

Chapter 1

Introduction: Conceiving Life in Law

the not-yet-born intermittently press their ... demands with an unmistakable but invisible power, a power that exceeds our conventional formulations of agency.¹

Introduction

The question of the regulation of human reproduction is intimately linked with the question of the relation of the citizen to the state. As Donna Haraway has pointed out, reproductive politics: 'are at the heart of questions about citizenship, liberty, family, and nation.'² Reproductive politics has become, in other words, the site in which competing worldviews battle for the definition of both nationhood and citizenship. This conflict over the governance of reproductive freedom of individual citizens is part of a wider conflict about the nature of contemporary democratic politics and the place of women within this system. As Maria Luisa Boccia has put it: 'Control over the power to reproduce or not to reproduce, inscribed on the female body, has always been and continues to be, at the heart of the conflict between the sexes.'³ This power to generate has, in patriarchal society, been claimed by men despite biological evidence to the contrary.⁴ It is this symbolic and political usurpation of the power of birth that has placed patriarchal discourse at the foundation of political thinking and organisation. Ironically, when women attempt to recover this power using the extant tools of law and rights they discover that the (masculine) law continues to control their generative power and choices.

Within the framework of a masculine legal symbolic, women are accorded, at best, mere permission to abort in limited circumstances, or to gain access to assisted reproductive technologies. What remains constant, if implicit, is the persistence of paternal permission over women's birth-giving power. As Boccia notes: 'This situation demonstrates the incongruities of the language of rights and of law in regulating questions of relations between the sexes, both from the perspective of

1 Wendy Brown, *Politics Out of History* (Princeton, 2001), p. 149.

2 Donna Haraway, *Modest_Witness@Second_Millennium.FemaleMan_Meets_OncoMouse. Feminism and Technoscience* (New York, 1997), p. 189.

3 'Il controllo sul potere di generare e non generare, iscritto nel corpo femminile, è da sempre e tuttora il cuore del conflitto tra i sessi.' (Maria Luisa Boccia, *La differenza politica: donne e cittadinanza* (Milan, 2002), p. 19).

4 For a perceptive philosophical analysis of this phenomenon, see Adriana Cavarero, *In Spite of Plato: A Feminist Rewriting of Ancient Philosophy* (Cambridge, 1995).

embodied subjectivities and of rationality.⁵ In Italy, the history of how human reproduction has been regulated demonstrates the real problem of obtaining reproductive rights in a patriarchal legal context. In this book I examine such questions against the background of the development of legal governance of human reproduction in Italy over the past thirty years. This period coincides with what appear to be two contradictory movements: on the one hand, the legalization of abortion provision and, on the other, the introduction of restrictive regulation of the area of assisted reproductive technologies.

The central question I seek to address is how a society, which in the 1970s was slowly and painfully moving away from a dominant heteropatriarchal conception of family relations, succeeded in introducing a law in 2004 which gave symbolic recognition to the human embryo and greatly restricted access to assisted reproductive services. The answer is a complex one involving the relationship between state and civil society, the transformation of the party political system in the 1990s, the cohabitation within society at large and within legal documents of competing ethical worldviews, the rebirth of the Roman Catholic Church as a mass political force,⁶ the decline of feminism as a mass political movement, and changing conceptions of women's status within Italian society.

The case of Italy is unique and yet also evokes many questions of enormous current import for other societies in relation to how one can or should govern bioethical issues. The Italian experience in relation to the governance of human reproduction forces us to ask how law can accommodate different views on bioethical policy in 'multiethical'⁷ societies. Can there be such a thing as impartial governance of such issues in a state that, despite transformations, remains symbolically and materially masculine and culturally Catholic?⁸ Successive Italian governments have tended to avoid addressing issues of bioethical controversy in an objective and honest manner due to a fear of a conservative backlash and a subsequent loss of political support. As Stefano Rodotà has so astutely pointed out in this regard:

today we live in an era characterized by a proliferation of values and of disputes about how to give recognition to pluralism ... Can one make [such values] live together, avoiding the transformation of such disputes into a more serious conflict? ... In this regard, vehement demands are made for certainties at any cost, and of course, short-cuts [are made]. This

5 'questa vicenda mostra le incongruenze del linguaggio dei diritti e del diritto nel regolare le questioni dei rapporti tra i sessi, nella prospettiva delle soggettività incarnate e della razionalità.' (Maria Luisa Boccia, *La differenza politica*, pp. 19–20).

6 For an analysis of the relationship between the contemporary Italian State and the Vatican, see Mark Donovan, 'The Italian State: No Longer Catholic, no longer Christian', *West European Politics*, 26 (2003): 95–116; and Sandro Magister, *Chiesa extraparlamentare* (Napoli, 2001).

7 This term is borrowed from Enzo Bianchi, who used it to describe Italian society in an interview on the radio programme *Fahrenheit*, Monday 10 July 2006, Rai Radio 3, available at www.radio.rai.it/radio3/fahrenheit/mostra_evento.cfm?Q_EV_ID=182142.

8 For an illuminating analysis of this theme in relation to the question of violence against women in contemporary Italy, see Sonja Plesset, *Sheltering Women: Negotiating Gender and Violence in Northern Italy* (Stanford, 2006).

leads to the imposition of an incontestable Truth, by way of the law ... in this way the law takes on an authoritarian hue, and appears as an imposition and not as a reflection of a shared feeling.⁹

This sums up very well the manner in which bioethical issues have been dealt with, or rather not dealt with, in Italy over the past twenty years. Instead of attempting to gain community consensus on an issue and working towards a solution that expresses the values of all sectors of society, governments have tended to see such matters in very simplistic terms, either they are morally supportable or morally suspect. In all this the pluralist State's moral guide has been the Vatican.

Focusing particularly on the period between 1978 and 2004, which began with the introduction of a liberal abortion law and which ended with a restrictive law on assisted reproduction, I analyse the reasons why such contrasting models came to simultaneously inhabit the legislative space. Why do women's bodies continue to be sites of ideological conflicts about nation, community and identity at the end of a period of substantial progressive change in the dynamic of gender relations in Italy? In contemporary Italy it is fair to say that a model of the family that one could define as traditional, that is the heteropatriarchal family unit, persists both at the level of everyday lived reality and at the level of public policy, and has been very difficult to transform. In the opening months of 2007 the question of the acceptable family model for public policy purposes has arisen in the context of the centre-left government's attempt to introduce legislation on the legal rights of same-sex couples. Vehement opposition to such a proposal has come from the Roman Catholic hierarchy and conservative politicians. Both the Church and conservative politicians see such a development as an affront to traditional family values. This is but one example of how such a traditional family model is so deeply embedded in the political and social fabric.

There exists in contemporary Italy a complex mingling of progressive and traditionalist narratives on the family. This allows the simultaneous projection of the State as pluralist in the texts of law and the persistence of a deeply ingrained patriarchy and cultural and religious homogeneity. The patriarchal familial narrative is but one of many narratives which exists simultaneously in Italian society. One major counter-narrative in modern Italy has been that provided by mass feminism. Italian feminism played a key role in bringing about the re-conceptualization of the position of woman in society. As well as playing a part in lobbying for legal reforms, the movement created a means of voicing female experience in the public sphere. In so doing it provided a powerful critique of the limits of legal reform

9 Stefano Rodotà, *La vita e le regole: Tra diritto e non diritto* (Milan, 2006), p. 16. The original reads:

oggi viviamo in un tempo caratterizzato da un politeismo dei valori e da controversie intorno al modo di dare riconoscimento al pluralismo ... Si può farli convivere, evitando che la controversia si trasformi in conflitto durissimo? ... Ecco, allora, che si fa forte la richiesta di certezze a ogni costo, e quindi di scorciatoie, che portino alla imposizione di una verità indiscutibile, attraverso una norma giuridica ...

... così il diritto assume tinte autoritarie, si presenta come una imposizione, e non come il riflesso d'un sentire comune.

within a patriarchal legal context. Despite legislative reform in relation to issues like divorce, abortion and rape, it was clear that this alone was not sufficient to displace a patriarchal notion of societal formation.

Bioethics: Between *Ethopolitics* and *Vitapolitics*

When individuals in liberal democratic societies attempt to win greater control over decision-making about their bodies, they are engaged in an unequal power struggle with the state. In order to win more freedom they must of necessity go before the law in order to assert these rights or lobby the government for a change in legislation. This active intervention by the individual to win such power has been defined by social theorist Nikolas Rose as biological citizenship.¹⁰ This term refers to the phenomenon whereby individuals increasingly define their citizenship in terms of their rights to life, health and cure. According to Rose, politics is no longer about the direct management of life through public health and other government interventions, but has moved towards a form of individual governance of the self. Rose refers to this form of politics as ethopolitics:

By *ethopolitics* I mean to characterize ways in which the ethos of human existence – the sentiments, moral nature or guiding beliefs of persons, groups, or institutions – have come to provide the ‘medium’ within which self-government of the autonomous individual can be connected up with the imperatives of good government. In ethopolitics, life itself, as it is lived in its everyday manifestations, is the object of adjudication. If discipline individualizes and normalizes, and biopower collectivizes and socializes, ethopolitics concerns itself with the self-techniques by which human beings should judge themselves and act upon themselves to make themselves better than they are. While ethopolitical concerns range from those of lifestyle to those of community, they coalesce around a kind of vitalism: disputes over the value to be accorded to life itself, ‘quality of life’, ‘the right to life’ or ‘the right to choose’, euthanasia, gene therapy, human cloning and the like.¹¹

There has been a shift from state governance of the individual to a kind of individual self-governance or care of the self, in which the agonised self must act to change its situation. In such a model, according to Rose, individuals: ‘use their individual and collective lives, the evidence of their own existence ... they demand civil and human rights ... They call for recognition, respect, resources ... control over medical and technical expertise.’¹²

Within the process of *ethopolitics* one can see both individual and collective self-actualisation. As Rose observes: ‘In advanced liberal democracies, biological identity becomes bound up with more general norms of enterprising, self-actualizing, responsible personhood’.¹³ Rose’s *ethopolitics* allows us to visualize the potential of deliberative participative politics within the context of bioethical policy-making.

10 Nikolas Rose, ‘The Politics of Life Itself’, *Theory, Culture & Society*, 18/6 (2001): 1-30.

11 *Ibid.*, p. 18.

12 *Ibid.*, p. 19.

13 *Ibid.*, p. 18.

In Italy, particularly in the 1970s this form of politics enjoyed considerable success in the form of the mass feminist movement. This feminist *ethopolitics* enabled the reshaping of gender relations. Within the Italian feminist movement a rich and unique thought of sexual difference was developed.¹⁴ This thought coming as it does from the experiences of liberation struggles is intimately linked to political action. In recent decades this deliberative *ethopolitics* has been eclipsed by what one could term a rigid top down *vitapolitics*. In this politics the embryo has been constructed by conservative lobby groups as an active individual agent. This highly problematic construction reduces women to mere vessels to reproduce the nation.

The embryo as virtual citizen, in the sense of its potential for citizenship, and in its potential to form a community based on a philosophy of Life, provides a point of suture for the Roman Catholic Church's narrative of a nation in moral decline. In this discourse the embryo must be protected at all costs, as its termination would rob the nation of future life, placing the nation in peril as well as the embryo. This converging of the nation with the embryo is a masterstroke of traditionalist symbolizing. It constructs a discourse in which the nation supports an ideology of life but which is unspoken and unimpeachable. It becomes the default setting against which those who would oppose it are immediately constructed as enemies of the nation. Women who seek control over reproductive decisions by availing themselves of pre-implantation genetic diagnosis, or who attempt to conceive with donated gametes, or who wish to terminate their pregnancy interrupt this vitalist national narrative. According to such a narrative, women act selfishly in putting their wishes before this potential life.

This campaign has succeeded in transforming the way in which reproductive medical services are governed by restricting existing reproductive freedoms. This *vitapolitics* is not a politics of empowerment but a politics of entrapment in an imagined natural order. In this paradigm, as Barbara Duden notes: 'flesh is extinguished and replaced by a disincarnate notion'.¹⁵ This *vitapolitics* does not refer to life in the material sense but to what Duden has called 'synthetic life'.¹⁶ For Duden, 'synthetic life' has become the idol of the present, not only for the Church but also for ethicists, politicians, journalists and advertising executives, amongst others. In this new ideogram 'life', Duden detects a wider concern with endangered life. She observes that 'this idolatry of life' is a consequence of 'a surreptitious shift in social and medical management concerns about the importance of "survival"'.¹⁷ Duden sees two cult objects as exemplifying this concern with survival, the planet Earth and the foetus. Each in their own way reflects a concern about mortality, survival and

14 For a full analysis of the development of sexual difference thought in contemporary Italy, see Carole Lazzaro-Weis, 'The Concept of Difference in Italian Feminist Thought: Mothers, Daughters, Heretics', in Graziella Parati and Rebecca West (eds), *Italian Feminist Theory and Practice: Equality and Sexual Difference* (Madison, 2002), pp. 31–49.

15 Barbara Duden, *Disembodying Women: Perspectives on Pregnancy and the Unborn* (Cambridge, MA, 1993), p. 100.

16 *Ibid.*, pp. 99–106.

17 *Ibid.*, p. 110.

extinction. In this sense, she notes that: ‘The four-letter word [life] is meaningless and loaded; it can barely be analysed, yet it is a declaration of war.’¹⁸

Likewise, the embryo has become a sign of immortality, an ideal site onto which to project desires to live on, to survive.¹⁹ For the religious right the embryo becomes invested with great symbolic value. The embryo is seen as the promise of the survival of the heteropatriarchal family narrative. The notion of embryo citizenship includes the what of the embryo, thus further undermining the unique who of the female citizen. It creates a model of citizenship based on the future interests of an unborn entity and diminishes the current interests of individual women. In such a discourse, woman is, to paraphrase Drucilla Cornell, reduced to the position of: ‘a what ... not a who, a self’.²⁰ This sacrificial discourse is integral to the traditionalist view of the family whereby the woman as mother and primary carer is duty-bound to sacrifice her autonomy for the sake of family unity. This rhetoric fits into the traditionalist model of the family, which was accepted unquestioningly by political and legal elites for the first thirty years of the post-war Italian Republic. As Andall has observed: ‘Family law in Italy has traditionally been concerned with protecting the collective interest of the family as opposed to the interests of individual members within it.’²¹ The lingering longing for such a model is strong in many sectors of Italian society, and the campaign to put the issue of the ‘sanctity of life’ on the political agenda tapped into and harnessed this constituency.

The embryo was employed as a weapon in the war against what the Church calls the ‘culture of death’. The ‘culture of death’ represents for the Church everything that for it impedes the growth and flourishing of Life. This politics of Life itself became for the Church its new weapon in its fight against what it called ethical relativism. The Church began to issue declarations on the immorality of experimentation on embryos and of IVF. In the campaign against the ‘culture of death’ the Pope uses the embryo as a weapon. It stands for the ‘culture of life’, which will reinstitute Catholic values. This is a politics which values the yet to come over the here and now, purgation over pleasure, the transcendent over the material.²² As part of this strategy, the Italian Conference of Bishops (*Conferenza Episcopale Italiana*) has, since the 1990s, engaged in re-Catholicising Italy. Italy, for the Church, needs to become the territory of a Catholic mission, just as once the colonial territories were to be Christianised. This new crusade is of course an admission of the failure of the theocratic model, a desperate attempt to show that it is possible to return Italy to some form of imagined *status quo ante* of Catholic tradition. This crusade is built on a number of pillars: Family, Education, Life and Work. It is an attempt to promote a

18 Ibid., p. 104.

19 It is interesting to note that the emergence of the embryo as a cult object coincided with the era of ‘post politics’ in Italy. See further Donovan, 2003.

20 Drucilla Cornell, ‘Dismembered selves and wandering wombs’, in Wendy Brown and Janet Halley, (eds), *Left Legalism/Left Critique* (Durham, NC, 2002), pp. 337–372, p. 350.

21 Jacqueline Andall, ‘Abortion, Politics and Gender in Italy’, *Parliamentary Affairs*, 47 (1994): 238–251, p. 248. See also Miriam Mafai, ‘L’obbligo della sofferenza’, *La Repubblica*, 22 Settembre (2005):1 and 20.

22 See further on the Roman Catholic Church’s political campaigns, Marco Damilano, *Il partito di Dio: La nuova galassia dei cattolici italiani* (Torino, 2006).

national imagined community based on Catholic social justice teachings. This model stresses the role of woman as mother and the need to reproduce the nation along traditional gender lines. As Sandro Magister has noted:

Catholicism is in fact ready to take up the challenge in its entirety. This is a challenge ‘which relates to its very capacity not only for survival in this society and culture, but also its capacity to permeate and guide its future’. With Italy as a guiding country, ‘to which Europe and the world look and expect much’: a testing ground ‘for the future of Catholicism and, in a certain sense, of all Christianity’.²³

The Church has consistently constructed woman as being synonymous with the private sphere. In 1987, the papal instruction *Donum Vitae*, penned by the then Cardinal Ratzinger, now Pope Benedict XVI, which outlined the Catholic Church’s position in relation to artificial reproductive technologies, noted that the legitimate desire for a child should not be seen as a right to have a child at all costs. That would be to treat such a child as merely a means to an end. In the 1995 papal encyclical *Evangelium vitae*, which called for the protection of life, IVF was seen as contrary to Church teaching because it constituted a danger to the embryo. If the embryo was seen as an entity deserving of unconditional respect in Church teachings, women were seen in an altogether different light. In 2004, Cardinal Ratzinger was the key drafter of the condescending *Papal Letter to Women*.²⁴ This document reveals current Vatican thinking on the role of women in society. The papal letter referred to the conflict between women’s biological role and her role in the public sphere. It mused upon how an effective balance could be struck, but worried mostly about the way in which women’s role as mother and carer was being diluted by wider changes in society. In the letter the following observation is made:

the obscuring of the difference or duality of the sexes produces enormous consequences at different levels. [Feminism] which favoured equal opportunities for women, freeing her of every biological determinism, has in fact inspired ideologies which promote, for example, the questioning of the family in its natural two parent form, made up of a mother and a father, equalising homosexuality and heterosexuality, a new model of polymorphic sexuality.

Here the Vatican calls up the excessive spectre of what it calls ‘polymorphic sexuality’ in its declaration of war on feminism in the name of Life itself.²⁵ This

23 ‘... il cattolicesimo è invece pronto a raccogliere intera la sfida. Una sfida “che riguarda la sua capacità non soltanto di sopravvivere in questa società e cultura, ma anche di impregnarle e di orientare il loro divenire”. Con l’Italia come paese guida, “al quale si guarda e dal quale molto si attende in Europa e nel mondo”: terreno di prova “della capacità di futuro del cattolicesimo e in certa misura di tutto il cristianesimo”.’ (Sandro Magister, *Chiesa Extraparlmentare* (Napoli, 2001), pp. 105–106.)

24 Congregazione per la dottrina della fede, *Lettera ai vescovi della Chiesa cattolica sulla collaborazione dell’uomo e della donna nella chiesa e nel mondo* (Vatican City, July 31 2004).

25 Indeed as Janet Halley observes: ‘the current Pope has devoted a substantial portion of his time to refuting feminism. He takes Butler’s *Gender Trouble* seriously as a political danger. A battle for hearts and minds is under way and feminism is one of the contenders.’

spectral phenomenon is seen as disruptive of the two parent heterosexual family model. The Church's language here characterises the feminist movement as being responsible for the decline of the heteropatriarchal family. In its rhetoric the Church accords more importance to woman's biologically determined role as reproducer and carer rather than as autonomous citizen. Woman is recognised as being different but not equal. For the Vatican, woman is imagined, to borrow the words of Drucilla Cornell, as 'already marked in [her] difference through [her] symbolic devaluation. The problem [is] not that difference [is] recognised, but that it [is] recognised as not being of equivalent value.'²⁶

This politics of 'Life' is premised on the policing of women's desire, which, in such a discourse, is an unstable and chaotic element that disrupts the Church's disciplinary politics. In this discourse, in which citizenship is premised on denial and self-sacrifice for some transcendent cause, the construction of woman as mother plays a vital symbolic role. For traditionalist anti-abortion groups this politics of embryonic life acts as a means of suturing together a nation that for them no longer has a unifying ideology. The embryo in this discourse becomes the *objet petit a*, that which will suture together Italy's fragmented self. This politics of 'Life' requires that the embryo is represented as a viable proto-citizen deserving of legal protection and rights, and as one to whom duties are owed. This legal fiction of constructing Life as in being from the moment of conception depends for its success on constructing a notion of the embryo as a person in danger of death. As Lauren Berlant has put it, in her analysis of anti-abortion politics in America, but which could equally well apply to the way in which embryo politics has developed in Italy:

The success of the concept of foetal personhood depends on establishing a mode of 'representation' that merges the word's political and aesthetic senses, imputing a voice, a consciousness, and a self-identity to the fetus that can neither speak its name nor vote. This strategy of nondiegetic voicing has two goals: (1) to establish the autonomy of the fetal individual; and, paradoxically, (2) to show that the fetus is a contingent being, dependent on the capacity of Americans to hear as citizens its cries as a citizen for dignity of the body, its complaints at national injustice.²⁷

This creates a narrative of citizenship in which the ideal Italian citizen is literally virtual, living for the future but never in the present. The fully realised female citizen is deprived of agency so that the embryo, incapable of agency, can be given the symbolic status of honorary agent to come. If the embryo is recognised as a being capable of having rights, it has, unlike fully formed human beings, no concomitant obligations. This creates a literally and symbolically split subject, one subject in two bodies. This strange relationship or duty to the other becomes particularly

(Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton, 2006), p. 22).

²⁶ Drucilla Cornell, 'Bodily Integrity and the Right to Abortion', in Austin Sarat and Thomas Kearns (eds), *Identities, Politics and Rights* (Ann Arbor, MI., 1995), pp. 21–84, p. 54.

²⁷ Lauren Berlant, *The Queen of America Goes to Washington City: Essays on Sex and Citizenship* (Durham, NC, 1997), p. 98.

problematic when the other is not yet born, reducing the life of the mother to that of the not yet dead rather than a fully valued living citizen. This strange reinterpretation of the notion of rights discourse creates a case of subjectivity as purgatory for many women. As Lealle Ruhl has pointed out in the context of the debate on abortion and the splitting of subjectivity between mother and foetus:

In liberal theory, rights are irretrievably tied to obligations; an individual gains certain rights and with them corresponding obligations. But how can the foetus have obligations? Indeed, what we witness in this description of pregnancy is not two liberal subjects in one body, but rather one liberal subject in two bodies. The pregnant woman has all of the obligations of a 'normal' or typical liberal subject but none of the rights. The fetus, on the other hand, has all of the rights of a typical liberal subject but none of the obligations. A strange situation indeed.²⁸

This strange situation reflects a petty pragmatic politics that does not want to engage in real political debate on important social issues, an absurd image of what true democratic deliberation should be.

The Church's crusade was aided ironically by the disappearance of the Christian Democratic party after the *Tangentopoli* scandals of the early 1990s.²⁹ Now that the Church was not tied to one political party, it could act as an independent political

28 Lealle Ruhl, 'Disarticulating Liberal Subjectivities: Abortion and Fetal Protection', *Feminist Studies*, 28 (2002): 37–60, p. 39.

29 The *Tangentopoli* scandals broke in the early 1990s with the revelations of widespread political corruption. It was discovered that the main political parties, the Christian Democrats and the Italian Socialist Party (*Partito Socialista Italiano*), had engaged in taking large amounts of illegal donations from private businessmen in return for political favours. There was widespread political collusion with businessmen who required favours such as tax breaks, or who needed help in bypassing planning laws. This was also coupled with the paying off of judges to delay or suspend trials for financial corruption. This systemic corruption was part and parcel of the Italian party system of the 1970s and 1980s. Political parties had become increasingly dependent on private funding for political success. The unveiling and investigation of the scandal, the so-called 'Clean Hands' (*Mani Pulite*) investigations of 1992–1994, led to the bankruptcy and decline of the main parties, the Christian Democrats and the Socialist Party. See further Donatella Della Porta and Alberto Vannucci, *Un paese anormale: Come la classe politica ha perso l'occasione di Mani Pulite* (Rome, 1999). The ramifications of *Tangentopoli* and *Mani Pulite* led to a wholesale realignment of the party political system. The realignment led to the emergence of *Forza Italia*, led by Silvio Berlusconi who promised a new kind of politics, in which he envisaged running the state like one of his many corporations. This of course was merely a refinement of the old corrupt party system into a new type of anti-politics, which saw the public interest turned into personal political advancement, and saw corruption becoming the norm yet again. Other parties that emerged after *Tangentopoli* included *Alleanza Nazionale* (National Alliance), the former neo-fascist party; the Olive Tree Alliance (*Ulivo*), made up, *inter alia*, of former Christian Democrats, Communists and Socialists; and the Daisy Alliance (*Margherita*), made up again of a motley alliance of former Christian Democrats, Socialists and Communists amongst others; and the Christian Democratic Union (*Cristiani Democratici Uniti*), to name but a few. See, for a fuller description of the party system, Martin Bull and James Newell, *Italian Politics: Adjustment Under Distress* (Cambridge, 2005), pp. 52–59.

player. It became in Sandro Magister's words the 'extra-parliamentary Church'.³⁰ In this new guise, and under the leadership of Cardinal Camillo Ruini, the Church began to effect real influence on political decision-making. The new party system was made up of reincarnated versions of the former socialist, communist, Christian Democratic and neo-fascist parties. Despite diverse ideologies and allegiances, these groupings had in common an underlying allegiance to Catholic thinking. This made it easier for the Church to have a swathe of support across the party spectrum. In spite of its strong official pronouncements on assisted reproduction, the Church's initial line was one of caution in relation to introducing legislation on the topic, based on the justification that any legislation, restrictive or liberal, would give symbolic recognition to IVF.

Conceiving Life in Law

The manner in which decisions in relation to the regulation of bioethical matters have been taken in Italy since the foundation of the post-war republic has been haphazard. Initially the default setting on matters of ethical controversy, such as abortion for example, was the naturalist approach of Roman Catholic theology, which coincided with a cultural attachment to patriarchy. Both the secular state and the Church shared a common antipathy to liberalising issues in the area of reproductive politics.³¹ The spur for change came from social movement activism, particularly that of the women's movements in the 1960s and 1970s which put on the agenda the issue of women's reproductive freedom leading to the introduction of legalised abortion in 1978. These changes have been tempered by the persistence within the political culture of a strain of thinking that identifies overtly with Vatican thinking.

This cohabitation with the Church spans the political spectrum encompassing both theo-conservatives (*teocons*)³² and theo-democrats (*teodems*).³³ This has had a detrimental impact on the liberalisation of matters in relation to access to reproductive services in recent years. With the blurring of the lines between the secular and the religious in this regard, a situation has arisen where a true representative politics is not being advanced in matters of bioethical controversy.³⁴ In this regard it would seem that the Vatican's continuing crusade to uphold what used to be called the 'sanctity of life' but is now, in a more media savvy age, being called the 'culture of life', (after all think the Vatican spin doctors how can people be against life?) is being successfully

30 Sandro Magister, *Chiesa extraparlamentare* (Napoli, 2001).

31 See further Lesley Caldwell, *Italian Family Matters: Women, Politics and Legal Reform* (London, 1991).

32 To be found broadly on the right of the political spectrum.

33 To be found amongst the ranks of centre-left politicians.

34 This is true of all aspects of Italian politics. This was to be seen particularly clearly during the years of Silvio Berlusconi's period in office from 2001 to 2006. See further Paul Ginsborg, *The Politics of Everyday Life: Making Choices, Changing Lives* (New Haven, 2005), pp. 1–11, and Paul Ginsborg, *Silvio Berlusconi: Television, Power and Patrimony* (London, 2004). Indeed Berlusconi can be seen as the apotheosis of the 'anti-politician', who sees representative democracy as a means only for personal gain.

translated into social policy. We have, as a result, a curious merging of the religious and the secular under a common ‘culture of life’. This ‘culture of life’ is of course a catch-all rhetorical device for introducing a *de facto* theocratic state in a *de jure* pluralist democracy.³⁵ This has enormous implications for individual freedom.

In Chapter 2 I analyse why Italian society has found it difficult to shed the paradigm of patriarchal familism. The post-war liberal democracy may have changed the relationship between the state and the male citizen but it did not change to the same degree the relationship between the state and the female citizen. The laws that trapped women in the private sphere in large part dated from the fascist period. In the new Republic these misogynist laws were not immediately repealed. The political elite continued to uphold a patriarchal social model. It was only as the result of concerted civil society pressure from the women’s movement from the 1960s onwards that this situation began to be transformed. The legal model of the family moved from one based on the primordial status of the father within the family to a relational model that took account of the interests of all family members.

Since the progressive movement of legislation in the 1970s and 1980s, a countertendency has emerged in the past decade. This has taken the form of an alliance between the Roman Catholic Church and politicians across the party spectrum. This theo-conservative lobby demands laws that promise a return to the hierarchal heteropatriarchal family model and which restrict sexual freedom, abortion, gay rights, and multiculturalism. This tendency desires to return to the dominion of the father’s law, *potestas patria*.³⁶ The persistence of patriarchy is evident despite the cultural and legal changes in relation to women’s position in society since the 1960s. Despite a diversity of family models, the cultural attachment to the notion of the heteropatriarchal family model remains strong in many quarters of Italian society. With the introduction in 2004 of very restrictive legislation in relation to assisted reproduction one can observe the successful operation of the theo-conservative backlash against the disappearance of the traditional family model.

Chapter 3 analyses the debates over abortion reform in the 1970s in what turned out to be a process of questioning accepted modes of social and political organisation. The struggle for the legalisation of abortion led to intense and sophisticated exchanges on whether liberal rights discourse could in fact change women’s material and symbolic position in a society that remained fixed within a masculine power structure. When the abortion law was introduced in 1978, it could not be seen as endorsing full reproductive freedom. Moreover, the law demonstrated that the power of reproductive choice was not ultimately in the hands of women. The law as a means of regulating abortion did not consider the real issue of reproductive freedom. In addition, the law provoked a bitter counter-reaction from traditionalist groups leading to a referendum on its repeal in 1981. The law itself survived following the

³⁵ See further, Damilano, *Il partito di Dio*.

³⁶ The term refers to the power of the father within the household in Roman Law. In Roman law, the family was under the tutelage of the *paterfamilias* or head of the household. See further Eva Cantarella, ‘Homicides of Honor: The Development of Italian Adultery Law over Two Millennia’, in David Kertzer and Richard Saller, (eds), *The Family in Italy: From Antiquity to the Present* (New Haven, 1991), pp. 229–244.

referendum, but the whole episode demonstrated a societal divide between traditional Roman Catholic views on the family and more progressive views on reproductive autonomy that could not be bridged by law reform alone.

In Chapter 4, I analyse the evolution of the conservative resistance to new models of reproductive freedom. A revitalised pro-life movement with the powerful backing of the Church has campaigned assiduously for the repeal of the abortion legislation and has along the way tried its best to sabotage its operation. This *vitapolitics* attempts to turn women into reproductive units and give voice to the embryo, to represent its interests as greater than a woman's and to make it more real, in representational terms, than the woman. Following the defeat in the referendum to repeal part of the abortion law the traditionalist lobby began to change its focus to call more strenuously and in a more sustained manner for the protection of human life from conception. The cultivation of a mass politics of embryonic life became the counterstrategy of the Church and lay conservative groups in the 1980s and 1990s. This would have severe consequences for the governance of new reproductive technologies and the question of reproductive freedom.

Chapter 5 looks at the success of such a strategy with the recently introduced law on assisted reproduction.³⁷ The new law prohibits testing of embryos for research purposes, freezing embryos and outlaws pre-implantation diagnosis for preventing genetically transmitted diseases. The law also prohibits donor insemination, denies access to assisted reproductive technologies to single women and ordains that no more than three eggs may be fertilised *in vitro* and that the resulting embryos be transferred to the womb simultaneously. As well as flying in the face of accepted societal norms of self-determination the text of the law paints a bleak picture of woman as reproducer. It excludes other familial formations, such as gay and lesbian couples from the provision of reproductive technologies and has at its heart an ideal of the family that is at odds with the current societal reality.

This development has come about as the result of a particular conflation of circumstances, namely, a successful campaign on the part of the Church and lay Catholic interest groups which placed the issue of the sanctity of embryonic life on the legislative agenda; the lack of any ideological commitment on the part of the main political parties in this area, the continued reliance of politicians on Church support, and the gradual weakening of the influence of feminism as a mass political movement. This law can of course be looked on as an anomaly, an attempt by a paternalistic elite in concert with the still vital political force of the Vatican to produce a manifesto for a traditional Roman Catholic conception of the family. However, on the other hand, it can be seen as an intriguing case study in the way in which patriarchal institutional power can overcome accepted norms of autonomy in a pluralist society.

The response of the Italian government to the regulation of assisted reproductive technologies refused to see regulation as a form of facilitation for scientific development. It took a dogmatic stance influenced by conservative Roman Catholic social teaching. This stance refused to recognise the changed status of the family

37 Legge 19 febbraio 2004, n.40, "Norme in materia di procreazione medicalmente assistita", (*Gazzetta Ufficiale* n.45 del 24 febbraio 2004).

and scientific reality in this regard. The law falls into the model of what Roger Brownsword has called 'regulated prohibition'.³⁸ This prohibition is brought about by the particular socio-cultural influences that the government chose to acknowledge, in this case the views of the Roman Catholic Church. The law had as its primary purpose the signalling of a particular notion of the family. In such a case we are faced with the use of law as a manifesto for another purpose. The law did not, unlike the English Human Fertilisation and Embryology Act 1990, attempt to provide an objective legal framework for the governance of assisted human reproduction.

Chapter 6 concludes the study by looking at how one might formulate a model in which reproductive rights might be secured. The chapter looks at alternative ways of framing reproductive citizenship. The Italian experience challenges pluralist models of bioethical governance. In the light of such a challenge I examine the possibility of achieving balanced bioethical policy in modern multi-ethical states.

³⁸ Roger Brownsword, 'Regulating Human Genetics: New Dilemmas for a New Millennium', *Medical Law Review*, 12 (2004): 14–39, p. 17.