

Recensões

Rodotà, Stefano (2015), *Diritto d'amore*. Roma: Editori Laterza, 151 pp., 1st edition.

Stefano Rodotà is Emeritus Professor of Civil Law at the University of Rome La Sapienza, one of the authors of the EU Charter of Fundamental Rights. Very sensitive to major social issues, in his recent book, *Diritto d'amore*, Rodotà has focused on the role that one of the basic human emotions, precisely that of love, should play in the legal and political dynamics of today's society, arguing from a historical reconstruction of the most important events involving the dyad law/love.

Rodotà emphasizes, from the very beginning, that in too many occasions the law has been used like an "instrumento to neutralize love" (p. 3), with the attempt to prevent free love to orient itself towards disparate directions, which could lead to the dissolution of the social order. The law, over the years, has been preoccupied with controlling love, in sum, to address it towards those forms of aggregation that better responded to the requirements of stability, as if loving meant to follow a custom, most often formalized in a marriage relationship.

The cues offered from Rodotà's work are multiple but all merge into the unifying element of the self-determination of the individual, intended as a fundamental right of every person, able to avoid the "risk that the absence or the non-presence of the law does not carry with it an exogenous command of life entrusted with morality custom" (p. 23). In fact, in the course of the centuries, love, more than being forced

into rigid legal categories, has been the privileged object of a debate between morals and religion, often combined in order to direct human behavior towards predictable and common choices.

Self-determination, a topic dear to Rodotà and on which we should recall one of his most famous works, *Il diritto di avere diritti*,¹ assumes in the text under review the form of the total freedom of the subject concerning his/her own emotional and sexual choices, on which the law cannot take part except to stimulate them or to grant them more freedom. In this sense, the historical battles for divorce, abortion and, more recently that on civil partnerships, become paradigmatic of the role law must assume, not that of controlling the behavior of cohorts, but rather that of granting the individual the necessary structures for his/her own self-determination. The law, in Rodotà's point of view, is fit to receive the individual requests when these are justified by requirements of freedom, equality and dignity, avoiding the risk of an "outlawed love" (p. 71) that, humiliated and discriminated, is forced to fight with every possible means for its full acknowledgment. And to avoid this risk, the law must act rationally, working over all the critical issues that hinder a free exercise of the right of love. Rodotà considers, for example, that the law must strive to eliminate the precariousness in the labor market, thus allowing those who so desire to build up a family, to eventually marry

¹ Stefano Rodotà (2012), *Il diritto di avere diritti*. Roma: Laterza, 433 pp.

and have children. Once the law pursues this aim and reaches such objectives, it can slowly withdraw, leaving space to a love that is “institutionally freed” (p. 76). Particular attention is then devoted by Rodotà to the civil partnerships issue. Considering that the work in comment was published a few months before Act no. 76 from the 20 May 2016 (aka. Cirinnà Act), which has introduced in Italy civil partnerships, with special attention to those between people of the same sex, it is interesting to note that Rodotà criticizes this form of union, if meant as a category of exception, tolerated but different from heterosexual marriage. Beside the individual instance, in fact, Rodotà invites us to take conscience of a “cultural change becoming increasingly popular”, which has encouraged same sex persons in their requests for equality, able to confer those instances “a massive social and political legitimization” (p. 80). Often the law shirks from its task of juridifying the widespread social instances, ignoring how the concretization of free individual life projects represents an individual’s right that must not only be recognized but also have its effectiveness guaranteed.

The author includes an interesting chapter, in which he faces the vexed issue of the supplementary character of jurisprudence compared to legislation. About the issues of love, in fact, a policy “de-legitimized because of its apparent inability to tackle the problems of its time” can only feed a “new form of legal mediation, entrusted to judges” (p. 111). This substitution, greeted by Rodotà as capable of channeling the public debate on the resolution of concrete vital cases, is intended to make those rights effective, which should be universally recognized to every individual as such.

These considerations represent the background for the part of the book devoted specifically to the matter of sexual identity

that, according to Rodotà, should be investigated in its entirety, although it is “highly mortgaged by the subject of transsexualism” (p. 128). This happens by virtue of the fact that sexual identity has been able to bring out the relationship between corporeality and the sphere of the affections, which together constitute the same conditions of love. The author embraces the thesis of gender as a historical – social construction, shaken to its foundations by recent cultural and social dynamics capable to enlighten love with a new light of freedom.

Rodotà believes that freed love, the one that has no need to be legitimized by law, takes as its corollaries reciprocity, equality, dignity, respect, solidarity, words that become an indispensable component for the author. This love is made of an “excess” (p. 138), as is described by our author, who most often eschews the rigid patterns of a law which must, however, be alert but not intrusive; that should be ready to recognize new subjectivities, but also the fundamental importance of the relationship between those subjectivities. Rodotà’s theoretical approach is a right of love understood as a continuous reaffirmation of its openness to the other, creating social bonds, and whose most intense expression is precisely the love relationship, generally intended.

Rodotà’s book, speaking of law and love, is able to faithfully photograph our time, capturing its positive aspects, but also criticizing them, in a constructive perspective. The request made to law to do “one more effort in the name of love” (p. 125) is really just the appeal of a mature jurist, aware of the major changes affecting his time. But he makes a realistic warning to judges and legislators, in order to be always ready to consistently interpret that tension towards the recognition of new rights that are socially generated. Only acting in this

way will the law be able to perform its duties fully, abandoning the illusion of a final settlement of the conflicts that arise around the right of love and, at the same time, its ambitions of possessing the individual's affects.

An useful tool for the social sciences as a whole, the text, full of erudite references, ranging from medieval courts of love to

De Amore by Andrea Cappellano, opens the door to a process of revision of the legal and now unstable social categories, in which the reader, starting from the specific theme of love, is called to take a bottom-up approach into the roots of the concept of individual self-determination.

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