile and inconstant, based on personal interest and exacerbated individualism, which resulted in a humanitarian crisis of global dimension. In addition, the technological advance itself has also led to greater degradation of nature and damage to the planet's environmental sustainability.

For Bauman (2001, p.7), the aforementioned humanitarian crisis is based on individualism, consumerism and selfishness, in light of the exacerbated self to the detriment of the condition of belonging and recognition of other people as similar. This refers to the idea of the fluidity of human relationships in view of the realization of their own interests, even if they signal the disposal of objects, natural elements and even other human beings. Bauman's reflections on the historical moment of post-modernity, points to the urge for moral recovery as a guiding principle for human actions. The individual must practice “[...] moral responsibility - being for the Other before being able to be with the Other - is the first reality of the I, a starting point rather than a product of society” (2011, p. 32).

Morality, as an element capable of guiding the understanding of oneself and of the social fabric, enables different choices, positions and individual attitudes, and the valuation of preferences must be done under the prism of morality. Thus, it seems that a brief look at the aforementioned humanitarian crisis indicates the need to adopt new postures and responsible human action with current and future generations, based on new horizons of understanding,

for which personal choices have an impact on morality. and morality has repercussions on personal choices.

Thus, it is fundamental to elect the values that determine the meaning of life in contemporary globalized society. The challenge is to identify converging points of humanity among multiple cultures, in order to foster the ideal of fraternity and care among human beings; including, so that human rights do not become just political-legal discourses, emptied of practical and material meanings. In fact, the space of post-modernity indicates the need for a re-dimensioning of human rights, to encompass other rationalities of a sensitive, communicative and cordial nature.

It is about thinking about the need for a transition from axiological, social, political, legal models, among others. Mainly because the current paradigms about values are saturated in the face of the complexity of life in the globalized social context, especially when it comes to the dynamics of the market. The capitalist system engenders in people the false awareness that utility values prevail over vital ones. On the other hand, thinking sensibly, based on other axiological, social, political and legal models, implies recognizing, for example, that values such as health, education and security must be considered the highest and must be protected, even that this possibility implies a decrease in industrial or commercial advancement (SCHELER, 1994, p. 184).

Based on this framework, if individual consciousness is not clarified by the search and experience of the common good, the human, from the angle of utilitarian and neoliberal thinking, will be considered only as the purpose (production) of this system (SILVA, 2008, p. 156), since neoliberalism “excludes issues relating to social justice from the sphere of State responsibility, denying, therefore, all legitimacy of (inefficient) income redistribution policies, oriented towards the objective of reducing inequalities of wealth and income [...]” (NUNES, 2003, p. 39).

In order to observe other horizons of understanding, it is necessary to assess which values represent fundamental meanings. This task expresses difficulty at the present time due to the comfort generated by the promises of

immutability created by modernity, by the non-commitment in the face of uncertainty. Even so, fraternity and care are presented as criteria to modify human existence, in a way that does not allow the commodification of life. The precariousness of the human condition, its temporariness, fallibility and finitude make the act of experience a moment that needs to be preserved. It is through the experimentation of fraternity and care that humanity will be able to create bonds full of exchanges of knowledge and learning, in which it will be possible to modify and enhance skills, in addition to promoting a more humane and sustainable life.

Law, experienced as a social phenomenon, accompanies these transformations and must be attentive to this process. Therefore, the article aims to discuss the values of fraternity and care from a legal and sociological point of view, problematizing post-modernity from the sociological point of view of Human Rights and the Rights of Children and Adolescents. Bibliographical research was used, with qualitative analysis, and deductive method.

Methodologically, the first section will focus on the discussion of the history of fraternity and care, taking into account an approach based on human rights. Sequentially, in the second section, we seek to point out the importance of fraternity and care with regard to the rights of children and adolescents, with a look at current and future generations.

2. POST-MODERNITY FRATERNITY AND CARE

The main characteristic of Human Rights, for its global concreteness, is universality. The understanding of this universality, however, is hampered by the perpetuation of the Western solipsist monologue, because “while Human Rights are considered essentially a Western achievement, their application with the objective of world recognition must be seen as illusory or imperialist.” (BIELEFELDT, 2000, p. 142). Therefore, if its imposition and proliferation on the world stage perpetuates totalitarian systems in which there is no dialogue that contributes to plurality and difference, then the universality of human rights presents a Western imperialist character.

Hence the importance of proposals for understanding human rights guided by dialogic views between the different ways of life in a globalized society. Among these proposals, attention to the rescue of multicultural, transcultural and intercultural values, in order to corroborate another dialogical world scenario; including the one in which the human being, according to Reale (2001, p. 80), is the source of values. The moment all people are recognized as human, in the broadest sense of the expression, the fulfillment of human rights and their historical renewal begins. Yet,

Human Rights had, and continue to have to be conquered, also in the West, and this not only against the privileged layers and the guarantors of the strong State, but also against those who saw and see threatened the traditional norms, the convictions and the relationships of authority through the emancipation claims of modern Human Rights (BIELEFELDT, 2000, p. 152). (Translated).

Thinking about human rights from an intertranscultural and dialogical perspective implies recognizing the plurality of human experiences, in addition to the importance of care and fraternity as a political *modus vivendi* of the 21st century. Also because the enunciation of basic principles of development of human life cannot, by itself, modify the aberrations proposed by capitalism and market dynamics as central elements to human interactions. No State, nor its citizens, chose, by free choice, to survive to live. For this reason, actions are created – social and institutional – which allow developing and consolidating sensitivity. In post-modernity, the social bonds that make emotions and sensibilities possible, present in everyday life, cannot be synthesized only by reason (MAFFESOLI, 2008, p. 34), as it is not a rational model, but a communion of affections and emotions that integrate human life. Thus, in a complementary character, reason and sensibility unite.

Reason, if considered as an instrument to decipher social phenomena, does not understand the dimension of feelings and the affective dimension. Sensitivity is needed to enable the observance of these phenomena in order to translate the complexity of a globalized and transnational society. For this reason, Silva considers that sensitivity constitutes the ability of human beings to

perceive how their fellow man feels. “Neither of the two paths (human being and things in the world) exclude the person as the center of all sensible phenomena.” (2008, p. 221) Sensitivity, in principle, is born directly from the realm of emotions, with no cognitive relationship with the judgment of reason. Sensitivity comprises the relationship between being and being/object. Feeling the other requires detachment from oneself and stripping oneself of one's material conditions to try to understand the aspect of the other. It is equivalent to breaking material and cultural paradigms, with a view to developing, through an affective process, the conditions in which the other finds himself.

It is necessary to structure the nuances of this fluid society from a deep understanding, which is capable of absorbing the sensitive experience that is present in everyday life. Making opportunities for real social interactions that refer to the common anthropological (and biological) bond of humanity, as well as to the sensitive plane, is a possibility visualized in post-modernity. Although the period is characterized by the speed of events and the uncertainties of relationships, the present time and the social space contribute to the understanding and understanding of a new social configuration, capable of rescuing sensitivity in the present moment. Social phenomena need to be analyzed from other horizons, more sensitive, capable of clarifying the meanings of postmodern life.

Under a similar argument, (GUTIÉRREZ, 2013, p. 39-40), explains that a new way of thinking results in basic attitudes of openness, interaction, solidarity, collective subjectivity, energy balance and forms of sensitivity, affectivity and spirituality. that fraternity and care are key elements in structuring a more just and balanced society in postmodern life. Peaceful coexistence among human beings signals fraternal receptivity, which, roughly speaking, means welfare, charity, mutual help and compassion. However, even before Christianity, the Aristotelian *Philia* already rehearsed a concept of fraternity, differentiating it from friendship, which would be directed towards a specific person, while fraternity would not have a certain number of people.

The Aristotelian concept of friendship is quite broad, since it encompasses utility, pleasure, goodness and friendship among unequals. In all

types of friendship proposed by the author, the requirement of reciprocity is clear, because without it it will not be possible to approach friendship. However, the most important thing is friendship as a political quality. The human being is a political being and living in community makes him that way. Hence, friendship, as a political quality, should be seen as a way to enable new social subjects, new ways of existing and living together (ARISTÓTELES, 1999, p. 27).

Although the category of fraternity was disseminated as a value in the Christian axis, “[...] it was the Enlightenment who based the trilogy on pre-Christian pagan culture, due to the intense battle against the Church and its excesses” (BAGGIO, 2008, p. 40). In 1789, with the Declaration of the Rights of Man and Citizen, as a consequence of the French Revolution, fraternity was evidenced alongside the ideals of freedom and equality, which overcame the barriers of social harmony and Christianity to constitute elements of a political society, capable of interfering in the form of government and integrating constitutional texts.

However, considering the triad “Liberty, Equality and Fraternity” of the French Revolution, only freedom and equality were inserted in the American legal context, to the detriment of fraternity, displaced due to the Christian content that was characteristic of it. Therefore, no juridical or political status was observed, leaving fraternity subjugated as an ideology raised in the banner of the French Revolution as a religious motivation.

Despite clearly observing the importance of fraternity as a value to guide human relations, it failed to establish itself as an ethical, political and legal value in modernity. However, over time, the Law incorporated this value as a principle required by official documents. Thus, in 1948, the Preamble to the Universal Declaration of Human Rights stressed the obligation of individuals to act towards one another in a “spirit of brotherhood”. Subsequently, the Constitutions of various countries incorporated the category in order to guide life situations, as in the case of the Brazilian Constitution of 1988, which already invokes it in its Preamble, and demonstrates this legal concern in enhancing fraternal relationships so that many conflicts can be attenuated (BUONOMO,

2009, p. 169). According to the aforementioned Brazilian Constitutional Preamble:

We, representatives of the Brazilian people, gathered in the National Constituent Assembly to establish a Democratic State, destined to ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as values supreme rights of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international order, to the peaceful solution of controversies, we promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL (BRASIL, 1988). (Translated).

On the other hand, it is clear that fraternity emerged as a secondary civilizing objective in the face of economic development and technological progress in post-modernity¹. Individualistic and selfish aspects of humanity were accentuated, causing the social, fraternal and solidary character to be relegated and even forgotten. Morin (2011, p. 22) points out that, without reflection and a new awareness of the globalized world, it will be difficult to face the crises of postmodernity, which are the result of the lack of humanity of one human being towards another. For the author, it is necessary to change the conception of the world through the awareness that values need to be rescued. Fraternal receptivity summarizes the construction of a society guided by common human values.

Similarly, Baggio (2008, p. 85) suggests that the “idea of fraternity is that of democratic participation, that is, the connection between the idea of fraternity and citizenship”. Fraternity is capable of promoting the ideal of a universal community, in which people, regardless of where they live and to which people they belong, manage to live in peace. For this reason, equality and freedom become empty without fraternity. It explains: if lived fraternally,

1 Lyotard states that Post-Modernity means “the state of culture after the transformations that affected the rules of the games of science, literature and the arts” (1993, p. 15), that is: to refer to Post-Modernity is to refer the change that occurred in several areas after the industrial period. The author clarifies that these changes became more present and intense from the end of the 1950s onwards, when Europe completed its reconstruction, having been more or less rapid depending on the country, and, even within countries, having varied according to the sector of activity. It is understood that modernity is already overcome.

freedom does not become the will of the strongest, just as equality does not degenerate into ruthless egalitarianism (2008, p. 53-54).

Even for Morin (2011, p. 43), it is up to politics to achieve a human ideal of freedom, equality and fraternity. This new policy has a double orientation: a humanity policy and a civilization policy, in the sense of restoring fraternity and, in this way, rehumanizing postmodern society. Thus, it seems important to recover fraternity in its political dimension, mainly, so that it consolidates itself as a guiding principle of the Democratic State of Law.

Therefore, it is important to mention that fraternity, as a principle, has dimensions which are not exhausted in the preamble of the 1988 Federal Constitution. but rarely, as a state or legal category, especially in Democratic Constitutions. Moreover, this brief historical synthesis allows relating the Principle of Fraternity and its dimensions, especially the legal one, as they must coexist in harmony in order to promote the effectiveness of fundamental human rights. By making legal mechanisms viable, which ensure a healthy and lasting coexistence between people, the reach of the meanings promoted by the objectives of Brazil is verified.

In these terms, it is important to emphasize the existing connection between the principle of fraternity and Law: in the past, the concern for the complicity experienced by the miseries at the time of the Revolutions; in the present, as a political and legal category through the phenomenon of constitutionalization; and, in the future, as an objective to be clarified and lived in favor of rescuing the common anthropological link, and overcoming the existing crises in the postmodern globalizing society. It is proposed that the Law enables fraternity as a principle required in human relations. Mainly because, beyond a principle and, unlike other values, fraternity did not find such space in the most important documents of each State. Vieira and Camargo highlight:

[...]Law is the very condition of existence of the progress event, because it is through it and its norms that the means of pacification of society are guaranteed. Without peace there is no progress and society needs to progress, because this is the expression of its moral disposition, which is the project of Modernity, expressed by the French Revolution (2013, p. 123). (Translated).

Law, therefore, presents the question of fraternity in a peculiar way, as it reveals itself as a possibility for a fraternal society to be perpetuated. Thus, it provides the conditions for the existence of this society, but does not provide mechanisms for this scenario to occur. According to Vieira and Camargo, “for society to maintain or progress towards fraternity, there is a need for the guarantees given by law, which reveals a fundamental connection between law and fraternity.” (2013, p. 123) Law not only shapes the action of the State, but also the action of individuals in the sense of building a solidary society (2013, p. 127).

In this line of thought, fraternity brings the Law itself closer to Morality, as it demands behaviors that prioritize certain values of a society. Thus:

The Law points out that in the relations between the State and individuals, between individuals and society and between individuals in the context of their private relations, a fraternal society must be sought. After all, we share the very same human condition, that is, a complex reservoir where strengths and weaknesses coexist. If we can be in the (legal) world with a conscience focused on a we instead of an I and the others, perhaps the feeling of disbelief in Law will dissipate and we can contribute to a more generous and just society (VIEIRA; CAMARGO, 2013, p. 129). (Translated).

For this reason, the requirement of post-modernity is to reflect on how certain situations enable a more dignified coexistence for everyone, interculturally. A common anthropological bond is proposed based on fraternity, according to the arguments presented above. About the fraternity, it is observed:

Fraternal law, therefore, highlights the entire historical determination of closed law in the anguish of the confines of the State and coincides with the space for reflection linked to the theme of Human Rights, with an additional awareness: that Humanity is simply the place 'common', only within which recognition and protection can be thought of (RESTA, 2004, p. 13). (Translated).

Therefore, Law and fraternity have a complementary nature that spans centuries and, possibly, will be perpetuated in time as a way of realizing

community life and social harmonization. It is increasingly necessary to insist on the principle of fraternity in the social and legal spheres. Despite fraternity being consolidated as a widely accepted legal category in postmodern society, it is necessary that fraternal practices be socialized in the material plane, under penalty of becoming, again, a forgotten principle.

It is noteworthy that equality and freedom become empty without fraternity, as this fosters universal intercultural communion to strengthen a common anthropological bond, designed for current and future generations. This bond, common to all human beings, must be rescued because no one can fully know himself. It is the others, always, who complete the vision that we – as individuals, people and population – have of ourselves (BAGGIO, 2008, p. 54). It is necessary to encourage, more and more, the existence of a fraternal right, which recognizes humanity as this space of self-responsibility, of recognition of common fragilities, of concrete viability of human rights without the negative identification of the other as a "enemy", whether by color, religion, nationality, political, economic status² or any other characteristic that individualizes him, according to articles one and two of the Universal Declaration of Human Rights (UNITED NATIONS, 1948).

When comprehensive spaces about the figure of the other become absent, one does not perceive the last proposals enunciated in this study, namely: the recognition of the other as a subject and fraternity as a legal and political principle of the 21st Century.

Fraternal praxis reveals its meaning also from the experimentation of care, as an integral part of human life: no type of life subsists without care, as it is an eminently interactive, dynamic and creative process, which reflects interest and solidarity (PEREIRA, 2006, p. 115). Boff confirms this meaning when he clarifies that care “means devotion, solicitude, diligence, zeal, attention, good treatment. [...] Care only appears when someone's existence is important to me.” (BOFF, 2008, p. 91) Therefore, care and fraternity cannot be

2 In the same sense, "it is well known that the identification of the 'enemy' is always focused on maintaining territorial and identity boundaries. That is why I consider the debate of the 1930s to be fundamental, astonishingly current, between Freud and Einstein, where the themes of war and peace intersect with the 'force of law', but, above all, with the question about the meaning of what a friend of Humanity is" (RESTA, 2004, p. 14).

unknown criteria for human rights. The content revealed by the affective existence, from the interretroactions of the other, demonstrates the elaboration of a differentiated behaviour in the postmodern context. Based on human rights, life and care become legal values that need effectiveness in order to guarantee the minimum necessary for the development of subjects and their manifestations.

The dynamics of capital, profit and the market, however, do not agree with these propositions. Without the presence of the other, it is asked: how is it possible to overcome the first point of the double paradigmatic crisis pointed out by Streck (2008, p. 234-235), that is, to establish supra-individual rights without, however, solving the problem of the blind subject for your condition of individuality? The orientation of change and cultural reflection on the meaning of human rights and dignity³ of the person are contextualized, in this transition period (political, legal, cultural, economic, geographic - in potential), as incapable of identifying the value conferred to these two categories: fraternity and care. According to Heidegger's expression (1981), these entities have become a simple and objectified presence⁴. Bloch (1996) warned about this reversal of values, similar to Scheler's posture (1994, p. 165), in which economic interests go beyond fundamental values, such as life and care. For Bloch:

3 Sarlet's thought should be emphasized: "[...] in the case of the dignity of the person, unlike what happens with other fundamental legal norms, more or less specific aspects of human existence are not taken care of (physical integrity, intimacy, life, property, etc.) constituting the very value that identifies the human being as such, a definition that, however, ends up not contributing much to a satisfactory understanding of the which is effectively the scope of protection of dignity, at least in its legal-normative condition" (SARLET, 2009, p. 89-90).

4 The expression in Heidegger means "[...] another way of reporting or approaching beings in general and human beings, taking them as objects such as those that serve scientific research. This does not mean that there are two sets of beings - some that are enveloping beings and others that are simple and objectified presence. There are different ways of referring to the same entities, taking them in different ways. What specifies the surrounding entities is the same involvement that the being-there experiences with them, while the entities that are a simple and objectified presence announce a relationship with the being-there in terms of distance, or non-involvement" (HEIDEGGER, 1981, p. 27-28).

Human dignity is not possible without economic liberation, and that liberation is not possible without the cause of human rights, which goes beyond all forms of contract. Liberation and dignity are not born automatically by the same act; but if they refer to each other [...]. (1996, p. xxix, free translation). (Translated).

Care, in post-modernity, has become a double absence, because: a) the manifestation of the ego in the world is not understood, that is, self-understanding does not exist; and, b) the prevalence of the ego over other subjects prevents us from accepting the stranger (*alius* – foreigner) in our usual certainties (CORTELLA; TAILLE, 2005, p. 31). The lack of commitment to the Other (*Alter*) is the specific trait of a world preoccupied with satisfying its own interests. These conditions refer to the idea of care. Human care represents a way of being, of relating and is characterized by involvement which, in turn, includes responsibility (WALDOW, 2004, p. 37).

Boff explains that care is an attitude, that is, a loving, gentle, friendly, harmonious and protective relationship with reality: personal, social and environmental (2014, p. 117). For the author:

What is opposed to carelessness and neglect is care. Caring is more than an act; it's an attitude. Therefore, it encompasses more than a moment of attention, zeal and devotion. It represents an attitude of occupation, concern, accountability and affective involvement with the other; it enters into Nature and into the constitution of the human being. The way of being cared for reveals in a concrete way what the human being is like. Without care, he ceases to be human. If they are not cared for from birth to death, the human being breaks down, withers, loses meaning and dies. If, throughout life, you do not carefully do everything you undertake, you will end up harming yourself by destroying what is around you. Therefore, care must be understood along the lines of the human essence (BOFF, 2008, p. 34). (Translated).

For this reason, care is linked to vital issues that can mean the destruction of the human future on Earth or the maintenance of life on this small and beautiful planet (BOFF, 2014, p. 118). Its importance is justified because the category includes all human actions to maintain, carry forward and protect our world in such a way that we can live in the best possible world (RODOTÀ, 2006, p. 223). This scenario can also acquire an even greater scope if care and

fraternal receptivity are experienced with the objective of realizing and strengthening the fundamental human rights of children and adolescents.

3. CARE AND FRATERNITY FOR THE COMPLETE PROTECTION OF CHILDREN AND ADOLESCENTS

The traits mentioned in the previous section regarding contemporary society indicate the need to rescue the common anthropological link that unites human beings. Post-modernity, marked by individualism and fragmentation, must support a change in behavior in social interactions. In particular, when it comes to children and adolescents as beings in the formation of their subjectivity and with full priority. Mainly, because it is taken into account that the 21st Century, marked by consumption, globalization, social inequalities, discrimination, violation of human rights, present the factors that directly contribute to social vulnerability.

Thus, post-modernity signals a moment of reflection in various aspects of human life. With regard to the Rights of Children and Adolescents, the central axis of this proposal is the search for social emancipation, through care and fraternity, which leads to an improvement in the situation of children and adolescents in Latin America, based on what they advocate the Constitutions in this geographic space. In order to achieve this objective, a good articulation between legal rigor and the effectiveness of the Rights of Children and Adolescents is required, considering the tripod: a) Human Rights and their instruments of effectiveness; b) legal operators; and, c) children and adolescents as subjects of rights and addressees of the norm.

With regard to the political, social and cultural situation in Latin America, it should be mentioned that, given the discrepancies in the continent's social context, policies aimed at children and adolescents are currently limited to welfare policies. Misery, poverty and lack of opportunities lead to the treatment of this part of the population, characterized by social control mechanisms on the outskirts of large urban centers. Not by chance, marginalized children and young people end up interrupting their training process, as they force

themselves to "adultize", ceasing to be a child earlier, in order to anticipate the adult phase, because without conditions of study and qualification, the alternative is work or the criminalization of poverty.

In Brazil, the socio-legal reality needs to be faced with all social problems. Treating them in isolation does not seem to be an option, as confrontation refers to political will, social engagement and the creation of legal mechanisms aimed at protecting the lives of children and adolescents in this country.

These initial lines only seek to describe the context of this perverse reality, even though the legal recognition of children and adolescents in Brazil is effective both by constitutional norm and by the Statute of Children and Adolescents. However, the degree of emancipation of these subjects is questioned, as promises of the rule of law where all citizens are equal. Faced with disparities, the rights advocated in the Federal Constitution and in the Statute of Children and Adolescents do not materialize either in the early years, nor in the years of formation and development until adulthood. For this reason, sensitivity is so necessary when discussing the general themes of children and adolescents. New horizons of understanding can only be visualized through care and fraternity, as political-legal principles to be experienced in post-modernity.

The realization of the legal text contained in the Child and Adolescent Statute is a social and legal commitment with a view to realizing the rights of those between zero and eighteen years old. Based on this premise, assuming the condition of human misery in the face of the promises of the Democratic State of Law and the legal inability to meet such a demand is the first step so that the panorama can have a change in the present moment. Each citizen is an integral element in the social gear and, given the vulnerability of children, the commitment becomes a common goal for all Brazilians.

This joint and shared task has a sociological matrix to be observed, since state regulatory intervention alone is not enough. In spite of the fundamentality of public policies in the protection of children and adolescents, it

is necessary to accept the reality of others in order not to confront the other, but to understand and recognize him in his (in)capabilities. Thinking about Law, in these terms, points to morals and ethics as elements of understanding in the face of other psychic, emotional, cognitive and educational realities. For this reason, the family, society and the state must be permanently active in relation to the protection of children.

The globalized contemporary society gathers conditions for the deepening of the matter, because discussing the Rights of Children and Adolescents also means discussing life and dignity. The current legal complexity indicates the recognition of rights in the legal text, but has as a constant challenge the way to put them into effect in the world of life. In this line of thought, much is discussed, legally and academically, about the established right and its conditions of effectiveness. With regard to Children's Rights, the re-democratization of Brazil, in 1988, indicated the objectives of the Republic as being the construction of a free, fair and solidary society, to eradicate poverty, marginalization, social inequalities, with the aim of promoting the collective good and non-discrimination among citizens.

The guardianship of the Social Democratic State is also aimed at citizens under eighteen years of age as the main recipients of fundamental rights such as health, education, social assistance. This condition can be observed from Articles 227 and 228, which deal specifically with the issue of Children and Adolescents in Brazil. These are articles that deal with special treatment due to their vulnerable condition, in order to follow the international agenda on the subject.

It is the duty of the family, society and the State to ensure to children, adolescents and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, to respect, freedom and family and community coexistence, in addition to putting them safe from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression (BRASIL, 1988). (Translated).

Even with the constitutional provision and the specific law on Children and Adolescents, challenges persist in relation to equal conditions, quality of life and opportunities for children and adolescents in Brazil. It is these conditions that support the dignity of children who, currently, are not effective in view of the difficulties faced in the recognition and realization of these rights. This situation culminates in the limitation of opportunities for personal, social, intellectual growth and even better living conditions for this part of the population.

Social commitment is essential in order to definitively eliminate the lack of public policies and social invisibility directed at Brazilian children. It seems that an interdisciplinary theoretical approach is fundamental for the development of the research, since only a legal foundation is not enough to understand the complexity of the elements that integrate the Rights of Children and Adolescents. The union of knowledge allows the confrontation of the social issue and the search for arguments is also relevant in the fields of philosophy, psychology and sociology. Understanding the contemporary social context supports a concise theoretical contribution, which signals the understanding of behaviors and identity formation of children and adolescents, given the need to empower these social subjects.

Legal Science, as a cultural and social phenomenon, a product of human interactions, cannot currently conceive of a “right with eyes closed” (CUNHA, 2007, p. 61). The historical moment lived is a moment of global integration, beyond geopolitical limits. As an alternative for union, in the face of shared common interests, it is necessary to consider the diversity of legal concepts in the globalized society, in the light of values such as Sensitivity, Care and Fraternity. In fact, the global legal system is complex and does not allow the understanding of categories in isolation, but in perspective of integration with new legal models and new political movements, as is the case of the New Latin American Constitutionalism. This exchange provides new horizons for understanding a constitutional hermeneutic based on international dialogue and Legal Pluralism.

Regarding the Principle of Full Protection, this already signals international legal integration, as its positivization in Brazilian law is the result of

international conventions to which Brazil is a signatory. The constitutional status added to the Statute of the Child and Adolescent confer legitimacy to these subjects of rights, even though the great challenge in post-modernity is recognized, that is, to create opportunities for the recognition and effectiveness of these rights in the comparison of the categories of care and fraternity. The expression of care and fraternity does not translate into the segregating and discriminatory state action, which indicates the invisibility and abstraction of the Rights of Children and Adolescents. It is necessary to understand these subjects as citizens considered in their complexity, in their condition of being in formation according to the age group that denotes psychic, social, behavioral, educational development, among others. These arguments are some of the existing ones to theoretically support the need to develop better conditions for children and adolescents from a legal, political and social perspective, based on Care and Fraternity, as elements already experienced in the perspective of the New Latin American Constitutionalism.

The aim is to discuss the possible paths for development based on social sustainability based on new actors and new references. The New Latin American Constitutionalism materializes plural realities by admitting, for example, rights inherent to nature and rights to the development of *Buen Vivir*, as a fundamental condition for realizing the dignity of the human person.

The Rights of Children and Adolescents in Brazil have largely positive regulations both in the Federal Constitution of 1988 and in the Statute of Children and Adolescents. Legal effectiveness is observed from these two legal instruments, but the reality in the world of life has another level: that of equitable non-effectiveness. The normative system directed at children and adolescents is in force, but there is no effective harmony, since the materiality of the social context reveals an abyss between norm and reality. The Rights of Children and Adolescents are positive, but they lack effectiveness. The subjects of rights that are the object of this research are on the side-lines of the realization of the principle of human dignity.

It was only from the second half of the 19th century that children gained the status of people (PERROT, 2004, p. 162). The Child and Adolescent Statute

defines what children and adolescents are. Children are those people aged between zero and twelve years old. Adolescents are people aged between twelve and eighteen years of age. In addition, a recent amendment to the Constitution included young people as those who deserve special attention, considering their condition of development, in accordance with article 227 of the Federal Constitution. In this way, the principle of human dignity is an element of support for the Rights of Children and Adolescents in Brazil. This guiding principle led to the incorporation of Human Rights advocated at the international level in Brazil; and, with regard to the Rights of Children and Adolescents, the main guideline is the UN International Convention on the Rights of the Child.

The general agenda on the Rights of Children and Adolescents is included in the Brazilian Constitution, following the international trend on the subject. With regard to the doctrine of full protection, for Motta Costa (2012, p. 131), it constitutes the evaluative basis that underlies the rights of children and youth. Part of the normative recognition of a special, or peculiar, condition of people in this age group (zero to 18 years old), which must be respected as subjects of rights. Children and adolescents, based on this argument, were recognized in their dignity as people in development and who need special protection and guarantee of their rights by adults: State, Family and Society. The Doctrine of Integral Protection began to replace the Doctrine of Irregular Situation, in force until then in Brazil. At this point, Beloff explains that:

Children and young people were considered objects of protection, treated based on their incapacity. The laws were not for all childhood and adolescence, but for a specific category, called “minor”. In order to designate them, open legal figures were used, such as “minors in an irregular situation”, in “moral or material danger”, “at risk”, or “in particularly difficult circumstances”. Still, the author continues, from a normative point of view, a distinction was made between children and those in an “irregular situation”, between children and minors, so that any issues related to the former were the responsibility of Family Law and those of the Juvenile Courts. The conditions in which they found themselves individually turned children and adolescents into “minors in an irregular situation” and, therefore, the object of coercive state intervention, both in relation to them and their families (1999, p. 13). (Translated).

The Doctrine of Integral Protection, however, cannot be considered in isolation, there are other principles that help directly in the realization of the Rights of Children and Adolescents, such as: the principle of absolute priority, of the best interest, of brevity and exceptionality, among others. The Doctrine of Integral Protection is present in the main international documents on the subject and has a global legal reach, contextualized in contemporary society. In Brazil, the trend follows that the Doctrine of Integral Protection is integrated into the international documents that deal with the subject; thus, children and adolescents have the status of subjects of law, based on the constitutional text of articles 227 and 228.

Regarding the mentioned articles, it is necessary to emphasize that the special treatment directed to children and adolescents is everyone's duty: State, Family and Society. The commitment of these social actors signals Care and Fraternity based on a constitutional recognition of the most vulnerable part of the population. Thus, the Democratic State of Law must implement public policies and positive state actions, in a vertical relationship, while Society and the family, in their actions, are characterized by horizontality. The essentiality of Human Rights directed at children and adolescents necessarily signals Care and Fraternity measures, especially in relation to social actions in this sense.

It should be noted that growing up is a gradual process and that all humans are in permanent development. However, the childhood and adolescence period give rise to a different look at the being in formation, in the face of the delicate moments to be faced, such as the first challenges and discoveries, in addition to the maturation of individuality, experiences and situations that lead to the formation of the human being. . For this reason, not infrequently, the characteristics of youth, especially the search for experiences and sensations, the boldness, the courage, the condition to do things of their generation, continue to cause strangeness, or even fear, to those who do not share these experiences (MOTTA COSTA, 2012, p. 55).

In the social context of contemporary Brazil, the chronological order is often inverted. In economically or socially less favoured classes, a curious phenomenon is observed, where the experiences of each age group are cut off

and adult life begins early. There are no effective conditions for a healthy and balanced development, as the ideal training conditions are disregarded in the face of the perverse reality we are currently experiencing. Without training conditions according to age group, children and young people from less favoured classes are facing liquid life, which “is a precarious life, lived in conditions of constant uncertainty, it is a succession of restarts” (BAUMAN, 2009, p. 8). Amid constant frustrations, liquid post-modernity is characterized by the precariousness of dreams, desires, relationships at any stage of human development.

This scenario of liquid life that translates part of the relationship of children and adolescents with the world, means increasingly relativized social bonds, often even within the family, a situation that aggravates the developmental deficiency. For this reason, in contemporary globalized society, common legal interests can be united from the process of globalization of law, as legal demands have become global in many aspects (STAFFEN, 2015, p. 21), such as the issue of the social vulnerability of Children and Adolescents, for example. As a topic of interest to the international community:

[...] legal globalization needs to face several problems, such as conflicts of uniformity and national differences, the competition of global-national-local norms, the attribution of competences, the regulation of capital and guidelines for global governance, the promotion of Human Rights, environmental preservation and planetary sustainability criteria, the fight against criminal networks, in short, a new and effective way of limiting an extremely fluid power, such as the current global order. Lastly, the Global Law paradigm that is announced promotes valid elements for a consistent and up-to-date oxygenation of the ideals of human rights, Democracy and Sustainability. This potential would hardly materialize in scenarios of state omnipotence, that is, it makes possible a substantial democratic, humanitarian and sustainable experience beyond the State. After all, it is still this, the State, that is the main defendant for violations of Human Rights, suppression of democratic faculties and impediment to Sustainability [...]. (STAFFEN, 2015, p. 41). (Translated).

Legal Pluralism, along these lines, is observed at the local, national and supranational levels. It is the legal dimension that has a scope beyond the State, so that it is essential to consider cultural, local, or historically constituted

realities, when applying the Law (SANTOS, 2001, p. 145). The effervescence of everyday life proposed here is one in which life takes place together, in a sacred way, where what matters is the sharing of common emotions (LEMOS, 2007, p. 71), directed at children and parents. adolescents with no prospects in the large urban centers of Brazil. Under this expectation, social bonds are not contractual bonds, but rather, they are part of a belonging process based on care and fraternity, categories that are vectors for the unveiling of Sensitivity in everyday life.

Legal integration presents effective solutions to shared global legal realities. Law, in post-modernity, should not stick to single currents that legitimize it, but open itself up to new perspectives in this context marked by major changes and transformations in various aspects of human life. Under this bias, new spaces of legality emerge to support new legal models regarding the protection of common goods and interests, as is the case of the Rights of Children and Adolescents in a global perspective.

It is a humanizing claim and a struggle to build the effective dignity of children and adolescents, as subjects who lack Care and Fraternity in their lives. When faced with a theory of Human Rights that is critical and contextualized, one must consider fraternal law, which does not suppress concrete and particular approaches to reality. Currently, we seek to discuss ways and alternatives to overcome the crisis of values that stains society, based on a humanitarian sense that rescues sensations and resumes the question of belonging among human beings. The New Latin American Constitutionalism is a phenomenon that has been pointing in this direction since the 1990s. It is a legal-political movement based on new social actors and globalized realities, by admitting, for example, admitting rights inherent to nature and rights to the development of *Buen Vivir*.

This phenomenon arises from the need for the Constitutional State to be in permanent construction, adapting to the historical moment experienced and legitimizing demands regarding the conquests and realization of Human Rights. The idea that society should be on the sidelines of the constitutional process is finally overcome: the contours and limits in the Constitution are

democratically consolidated into new spaces of understanding that include new subjects of rights, such as to Pachamama⁵.

The structuring of this political and legal project indicates the direct participation of that historically excluded part of the population, such as indigenous people, women, children, among others. Democratic practices begin to support the constitutional norm and overcome deficiencies and social vicissitudes, in the experimentation of legal pluralism, represented by the recognition of nature as a subject of dignity and rights (MARQUES JÚNIOR, 2014, p. 99). Sustainability is rooted in the proposals of the New Latin American Democratic Constitutionalism. On this basis, Pellenz (2015, p. 153) highlights that:

Regarding biocentrism, it is emphasized that the so-called new Latin American constitutionalism goes against this possibility. Attention is drawn to the 2008 Constitution of Ecuador, which proposes innovations in this regard, namely the admission of Nature as a subject of rights (Rights of Nature). *Pachamama* was legitimized as a subject of rights, that is, that natural resources can be parties in the procedural legal relationship. In the same legal diploma, the human right to water was highlighted, as well as the possibility of *Buen Vivir* from a very advanced environmental perspective. (Translated).

It so happens that the perspective of Buen Vivir, as a legal-political movement, in the Constitutions of Ecuador and Bolivia, refers to legal pluralism, as a key element in the democratic integration of the population, without any type of discrimination in this regard. The participation of indigenous peoples was made possible, not only as subjects of rights, but active in decision-making processes through community authorities exercising administrative functions linked to the State in the most diverse territorial spaces.

Eurocentrism is removed, in the New Latin American Constitutionalism, and a new dialogue is proposed, based on the institution of its own model of Constitution, with autonomy to break with pre-established paradigms, envisioning the decolonial turn so important for the construction of a new constitutional horizon in the South American continent. For no other reason than

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that the constituent assemblies are composed of different social groups and, therefore, of different interests, mischaracterizing the political dynamics of the ruling elite, directly influencing the constitutional text of each country. This openness provides space for discussion and the reception of new legal demands, enabling the fulfillment of specific demands of each social and local context, which break, definitively, with the legal-constitutional assimilation coming from Europe and North America, from of the 1990s. In the meantime, it is evident that:

The analysis of the Constitutional Charter produced, in order to justify its inclusion in the new Latin American constitutionalism, highlights its innovative content and even its originality. . 207); the constitutional extension being that “the analytical and detailed format aims to maintain a close relationship between the will of the constituent and the constituted powers – popular sovereignty” and constitutional rigidity (arts. 441 and 442). The wide catalog of rights is also evident, among them the rights of Nature (arts. 71 and 72); the characterization, as in Bolivia, of the rights of Vivir bien or Buen vivir (arts. 12 and 34); the prominence given in the preamble to Pachamama; control of constitutionality by omission (art. 94); the institution of a Public Prosecutor's Office for the defense of fundamental rights (arts. 86, 214 and 215) and of the Public Defender's Office (art. 191) and, finally, the so-called institutions guaranteeing political rights (art. 217) (CADEMARTORI, 2012, s. p.). (Translated).

The legal demands brought by social groups represent the awakening of dormant voices since colonization. In the sense of human development, the law, through the constitutional norm, suggests Buen Vivir as an essential element for the reduction of poverty rates and social inequalities. In the same sense, multiculturalism is a field of effervescence, which provides opportunities for the pursuit of the common good based on the knowledge of traditional societies. The ideal of Buen Vivir is incorporated by the Latin American Constitutions as a result of major political transformations in these countries in recent decades, which identify the Fraternity category as an integrating juridical-political principle, which can only be experienced in plural and democratic environments. Participation and democratic play are based on the assumption that social, economic, cultural and legal factors in Latin America must mirror *Buen Vivir* in all spheres of human life.

The condition of human development, along these lines, can be transferred to the dimension of the realization of the Rights of Children and Adolescents in the South American continent, considering the existing similarities regarding the colonizing process, the situation of exploitation, inequalities, poverty, invisibility, lack of opportunity, lack of education and health. As a positive measure, in order to empower young people, confer autonomy, capacity for action and active participation in the political game in Bolivia, they are invited to participate in the Constituent Assembly, along with other local leaders (BOLIVIA, 2009).

For these reasons, it is evident that the New Latin American Constitutionalism offers essential contributions based on and oriented towards Buen Vivir as a new hope, a path of salvation, a tomorrow after a terrible night of nightmares (BOFF, 2012, p. 65). The expanded democratic spaces, the rupture with the European paradigm, the participation of several actors in the constituent process and the search for overcoming the environmental crisis are the main characteristics of the movement.

In this way, Humanity is facing a new opportunity to imagine another world (ACOSTA, 2012, p. 102), based on Care and Fraternity directed to other objects, such as the Right of Children and Adolescents. It is not about a utopian horizon, but about reallocating human development from the Buen Vivir, already existing in Constitutions in Latin America, to the Brazilian perspective, with regard to Care and Fraternity as categories to be experienced in the realization of the Rights of Children and Adolescents.

In these terms, values are consolidated that provide opportunities for harmonious coexistence between Man and Nature and that enable the development of children and young people from other perspectives. In democratic spaces, the aim is to eradicate poverty and provide equal opportunities for growth, in a relationship of interdependence with the community of life. Adapting the social reality and Fundamental Human Rights of Children and Adolescents is a challenge of Post Modernity, which can be made possible from the experimentation of Care and Fraternity by all social actors, united in a perspective of Buen Vivir to reach those who are still training.

4. CONCLUSION

The article aimed to discuss the values of fraternity and care from the legal and sociological point of view, mainly from the perspective of Human Rights, to think of them as vectors for the Rights of Children and Adolescents. It presented, as a main cut, the thought produced in Latin America and Brazil on the subject. Post-modernity was problematized under the sociological bias of Human Rights and Rights of Children and Adolescents.

Methodologically, in the first section, the history of fraternity and care was discussed, taking into account an approach based on human rights. Sequentially, in the second section, the importance of fraternity and care with regard to the Rights of Children and Adolescents was argued, with a look at current and future generations.

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