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Who Owns Villa La Pietra? The Story of A Family, their Home, and an American University under Italian Law

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Who Owns Villa La Pietra?
The Story of A Family, their Home, and an American
University under Italian Law

NOTE

Felicia Caponigri[†]

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Abstract

In 1994 Harold Acton, son of Arthur Acton, an English art dealer in Florence, and Hortense Mitchell Acton, an American banking heiress, donated his family home, Villa La Pietra, to New York University. Today, this Tuscan villa is at the center of a declaration of paternity lawsuit and a claim of inheritance brought by Liana Beacci, Arthur Acton's daughter by his Italian secretary. In this Note, Felicia Caponigri presents the facts of the case, focusing on the provenance of the Villa, and the procedural posture of the case. Caponigri applies Italian law to argue that New York University might claim clear title to the Villa if Hortense's father gave her the Villa, or if Hortense set up a legal entity in which she placed title to Villa La Pietra. Caponigri also argues the Beacci might have a colorable claim if Hortense and Arthur Acton acquired the Villa together.

I INTRODUCTION

A PRESENT DAY VILLA LA PIETRA

A thirty-minute walk from the hustle and bustle of Florence's *centro storico*, at the very top of a steep hill along the Via Bolognese, behind stuccoed walls and imposing iron gates, within hushed olive groves, rest fifty-seven acres of Tuscan paradise.¹ Every semester, more than three hundred New York University ("NYU") students, including one hundred freshmen, arrive there to discover Italian culture, speak the Italian language, and immerse themselves in art history,

¹ The website of New York University's Office of Global Programs describes Villa La Pietra as "the outstanding historical villa and home of the New York University Florence program. Bequeathed to NYU in 1994 by Sir Harold Acton, the Florentine study abroad campus consists of 5 historic villas and 57 acres of gardens and olive groves." *Villa La Pietra*, N.Y.U. OFF. OF GLOB. PROGRAMS, <http://www.nyu.edu/global/lapietra/> (last visited Mar. 6, 2014).

literature, and other subjects curated within the Italian perspective.² When not in the classroom, students take part in a number of student activities on the grounds, including picking olives during the fall semester. Most students live in one of the five villas on the Villa La Pietra campus. The majority of their classes are held in Villa Ulivi, when they are not held on-site at the Uffizi museum or another Florentine landmark. For students enrolled in a select number of art history classes, class takes place in a room at the very top of the main villa, Villa La Pietra. Entering through the Villa's chapel, and past a portrait of the former lady of the Villa, the American expatriate and Florentine transplant Hortense Mitchell Acton, students ascend to their classrooms.

Tuscan yellow, framed by green shutters, Villa La Pietra itself currently stands as a monument to a family, the Actons, their art collection, and the fantastical life they created for themselves during a tumultuous twentieth century. Today a house museum, Villa La Pietra has been painstakingly restored by NYU to its glory days when the Actons lived and entertained there. Filled to the brim with early Italian Renaissance *primitivi* work, baroque furniture, sculptures from classical antiquity, and exemplary objects from the Far East, alongside family portraits from the early twentieth century, Villa La Pietra's hushed museum atmosphere belies the activity of visual communication occurring between these artworks' themes and motifs.³

But who was the true architect of this visual communication? What is the true provenance of this early twentieth century vision of art, culture, and life under the Tuscan sun?

² For details of the NYU Florence program's course offerings and the number of students, see *NYU Florence*, N.Y.U. OFF. OF GLOB. PROGRAMS, <http://www.nyu.edu/global/global-academic-centers/florence.html> (last visited Mar. 6, 2014); see also NYU Florence Course List for 2014, N.Y.U. OFF. OF GLOB. PROGRAMS, <http://www.nyu.edu/global/global-academic-centers/florence/academics/courses-spring-2014.html> (last visited Mar. 6, 2014).

³ Villa La Pietra is defined by layers of history, which are all unified within its very architecture. The Actons harnessed and utilized all parts of the Villa's history in their presentation of the Villa for themselves, their friends, and fellow visiting expatriates and dignitaries whom they hosted. The Villa had its genesis as the home of Francesco Sassetti, the banker of the Medici family, from 1460 to 1545. Its resulting Renaissance architecture, with rooms built around a courtyard on a main axis extending through the house to the gardens, are key elements of the Villa's Acton era interior decoration. Tapestries and ceramics depicting the Medici coat of arms are dispersed throughout the art collection. Later owners of the Villa (the Capponi family from 1545 to 1877) tweaked the Villa and its architecture, notably enclosing the courtyard with a glass ceiling. The Villa's Acton era decoration takes advantage of this too. With a fountain complete with fish in the middle, and frescoes bought and placed along the winding staircase, the indoor courtyard is another testament to how the placement of the Villa's art collection complements the Villa's organic, changing historical nature. Like the Villa's precise indoor decoration, the Villa's gardens, complete with an outdoor *teatrino*, sculpted through precisely groomed hedges, and peppered with statuary, resurrect a traditional Italian Renaissance aesthetic as interpreted through the distinct perspective of a twentieth century American expatriate revival. See generally *Villa La Pietra: The Acton Collection*, N.Y.U. OFF. OF GLOB. PROGRAMS, <http://www.nyu.edu/global/lapietra/art.collection/> (last visited Mar. 14, 2015); *Villa La Pietra: Garden*, N.Y.U. OFF. OF GLOB. PROGRAMS, <http://www.nyu.edu/global/lapietra/garden/> (last visited Mar. 14, 2015). For detailed information on Villa La Pietra during the Acton era, including the aforementioned dates and architectural information, see *Transatlantic Modernities*, VLP COLLECTIONS, <http://vlpcollections.org/transatlantic/> (last visited Mar. 14, 2015).

B VILLA LA PIETRA'S CURRENT RELATIONSHIP WITH
THE FLORENTINE AND AMERICAN EXPATRIATE COMMUNITIES

For the tourist abroad, Florence is an idyllic Renaissance town caught in a time warp, with cobblestones that seem to bear the footprint of Dante himself. To this day, Florence embodies that age-old Italian adage, “*Tutto il mondo è paese*” to its many residents.⁴ Florence, for all its Renaissance glory, is a small town, where news travels fast, and everyone seems to know each other. In the early twentieth century, this was even more so. Scholars have noted that early twentieth century Florence was a welcome respite from modern civilization, a place of nostalgia.⁵ The tight-knit group of American expatriates living in Florence interacted with a select number of Florentines who shared their vision. They had their own newspapers, among them the *Florentine Herald* and the *Florentine Gazette*. These newspapers did more than simply profile places to visit in Florence and recount the pleasures of the local English Café Doney's on Via Tornabuoni; they also published a “List of Residents” in Florence, and their visitors.⁶ Anglo-American residents would visit the art of great Florentine collectors, such as Frederick Stibbert, meet for tea at their villas to discuss society news and lofty subjects, and welcome dignitaries at their exclusive clubs.⁷

The calm surface and presentation of this nostalgic life, however, was not just a result of the inherent beauty of Florence and its residents' observations.⁸ Indeed, it was the result of a deliberate construction. Art and antiquities dealers, long before the 1970 UNESCO Convention prohibited their actions, traded on this romance to sell and sometimes smuggle works of great cultural importance out of Italy. One need only read the letters of the famed art historian and dealer Bernard Berenson to Isabella Stewart Gardner to understand the delicate dance and unbridled enthusiasm inherent to the relationship between dealers and their

⁴ This phrase translates to “The whole world is a village.”

⁵ BERND ROECK, *FLORENCE 1900: THE QUEST FOR ARCADIA* 4–5 (Stewart Spencer trans., Yale University Press 2009) (2001).

⁶ I have made an in-depth study of these newspapers, which may be found in the archives of the British Institute of Florence, the *Biblioteca Marucelliana*, and the *Biblioteca Nazionale* in Florence. It is important to note that the Actons' residence at Villa La Pietra was included in the residents of Florence, and was spotlighted in articles. The importance of the dates of these notices will be important later to the factual inquiry of the paternity suit and inheritance claim by Liana Beacci against NYU. The first evidence of the Actons' residence at Villa La Pietra is in a “List of Residents.” *List of British and American Residents in Florence*, *FLORENCE HERALD*, Dec. 3, 1908, at 5 [hereinafter *List of Residents*]. Prior to his residence at Villa La Pietra, Arthur Acton, referred to as Mr. Acton, is listed in 1895 as residing at 8 Via Caracciolo. *List of Residents*, *ITALIAN GAZETTE & FLORENCE GAZETTE*, Mar. 30, 1895, at 9. Photo Albums in the La Pietra archive contain images, with notations by Hortense, of a building on the Via Caracciolo, as well as visits to other Villas in the Florentine countryside, prior to any photographic documentation of Villa La Pietra.

⁷ One such club to which Arthur Acton belonged was the Florence Club. *In and Out of Florence*, *FLORENCE HERALD*, Dec. 6, 1913, at 4 (“British ambassador in Florence, en route to Rome, entertained by the Florence Club . . . Arthur Acton among gentlemen present.”).

⁸ As the representation of a prototypical British woman enchanted by Italy, Eleanor Lavish says in Ruth Jhabvala's screenplay of *A Room with a View*, “there is something in the Italian landscape which inclines even the most stolid nature to romance.” Ruth Praver Jhabvala, Screenplay to *A Room with a View*, *DAILY SCRIPT* 40, http://www.dailyscript.com/scripts/A_Room_With_A_View.pdf (last visited July 27, 2015); *A ROOM WITH A VIEW* (Merchant Ivory Prods. 1985).

American clientele.⁹ Homes were not only places of personal rest, but also calling cards—the proper interior decoration and art collection communicated an understanding of the Florentine dream. The proper attire and creativity in fashion and dress could prompt a long sought-after invitation to a fancy-dress ball. Personal, intimate details of an Anglo-American expatriate life were often hidden away, not to threaten the foundation of the Anglo-American dream of Florence.

This same calm surface and presentation of nostalgia is visible today at Villa La Pietra. Apart from hosting NYU's study-abroad program, the Villa hosts conferences, academic lectures, and political figures.¹⁰ It also blends modern luxury with its own historic grandeur.¹¹ However, like the nostalgic dream of early twentieth century Florence created by its Anglo-American residents, the surface of NYU's La Pietra is also constructed; it is a construction of calm in the face of a declaration of paternity lawsuit, and a claim of inheritance, both of which threaten NYU's very ownership of Villa La Pietra.

C LITIGATION

In 1994, Harold Acton (“Harold”)—son of Hortense Mitchell Acton (“Hortense”), a banking heiress from Chicago, Illinois—and Arthur Acton (“Acton”)—an English art dealer and agent of Stanford White—passed away at Villa La Pietra. Declared the prototypical aesthete of the 1920s by the *New York Times*, “his family’s Renaissance villa on a hillside overlooking Florence” was donated to NYU.¹² Almost as soon as the donation occurred, NYU was sued and named

⁹ For excerpts of the correspondence of Isabella Stewart Gardner and Bernard Berenson, see generally LOUISE HALL THARP, *MRS. JACK: A BIOGRAPHY OF ISABELLA STEWART GARDNER* (1965). Isabella writes, “I am bitten by the Rembrandt and today being Sunday I will cable ‘Yes Rembrandt, Yes Tintoretto.’” ERNEST SAMUELS, *BERNARD BERENSON: THE MAKING OF A CONNOISSEUR* 244 (1979).

¹⁰ In 1999, President Bill Clinton stayed at the Villa prior to the Conference on Progressive Governance for the 21st Century. See William J. Clinton, Remarks at a Dinner for the Conference on Progressive Governance for the 21st Century in Florence, Italy, in 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: WILLIAM J. CLINTON 2127, 2127–31 (2000).

¹¹ The Villa hosted a Louis Vuitton collection launch party, displaying items of the new Louis Vuitton collection alongside Hortense Mitchell Acton’s personally engraved Louis Vuitton trunks from the late nineteenth century in 2004. *Portfolio: Louis Vuitton*, SMART& R ASSOCIATI, <http://www.smart-er.it/dettaglio-progetti.php?id=51> (last visited Mar. 6, 2014).

¹² John Darnton, *Sir Harold Acton Is Dead at 89; Prototypic Esthete of the 1920’s*, N.Y. TIMES, Mar. 1, 1994, <http://www.nytimes.com/1994/03/01/obituaries/sir-harold-acton-is-dead-at-89-prototypic-esthete-of-the-1920-s.html>; see also *The Talk of the Town*, NEW YORKER, Oct. 30, 1995 at 33; Judy Bachrach, *Florentine Mischief*, VANITY FAIR, Dec. 2003, at 258. In reality, Harold Acton’s American will, which postdated his Italian Last Will and Testament, left all his shares in the La Pietra Corporation, which holds the title to Villa La Pietra, to NYU. Last Will and Testament of Harold Acton, at 2 (Dec. 28, 1993) (on file with author). It is important here to note that the full estate of Harold Acton included not only Villa La Pietra, the art collection in the Villa, the fifty-seven acres and surrounding Villas, but also the first two floors of the Palazzo Lanfredini in downtown Florence, in which The British Institute of Florence is currently located. This Note considers only colorable claims to Villa La Pietra itself, not the art collection within, to the Palazzo Lanfredini, nor to any other Villa on the property. This Note also only considers the defendant NYU and their arguments in the case, and not the British Institute, or Avv. Andrea Scavetta, the executor of Harold Acton’s estate. It is also important to note here, as an aside in the case, that if NYU cannot fulfill the wishes of Harold Acton’s last will and testament, namely to maintain

in 1995 as the defendant in a declaration of paternity suit filed by an Italian woman in her seventies, Liana Beacci (“Beacci”).¹³ Being the daughter of Elsie Beacci (“Elsie”), who had been Acton’s secretary, Beacci’s petition for a legal declaration that Arthur Acton was her father was and still is a necessary precondition to any claim of right under Italy’s generous inheritance laws.¹⁴ First filed in 1995, the declaration of paternity suit is still being litigated in Italian courts as of this writing, notwithstanding Beacci’s death in 2000 at age 83.¹⁵ Apart from Italy’s notoriously slow judicial system, the case has raised new issues of Italian law, allowing it to continue rather than die a legal death. One of the most important of these issues recently brought the parties to the *Corte di Cassazione*, Italy’s supreme court. This issue is whether NYU was properly named as the defendant in the suit for declaration of paternity when Article 276 of the Italian Civil Code (or “C.c.”), at the time the case was brought, only allowed people to sue their presumed parents or those parents’ heirs—and not the heirs of the heirs—to obtain judicial recognition of their status as biological children.¹⁶ This issue has been made more complex by the Italian Parliament’s passage in 2012 of the *filiazione* reform, which revised Article 276.¹⁷ As of February 7, 2014, in the case of the absence of both the presumed parent and his heirs, a person seeking a declaration of paternity now has the right to present the claim in front of a *curatore speciale* appointed by the judge.¹⁸

Villa La Pietra “for the study and development of the arts,” the Villa will go to the Art Institute of Chicago. *Id.* at 4.

¹³ *The Talk of the Town*, *supra* note 12, at 34.

¹⁴ ANTONIO TULLIO, LA SUCCESSIONE NECESSARIA 140 (2012).

¹⁵ Anthony Haden-Guest, *A Family Affair: New York University and the Acton Saga*, N.Y. OBSERVER (Sept. 10, 2013, 5:42 PM), <http://galleristny.com/2013/09/a-family-affair-new-york-university-and-the-acton-saga/>.

¹⁶ CODICE CIVILE [C.C.] [CIVIL CODE] art. 276 (1969). It is important to note here that the Italian code at the time used the term *naturale* to refer to children born outside of marriage. Here, the Note will use the English word “biological” for the Italian *naturale*.

¹⁷ Legge 10 dicembre 2012, n. 219, G.U. Dec. 17, 2012, n. 293. *Filiazione* means “filiation”, and refers to the status of being a child of a parent. Throughout the Note, the word *filiazione* will be used in place of “filiation.”

¹⁸ The only comprehensive book in English on the Italian Code of Civil Procedure translates *curatore speciale* as “special trustee.” SIMONA GROSSI & MARIA CRISTINA PAGNI, COMMENTARY ON THE ITALIAN CODE OF CIVIL PROCEDURE 135–36 (2010). Because of the close relationship in this case between Article 78 of the Italian Code of Civil Procedure and Article 276 of the Civil Code, hereinafter, when used, “special trustee” means *curatore speciale* in Italian law. Other legal scholarship alternatively translates *curatore speciale* literally, substituting the word “special curator” in English, defining it as a “special curator, *curatore speciale*, who shares decision-making power with the guardian.” Nicholas A. Secara, Note, *Has Italy Discovered Virgil? Utilizing the British Archetype to Create End-of-Life Legislation in Italy*, 19 CARDOZO J. INT’L & COMP. L. 127, 160 (2011) (quoting JOHN GRIFFITHS, HELEEN WEYERS & MAURICE ADAMS, EUTHANASIA AND LAW IN EUROPE 412 (2008)) (discussing the appointment of a *curatore speciale* to share power with a father who, as his daughter’s guardian, wanted to withdraw medical treatment since she was in a coma).

The exact language of the revised Article 276, entitled *Legittimazione passiva* is:

La domanda per la dichiarazione di paternità o di maternità naturale deve essere proposta nei confronti del presunto genitore o, in sua mancanza, nei confronti dei suoi eredi. In loro mancanza, la domanda deve essere proposta nei confronti di un curatore nominato dal giudice davanti al quale il giudizio deve essere promosso. Alla domanda può contraddire chiunque vi abbia interesse.

In their judicial opinions, both the *Tribunale*—the Court of First Instance—and the *Corte d'Appello*—the Court of Appeals—have claimed that principles found in the Italian Constitution (“Constitution”), justify denying a person legal recourse to seek the status of a legally recognized child. These principles are the protection of the legitimate family in Article 30 and the delegation of discretion to the legislature to promulgate rules regarding the ascertainment of paternity in Article 29.¹⁹ Most recently, however, in a judgment deposited in September 2014, the *Corte di Cassazione* has ruled that, according to both the principles of equality and fundamental rights enshrined in Articles 2 and 3 of the Constitution as well as the legislative intent of the *filiazione* reform, the Beaccis do indeed have legal recourse, allowing the Beaccis to seek the declaration of the status of Liana Beacci as a legally recognized child.²⁰

The legal recognition of Beacci as the biological child of Acton goes hand in hand with the second issue in the case: whether Beacci and her heirs may successfully claim inheritance rights to Villa La Pietra. A Beacci inheritance claim cannot even be considered without Beacci first obtaining the status of a recognized biological child.²¹

The purpose of this Note is to examine whether NYU can claim that Hortense remained the sole owner of Villa La Pietra and therefore that she bequeathed Villa La Pietra to her son, Harold, fully and without any colorable claims by her husband’s natural offspring, Beacci.²² There are three applications of Italian law under which NYU could have and could still indeed successfully claim this, and one application of Italian law under which they could not. This Note will examine these four scenarios, in the following order:

1. NYU might have successfully claimed that NYU was not the proper defendant in the case, thereby precluding Beacci’s heirs from bringing their inheritance claim;
2. NYU successfully claims Hortense was given Villa La Pietra by her father, the millionaire Chicago banker William Mitchell, thereby retaining sole title to the Villa as her personal property, and therefore bequeathing clear title to her son Harold, and then to NYU;

C.c. art. 276. The law passed that caused the *filiazione* reform to enter into force was Decreto Legge, 28 dicembre 2013, n. 154., G.U. Dec. 10, 2012, n. 219.

¹⁹ Art. 29 COSTITUZIONE [COST.]; Art. 30 Cost.

²⁰ *Si riapre la battaglia per l'eredità di sir Acton* [Reopening the Battle for the Legacy of Sir Acton], LA REPUBBLICA.IT: FIRENZE (Sept. 24, 2014, 1:00 PM), http://firenze.repubblica.it/cronaca/2014/09/24/news/si_riapre_la_battaglia_per_l_eredit_di_sir_acton-96545717/; see also Cass., sez. I, 19 settembre 2014, n. 19790, Foro it. 2015, I, 2126.

²¹ TULLIO, *supra* note 14. It is important to note here that, by applying the Italian laws of succession and inheritance to the facts of the case, this Note dives into a hypothetical and theoretical application, since the actual parties have not even arrived at litigating this issue in their real-life legal action.

²² And as a result, whether NYU might itself retain good title to Villa La Pietra and not risk any threat to the existence of its study abroad program and campus.

3. NYU successfully claims Hortense set up a legal entity, whether a corporation or trust, placing legal title to Villa La Pietra in such entity, thereby bequeathing clear title to her son Harold, and then NYU; and
4. Hortense and Acton acquired the Villa together, thereby resulting in a colorable claim by Liana Beacci to Villa La Pietra and the property.

Before presenting these scenarios, this Note will set forth the facts of the case as each party to the case has presented them. It will then review the procedural posture of the *Beacci v. NYU* case. Finally, it will situate Italian inheritance law within the greater historical context of Italian family law and its many incarnations and reforms.²³

At the heart of this legal battle and these different scenarios is a great, as yet unbound, balance between the protection of a fundamental facet of a person's identity: their paternity, their knowledge of who they are and where they come from, and the protection of the legacy of a villa and a family, and the rights of the curator of that legacy, NYU. The quest to find this balance frames and informs the Note's analysis.

II FACTS

Both parties generally accept the following facts: Hortense Mitchell, a Chicago heiress, and Arthur Acton, an agent of Stanford White in Florence, married in 1903.²⁴ In 1907, Villa La Pietra was purchased. Hortense and Acton resided at Villa La Pietra after this date. Sometime before 1917, Elsie Beacci came to work at the Villa and sometime thereafter, left her employment at the Villa. Hortense and Arthur Acton had two children, Harold, born in 1904, and William, born in 1906. Elsie had one daughter, Liana, born in 1917. It is in painting the composition within this factual frame that differences begin to emerge.

A THE BEACCIS

Elsie's collected diary entries are the main source of the Beaccis' facts. Beacci's daughter, Dialta Alliata-Lensi Orlandi ("Dialta"), has published an edited version of these letters in book form. The book is entitled *My Mother, My Father and His Wife Hortense*. According to this version of the facts, Elsie met Arthur Acton in 1897, when she was working in a doctor's office in Florence.²⁵ On

²³ Contextualizing the law historically is especially important for this case, because Italian law will apply the rules of succession from the 1942 Civil Code, without its revisions up to the present day, to Arthur Acton's estate.

²⁴ An architect whose works included Madison Square Garden, Stanford White also procured Italian antiquities through contacts on the ground in Italy, like Arthur Acton, for his many millionaire American clients. A talented, yet scandalous figure, White's death was one of the inspirations for E.L. Doctorow's *Ragtime*. White was shot and killed in 1906 in the garden terrace on top of Madison Square Garden by Harry Kendall Thaw, the husband of one of White's former lovers, Evelyn Nesbit. For a description of White's activity in the antiquities market, see generally WAYNE CRAVEN, *STANFORD WHITE: DECORATOR IN OPULENCE AND DEALER IN ANTIQUITIES* (2005).

²⁵ DIALTA ALLIATA-LENSI ORLANDI, *MY MOTHER, MY FATHER, AND HIS WIFE HORTENSE* 46 (2013).

March 15, 1897, Arthur took Elsie to see Villa La Pietra, which at the time was in “a state of abandonment.”²⁶ After declarations by Arthur that La Pietra was his mission, and that he was meant to restore it, collect art there, and “create a lasting bastion of classic Florentine vision and grace,” Arthur asked Elsie to accompany him on this mission to “manage things and be sufficiently independent to handle my affairs when I am away.”²⁷ On August 1, 1897, Elsie wrote that Arthur had “rented the property for next to nothing in exchange for taking care of it and with a written intent from the owner that the tiny payment and the expenses for the renovation will go towards the eventual purchase price. He is intending to purchase the Villa one day.”²⁸ According to diary entries published in this book, Elsie did manage Villa La Pietra. She installed artwork, even after Arthur and Hortense married, placed statues in the garden, and managed the workers who helped to restore the Villa.²⁹ In the book, both the Villa and the art collection are presented as the result of the creative spark of Arthur and Elsie, as the physical embodiment of their hidden love.³⁰ According to the same, Elsie only departed La Pietra in 1916 when she was expecting her daughter, Liana. Shortly after this departure, Elsie wrote that Acton placed La Pietra and the rest of the villas in the complex in Hortense’s name in order to avoid paying Italian taxes.³¹ Moreover, according to this same account, Acton bought all the villas on the property, including La Pietra, himself, and gave La Pietra in 1907 “to Hortense as a present for the birth of the boys.”³² For the rest of her life, Elsie ran the *Pensione Beacci-Tornabuoni* on the Via Tornabuoni in Florence’s *centro storico*.

For her part, Elsie’s daughter Liana was educated in the best schools in England and Switzerland and “was a frequent guest” at the Villa.³³ Arthur Acton also painted many portraits of Liana and her mother, which the Beacci family has in their possession.³⁴ Beacci’s relationship with Acton is portrayed as one of silence and ignorant bliss, in which neither can admit to the other nor discuss that they are father and daughter, and yet they act, in private, as if they were. Moreover, Beacci’s interactions were not limited to Acton, but extended to her half-brother William, with whom she apparently had a very close relationship.³⁵

Notwithstanding these happy entries, which include detailed accounts of Elsie’s romantic interludes with Acton in all their physicality, Elsie’s diary goes to great lengths to portray Hortense as an alcoholic, a drunk, and as a woman who had no comprehension of her husband Arthur’s interest in art, and no interest

²⁶ *Id.* at 62.

²⁷ *Id.* at 62–63.

²⁸ *Id.* at 75.

²⁹ *Id.* at 102–03.

³⁰ For example, a reference to “our garden rooms” and a tryst amongst statues. *Id.* at 171.

³¹ *Id.* at 244. Please note that a history and examination of Italian tax law is beyond the scope of this Note.

³² *Id.* at 243.

³³ *The Talk of the Town*, *supra* note 12, at 34.

³⁴ *See id.*; Bachrach, *supra* note 12, at 280.

³⁵ ALLIATA-LENSI ORLANDI, *supra* note 25, at 284.

in his vision for La Pietra.³⁶ Many scenes are written in which Hortense at once complains, “I miss my life, . . . I miss Lake Geneva, I miss our house,” and alternatively, “[a]ll these old things mean nothing to me . . . [t]hey are just objects.”³⁷ Elsie is portrayed as the interpreter who unlocks Florence for Hortense, and as Hortense’s only friend. One of the most detailed passages concerns the marriage of Louise Dillingham, Hortense’s cousin, which took place at Villa La Pietra in 1910. According to the Beacci account, Hortense received word that her father died that very day, and everyone wore black to the wedding.³⁸ Hortense is also said to be absent from Florence and the Villa for a whole year during World War I, from 1915 to 1916.³⁹

All of these details cumulate in a portrait of Hortense as a weak, childish woman with no understanding of her surroundings. Hortense’s outbursts, especially those directed at Elsie as she confronts Acton about the affair, are portrayed as immature rather than as the justified concerns of a wronged wife. She is portrayed as drinking martinis until in a drunken stupor as she lies around the Villa in Chinese silks.⁴⁰ The book ends with the revelation that Acton was himself illegitimate, completing the narrative circle irrevocably linking him with his own daughter.

Liana Beacci married and had five children. She lived with her husband in Italy, close to Florence.⁴¹ She and Acton continued to speak and enjoyed a convivial relationship. In 1952, according to Beacci, Acton called her to the Villa, stood her next to Harold and told her to “rely on Harold, who would take care of me as he himself [Acton] had always done.”⁴² Acton further said “Harold would manage La Pietra as long as Harold lived, and that in the event that Harold died without heirs, Acton’s wish was for the estate to be inherited by my five children and me.”⁴³ This was the last time Beacci saw Acton.

B THE ACTONS⁴⁴

As previously observed, much of Dialta’s book centers on her grandmother playing the heroine to Hortense’s wicked wife, and her mother playing the stoic victim to Hortense’s reign of terror.⁴⁵ The facts show, however, that far from a stereotypical drunk housewife who was ignorant of the beauty around her, Hort-

³⁶ *Id.* at 212, 220, 260–63, 310, 316–19.

³⁷ *Id.* at 192–93.

³⁸ *Id.* at 204–05.

³⁹ *Id.* at 233.

⁴⁰ *Id.* at 383.

⁴¹ *Id.* at 322.

⁴² *Id.* at 363.

⁴³ *Id.* at 363–64.

⁴⁴ Portions of these facts were discovered while researching my undergraduate thesis. Felicia Caponigri, *Hortense Mitchell Acton: From Fashion Collector to Art Collector* (Apr. 2012) (unpublished undergraduate thesis, University of Notre Dame) (on file with author). My undergraduate thesis has been used to create a portion of Villa La Pietra’s online exhibit, *Transatlantic Modernities*. See *Hortense’s Dress*, TRANSATLANTIC MODERNITIES, <http://www.vlpcollections.org/transatlanticmodernities/hortenses-dress/> (last visited Mar. 14, 2015).

⁴⁵ ALLIATA-LENSI ORLANDI, *supra* note 25, at 304–05; see also *supra* Section II.A.

ense Mitchell Acton was a woman of refined taste, with a sense of adventure, who had a knack for socializing in early twentieth century Florence.

Prior to her arrival in Florence, Hortense played her own part in a successful Chicago family. Her father, William Mitchell, was a self-made millionaire who, as a youth, kept the company of California gold miners before founding the Alton Railway in Illinois. After the Great Fire in 1872, he tempted his fate in Chicago, and was offered the presidency of the Illinois Trust and Savings Bank.⁴⁶ Hortense had just been born. In the many profiles of her brother, the multi-millionaire John J. Mitchell, who succeeded his father as President of the Illinois Savings and Trust, Hortense's family and their work ethic were described as "humble" and "democratic."⁴⁷ Collecting ran in Hortense's family. Her brother John bought a summer home made out of the Ceylon (modern Sri Lanka) building built to represent that country and its culture from the famous World's Columbian Exposition of 1893 on Lake Geneva in Wisconsin.⁴⁸ Hortense's older sister, Mrs. (Mary) Chauncey J. Blair, was also a collector and was one of the founding members of the Antiquarian Society at the Art Institute of Chicago, donating multiple pieces of decorative arts to the Art Institute.⁴⁹ Coincidentally, Mary's home in Chicago was designed in the model of an Italian Renaissance villa, and she took up residence at it prior to 1901, before Hortense married Arthur Acton.⁵⁰

Before meeting Acton (presumably while on holiday in Egypt), Hortense graduated from Dearborn Seminary in Chicago and went on to study in Berlin.⁵¹ She was also a regular on the Chicago social scene. Not much is known about Acton prior to his arrival in Florence, although multiple facts point to his training as an artist at the *Académie des Beaux-Arts* in Paris, where some speculate he met Hortense's brother, Guy Mitchell.⁵² An agent of Stanford White's in Florence for certain, Acton is quoted in the American press shortly after Stanford White's death, defending his late friend's name and honor.⁵³ Mentioned by

⁴⁶ See *William H. Mitchell Dies*, CHI. DAILY TRIB., Mar. 9, 1910, at 4.

⁴⁷ See *One of the Nation's Leading Financiers*, CHI. DAILY TRIB., May 24, 1901, at 11.

⁴⁸ Hortense visited the home multiple times. A photograph of John's summer home can be found in the photo archives of Villa La Pietra. Likewise, images of the Ceylon Building from the World's Columbian Exposition confirm that John's home is the same building. CAROLYN HOPE SMELTZER & MARTHA KIEFER CUCCO, LAKE GENEVA IN VINTAGE POSTCARDS 25 (2005).

⁴⁹ Membership in such societies in the late nineteenth and early twentieth centuries marked the movement of nineteenth century women from the inner sphere of their homes into the public sphere. The Antiquarian Society at the Art Institute soon became a force to be reckoned with, seeking donations from Chicago's elite. For more information on the Society, see Celia Hilliard, "Higher Things": *Remembering the Early Antiquarians*, MUSEUM STUD., Fall 2002, at 6.

⁵⁰ For information on Mary's home, see *Herma Clark's Letter*, CHI. DAILY TRIB., Feb. 20, 1949.

⁵¹ Judith Cass, *Dearborn Seminary Alumnae Association Meets*, CHI. DAILY TRIB., Jan. 18, 1933, at 15 (for list of Dearborn Alumni); Passport Application of Hortense Mitchell Acton to Consulate of the United States in Berlin (Sept. 28, 1889) (on file with author); *In The Society World*, CHI. DAILY TRIB., Oct. 11, 1902, at 13 (describing Hortense's intent to winter in Egypt with her brother Guy and their mother).

⁵² See generally R. TERRY SCHNADELBACH, *HIDDEN LIVES/SECRET GARDENS: THE FLORENTINE VILLAS GAMBERIA, LA PIETRA, AND I TATTI* (2009) (commenting on Acton's years in Paris).

⁵³ Arthur Acton was quoted defending Stanford White's honor after his death: "[A]rtists intend to stand by Mr. White's memory and protect it as far as possible from the calumny which the other

Bernard Berenson to Isabella Stewart Gardner as a “bounder” (a less than flattering term), Acton seemed to always be considered a collector of bric-a-brac by his fellow Anglo-Americans expatriates and Florentine art collectors, while American visitors were usually enthused about seeing his collection.⁵⁴ It is still uncertain whether Arthur Acton was related to the famous noble English Actons who then made their home in Naples.⁵⁵

When she moved to Florence in 1904 with Arthur, one of the first things Hortense did was establish relationships with leading art collectors of the day. That same year she visited the Oriental collection of Frederick Stibbert, and wrote him a letter thanking him for lending her a book on Chinese costume, which she would use as inspiration for a dress to wear at an upcoming ball.⁵⁶ Far from frivolity or simple weirdness, Hortense’s chinoiserie robes and kimonos that she is reported to have worn later in life were an extension of her early Orientalist taste, a commonality she shared with celebrated Florentines. Hortense’s Orientalist taste was, in the early twentieth century, an expression of cultural colonialism, through which members of the Anglo-American and Florentine elite understood other cultures. In fact, Anglo-Americans understood and mediated their relationship this way not only with the Orient, but also with Italians and Florence itself. It is this mediation in which Hortense engaged when she dressed up in a Paul Poiret costume alongside her husband and danced the night away as an Arabian princess at a Venetian masquerade ball at the American ambassador’s Villa Schifanoia in 1914.⁵⁷

Through her fashion and her aesthetic taste, Hortense created social relationships that benefited Arthur Acton, their life at Villa La Pietra, and the art collecting done there. Before his marriage to Hortense, notwithstanding his supposed great residence in Florence, there is barely a mention of Acton in the Anglo-Florentine newspapers of the time.⁵⁸ Instead, once he married Hortense, Arthur began to not only appear in the society columns, but also to be noticed, although perhaps not completely admired, for his art collection and the gardens of Villa La Pietra.⁵⁹

side of the case is trying to heap on it.” *Admires Collection: Italian Connoisseur Praises Chas. L. Freer’s Paintings*, DETROIT FREE PRESS, Sept. 7, 1906, at 5. In retrospect, these words seem rather prophetic, given the calumny the Beacci claim is heaping on the Acton memory.

⁵⁴ SCHNADELBACH, *supra* note 52, at 92 (for details of Berenson’s letter); Letter from Pauline Kohlsaatt Palmer, in *THE LETTERS OF PAULINE PALMER 190* (Elanor Dwight ed., 2006) (detailing the excitement Chicago friends felt at the chance to see some “real antiquities” upon visiting Hortense and Acton at Villa La Pietra for Louise Dillingham’s wedding).

⁵⁵ Harold has described his father as an orphan. HAROLD ACTON, *MORE MEMOIRS OF AN AESTHETE* 321 (Faber & Faber 2008) (1970).

⁵⁶ Hortense M. Acton, Thank You Letter to Frederick Stibbert (1904) (on file with *Museo Stibbert* Archive, Florence, Italy).

⁵⁷ *Social Intelligence*, FLORENCE HERALD, Mar. 28, 1914 (on file with *Biblioteca Marucelliana* in Florence, Italy).

⁵⁸ *List of Residents*, *supra* note 6.

⁵⁹ See, e.g., *The Tuscan Villas as Home rather than as Show-places*, ITALIAN MAIL, Jan. 27, 1923. In a review of an upcoming book in which it was featured, the newspaper commented on Villa La Pietra and its owners, noting they “ha[d] allowed the genius loci of the whole house to come forth as part of the garden.” *Id.*

According to multiple sources, the title of Villa La Pietra was always in Hortense's name, and never in Arthur's.⁶⁰ Photographs located in the Villa La Pietra Photographic Archive show that, far from wearing black, everyone at the 1910 wedding at La Pietra wore white or a similarly light color.⁶¹ Likewise, the Beacci diaries date the wedding as May 3, 1910, while William Mitchell's obituary in the *Chicago Daily Tribune* is dated March 9, 1910.

While there is indeed a lack of society news about Hortense in the years when the Beaccis claim she was out of Italy, the year leading up to it, 1914, displays one of Hortense's most active social calendars. In the span of one month, Hortense was dubbed the hostess of the week. She attended receptions and picnic luncheons, a New Year's Day *musicale*, where she apparently very much enjoyed the tango alongside Acton, and dressed William and Harold up in authentic Chinese garb for a Children's Fancy Dress Cotillion.⁶² When Hortense did travel, Acton often came with her, and these departures, like their parties, were noted in the society pages. After World War II and the loss of her son, William, Hortense kept to herself at the Villa, reading books and entertaining guests until her death in 1962. Arthur predeceased her in 1953.

Accounts of Harold's relationship with his parents have said that it was strained, with Harold himself admitting that his parents preferred William.⁶³ These articles (published in respectable names such as *The New Yorker* and *Vanity Fair*) have gone so far as to state that Harold complained to Bernard Berenson about these parent-child issues. However, in his memoirs, Harold spoke

⁶⁰ Not only do the Beaccis admit this in the published letters, but multiple people interviewed for this Note have confirmed that title to the property was indeed in Hortense's name. So far, this Author has been unable to obtain the exact title from the *Pubblico Registro Conservatorio* in Florence, although a contract registered in 1930 located in the *Archivio Storico* of the *Comune di Firenze* names Hortense as the sole owner of land on Via Bolognese. "Acton Hortense. Cessione di terreno in via Bolognese" fra villa Ruspoli e villa La Pietra di proprietà della medesima, (1928–1929) (on file with *Archivio Storico* of the *Comune di Firenze*).

⁶¹ For a photograph of the 1910 wedding, see A. RICHARD TURNER, *LA PIETRA: FLORENCE, A FAMILY, AND A VILLA* 62 (2002).

⁶² For details of Hortense's social outings in these months see *Social Intelligence*, FLORENCE HERALD, Jan. 31, 1914 ("Mrs. A Acton one of the hostesses of the week"); *Social Intelligence*, FLORENCE HERALD, Jan. 17, 1914 ("Mr and Mrs A Acton at picnic luncheon arranged last week at the Member's Club House at San Donato"); *Social Intelligence*, FLORENCE HERALD, Jan. 10, 1914 ("Mr and Mrs Acton attended the 'Supper Tango' at the Grand Hotel on December 31st"); *Social Intelligence*, FLORENCE HERALD, Jan. 3, 1914 ("we noted Mrs A Acton's little boys—a most authentic pair of Chinese—a mandarin in pink and a coolie in sky blue satin"). All articles are on file with *Biblioteca Marucelliana* and *Biblioteca Nazionale* in Florence, Italy. *Social Intelligence* and *In and Out of Florence* were regular columns on page four of *The Florence Herald*. Many of Hortense's social events still occurred during World War I, with notations, especially of her dining with officers of the British army, who were also guests at her home, prevalent in *The Florence Herald*.

Hortense was very active in the Red Cross, and she attended and helped to organize many of their charitable functions, which was also duly noted in the Anglo-Florentine press. *In and Out of Florence*, FLORENCE HERALD & ITALIAN GAZETTE, Nov. 27, 1915, at 3 (noting Hortense and officers staying at Villa La Pietra attended a musical entertainment at Villa Medici for the Red Cross). Moreover, at the height of World War I, Hortense participated in the Umberto Brunelleschi costumed production *Un po di colore*. See *Villa La Pietra: Treasures from Hortense Mitchell's Wardrobe*, N.Y.U. OFF. OF GLOB. PROGRAMS, http://www.nyu.edu/global/lapietra/pdfs/Hortense%20Dress%20Display%20Brochure_Web.pdf (last visited Mar. 18, 2015).

⁶³ ACTON, *supra* note 55, at 189.

with frankness about his relationships, but never revealed any ugliness which may have colored them.⁶⁴ Indeed, by all accounts, Harold's closest friends have noted how he felt very much his mother's presence at the Villa even after her death in 1962. A graduate of Oxford, a writer, an expatriate in China during the 1930s, and finally the last aesthete of his time and host at Villa La Pietra, Harold's dedication to Villa La Pietra and his Orientalist aesthetic were also very much a reflection of his own brand of cultural colonialism. Before the death of his mother in 1962, Harold writes in his memoirs that it was she who convinced him of the legacy of Villa La Pietra.⁶⁵

Although there is no mention in Harold's books, or any evidence in Villa La Pietra's photographic archive of Beacci or her mother Elsie, Harold is said to have known about Beacci and to have avoided her at parties in public when he could.⁶⁶

III PROCEDURAL POSTURE

A ROUND I: ADMISSIBILITY:

PRIMO GRADO—TRIBUNALE, SECONDO GRADO—APPELLO, CASSAZIONE 1995–1998⁶⁷

On July 21, 1995, Liana Beacci filed suit against New York University, which inherited all of Harold Acton's shares in the La Pietra Corporation, which held title to Villa La Pietra. Article 274 of the Italian Civil Code provided the grounds for Beacci's suit: It was an action for the admissibility of Beacci's claim for declaration of paternity from Sir Arthur Acton.⁶⁸ The *Tribunale* of Florence held that Beacci's claim was inadmissible, holding proof of an intimate relationship between Elsie Beacci and Arthur Acton was lacking. Appealing the case to the Florence *Corte d'Appello*, Beacci argued that the *Tribunale* erroneously held that

⁶⁴ These included comments such that his father, "expected my brother and me to live *in statu pupillari* under his permanent supervision and control" while his mother "[the] most angelic of companions . . . her sweetness of temper smoothed over the asperities . . . that cropped up (between father and son) . . . no doubt she too would have wished me to get married and lead a different life, but far from reproaching me she encouraged me to be true to myself . . . I owe everything to her instinctive understanding." *Id.* at 60.

⁶⁵ *Id.* at 338.

⁶⁶ Harold Acton's reported comments about his supposed half-sister included, "I know nothing about that woman!" David Plante, *A Last Fantasy in Florence*, *NEW YORKER*, July 10, 1995, at 50.

⁶⁷ The Italian court system consists of the *Primo Grado*—the Court of First Instance, called the *Tribunale*—the *Secondo Grado*—the Appeals Court—and the *Corte di Cassazione*—the Supreme Court. In Italian civil law, second instance appeals may be made both on procedural and substantive grounds. On appeal, there is a *de novo* retrial of all decisions based in law (but not in fact). Parties may introduce new evidence and new defenses (in extraordinary circumstances), but they may not introduce new claims. Judgments from the court of first instance which may be appealed include partial judgments and judgments which completely dismiss a case. The court of appeals decides both on the procedure and on the merits of a case. In contrast, the *Corte di Cassazione* may only hear appeals based on procedural grounds, not on the merits of the case, and may not make a judgment on the merits. Therefore, the *Corte di Cassazione* usually sends a case back to the *Tribunale* for judgment. For a more detailed summary, see GROSSI & PAGNI, *supra* note 18, at 9–23.

⁶⁸ App., 13 Maggio 2013, n. 738 (Firenze), slip op. at 5.

there was a lack of proof regarding intimate relations between her mother, Elsie Beacci, and her presumed father, Arthur Acton, failing in fact to consider other evidence, including the portraits painted of Liana by Acton, her schooling, the fact that her mother lived at Villa La Pietra for an extended period of time prior to Liana's birth, and other testimony.⁶⁹ Liana Beacci contested the *Tribunale's* finding on the main legal grounds that it had failed to render a decision based on the probability of the evidence, and had instead weighed the evidence to a level of certainty.⁷⁰ The standard for admissibility of judicial declarations of paternity actions at that time was that elements offered need not be decisive, but rather "susceptible to development, integration and in depth analysis in the decision on the merits."⁷¹ Likewise, Beacci also alleged that the *Tribunale* did not take advantage of the ability to prove the facts with an eventual DNA test, as required by Article 116 of the Italian Code of Civil Procedure (or "C.p.c.").⁷² NYU countered this appeal by arguing that the facts proffered were only sufficient to establish a mere acquaintance between Elsie Beacci and Arthur Acton, and nothing more (that is, they were not susceptible to development).⁷³ On February 28, 1996, the court of appeals deemed Beacci's action admissible, agreeing with Beacci that the *Tribunale* erred in holding the evidence to a standard of certainty and not probability. The court came to this conclusion by examining the legislature's intent in substituting "specific circumstances" for the word *indizi*, or "proof", as part of the 1975 Family Law Reform. Moreover, the appeals court held that the proper purpose and end of the *Tribunale* judge's investigation was to ascertain a *fumus bonus iuris*.⁷⁴ The court of appeals also took into account the protective nature and purpose of Article 274 of the Civil Code (as a preliminary check on the claim for a declaration of paternity). Although justified by the last clause of Article 30 of the Constitution ("the law shall establish rules and constraints for the declaration of paternity"), the existence of the Article was difficult to reconcile with Article 24 of the Constitution (protecting the right of anyone to bring a case before a court of law in order to protect their rights). Therefore, the court reasoned that the risk of ordering a potential DNA test to prove the claim on the merits in the future was minor when balanced within the nature of the issue: that of close family relationships.⁷⁵

NYU in turn appealed to the *Corte di Cassazione* on procedural grounds, arguing that the reasoning of the *Corte d'Appello*, which tied these pieces of

⁶⁹ The facts and reasoning here cited to are taken from Cass., sez. I, 27 febbraio 1997, n. 5371.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* Article 116 of the C.p.c. provides that a judge must evaluate the evidence according to his judgment unless the law provides otherwise. For a complete and exhaustive list of the articles of the C.p.c., see CODICE DI PROCEDURA CIVILE: COMMENTATO CON LA GIURISPRUDENZA [CODE OF CIVIL PROCEDURE: ANNOTATED WITH JURISPRUDENCE] (Francesco Bartolini & Piero Savarro, eds., 33d ed. 2013).

⁷³ Cass., sez. I, 27 febbraio 1997, n. 5371.

⁷⁴ *Fumus bonus iuris* is a Roman law term which in Italian law means that a claim has been found to be sufficiently not manifestly unfounded, that there is a possibility or a probability of the existence of the right. *Fumus Bonus Iuris*, ENCICLOPEDIA TRECCANI, <http://www.treccani.it/enciclopedia/fumus-boni-iuris/> (last visited Mar. 14, 2015).

⁷⁵ Cass., sez. I, 27 febbraio 1997, n. 5371.

evidence to the existence of a *fumus*, was procedurally nonexistent and therefore contrary to both Article 274, which required the judge to *motivare*, that is, justify or explain his reasoning, and to Article 111 of the Italian Constitution.⁷⁶

The *Corte di Cassazione* agreed with the court of appeals that the standard was a *fumus bonus iuris*, but also sided with NYU, holding that the judgment of the court of appeals did indeed lack a sufficient explanation to fulfill the procedural requirement.⁷⁷ The *Corte* held that the court of appeals, instead of relying on a complex evaluation of the facts as offered by Beacci, should have taken it upon itself to verify the “demonstrative capacity of these dates and their susceptibility to probatory development in a successive judgment on the merits.”⁷⁸ The *Corte* also held that this verification must take place before the court ordered a DNA test, since if not the purpose of Article 274 (to evaluate the admissibility, or colorability, of a claim), would be in vain. As a result, on February 27, 1997 the *Corte di Cassazione* remanded the case to the appeals court in Florence so the lower court could both complete this verification and explain its reasoning.

On September 14, 1998 the court of appeals in Florence declared Liana Beacci’s claim for a declaration of paternity admissible. Neither party contested the decision.

B ROUND 2: DNA AND THE BEGINNINGS OF THE *Curatore Speciale*: 2000–2007

On March 31, 1999, after Beacci’s claim was deemed admissible, Liana Beacci sued New York University on two new grounds. First, she asked that the court ascertain her status as the biological daughter of Arthur Acton. Second, that her rights of inheritance relative to her biological father Arthur Acton and the related issue of her rights of succession as to her biological brother Harold Acton, be ascertained and consequently declared.⁷⁹

On August 22, 2000, Liana Beacci passed away.⁸⁰ On November 22, 2000, Dialta Lensi Orlandi Cardini, Liana Beacci’s daughter, presented herself at the *Tribunale* of Florence, and according to Article 2908 of the Italian Civil Code, formally replaced her mother as the new plaintiff in the case, continuing the proceedings.⁸¹ Dialta’s children and Liana’s other heirs were later joined to the case.

On June 6, 2001, NYU moved for an extinction of the proceedings on the grounds that Beacci’s descendants did not continue the case within six months of the declaration of death. The *Tribunale* judge sustained this objection, and sep-

⁷⁶ Art. 111 COSTITUZIONE [COST.] states, “All judicial decisions shall include a statement of reasons.”

⁷⁷ Cass., sez. I, 27 febbraio 1997, n. 5371.

⁷⁸ *Id.* (translation by Author).

⁷⁹ App., 13 maggio 2013, n. 738 (Firenze), slip op. at 9.

⁸⁰ *Id.* at 6.

⁸¹ CODICE CIVILE [C.C.] art. 2908 provides that a judge may nominate, modify, or extinguish judicial relationships, having an effect on the parties, their heirs, or those having cause. CODICE CIVILE [C.C.] art. 270 also provides that the right to sue transfers to the natural child’s heirs if they die during the proceedings.

arated the cause of action of judicial declaration of paternity from that of succession, suspending the latter until the declaration of paternity was resolved.⁸²

On February 28, 2002, Liana's daughter Dialta and her fellow plaintiffs once again raised issues and claims brought by Liana Beacci in her original 1999 case.⁸³ On January 13, 2003, the judge unified the 1999 case with the action of Liana Beacci's children and heirs, and again separated the issues of declaration of paternity and succession in the continued case. With this same ordinance, the judge also appointed a *Consulente Tecnico d'Ufficio* ("CTU") to effectuate a DNA examination of Arthur Acton and Liana Beacci and an analysis of the data, authorizing their exhumations.⁸⁴

After the DNA test, which ascertained to 99.94% certainty that Liana Beacci was the natural child of Arthur Acton,⁸⁵ the results were deposited with the court. Dialta and her fellow plaintiffs moved to have the court declare that Beacci was indeed Arthur Acton's biological daughter. They therefore argued that Beacci had the right to add the name Acton to her own, and to have the *sentenza* registered.⁸⁶ NYU raised a number of objections, which included a request for a new CTU and the appointment of an expert in probability to highlight and ascertain the exact genes attributed to Acton in the DNA test.⁸⁷ Most importantly, for the first time, NYU raised the issue of *legittimazione passiva*, arguing that according to Article 276 of the Civil Code, they were not the proper defendants in the case.⁸⁸

In 2007, in order to resolve the issue of the lack of a proper defendant, the *Tribunale* of Florence, under the direction of Judge Zazzari, resolved, but did not decide, to appoint a *curatore speciale*, or a special trustee, in order to overcome the defendants' objections that they were not the proper defendants in the case.⁸⁹ The judge, according to court documents, arrived at this decision by using a "constitutionally oriented interpretation" of Articles 276 and 274 of the Civil Code.⁹⁰

⁸² App., 27 febbraio 2013, n. 738 (Firenze), slip op. at 7.

⁸³ Note that the 2009 case states one of the reasons the Beaccis re-proposed all the issues in front of the court again was to overcome the objections raised by NYU regarding their lack of promptness in continuing the case after Liana Beacci's death. Trib., 27 agosto 2009, n. 2634, slip op. at 3.

⁸⁴ A *Consulente Tecnico* is a clerk of the judge whose task is to brief the judge on technical clarifications requested by the judge after certain investigations by the court have been ordered. See *Consulente Tecnico: Diritto processuale Civile* [Technical Consultant: Civil Procedure Law], DIZIONARIO TRECCANI, <http://www.treccani.it/enciclopedia/consulente-tecnico-diritto-processuale-civile> (last visited Mar. 14, 2015).

⁸⁵ *Eredità di sir Acton gli eredi: Beacci perdono la causa*, LA REPUBBLICA.IT, Sept. 2, 2009, <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2009/09/02/eredita-di-sir-acton-gli-eredi-beacci.html>.

⁸⁶ App., 13 maggio 2013, n. 738 (Firenze), slip op. at 8.

⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 9.

⁸⁹ Trib., 27 agosto 2009, n. 2634, slip op. at 3.

⁹⁰ App., 13 maggio 2013, n. 738 (Firenze), slip op. at 3. Article 247 of the *Codice di procedura civile*, or Civil Code of Procedure, allows for an appointment of a *curatore speciale* in the case of the death of a father, mother or child (and the death of their ascendants, descendants, or the son's wife, who are all given the right to bring the claim in case of the death of one of the three original holders of the right) who would have been the defendant in an action of *disconoscimento*, or disownment.

C ROUND 3: THE *Curatore Speciale* AND THE CONSTITUTIONAL QUESTIONS:
PRIMO GRADO, SECONDO GRADO, CORTE DI CASSAZIONE: 2007–2014

New York University immediately objected to the appointment of a *curatore speciale*. However, the court of appeals in Florence dismissed its appeal since Judge Zazzari had only resolved to appoint a *curatore speciale*, and had not taken specific legal action to do so. The appeals court noted that NYU did not have the decision itself from the *Tribunale* judge. Furthermore, since the objection to a *curatore speciale* was part of an incidental appeal, that is, a contestation of the same original *sentenza* (in regards to the CTU and DNA evidence) to which the Beaccis had also raised their own contestations, NYU's objections needed to be filed according to Article 343 of the Civil Code of Procedure, that is in a response brief, and not directly in front of the court of appeals.⁹¹

It is at this stage that the case was given a new judge. Under Italian law, judges must leave cases every ten years in order to maintain an air of impartiality.⁹² The new President of the *Tribunale*, Judge Miranda, on June 21, 2007, rejected the Beaccis' request to execute the *Tribunale's* resolution of January 15, 2007 to appoint a *curatore speciale*, reasoning that a special trustee was only to be appointed, according to Article 78 of the Italian Civil Procedure Code, in three specific instances, which did not include the lack of a proper defendant.⁹³ The Beaccis appealed, asking the court of appeals in Florence to remand the case to the *Tribunale* with an injunction that the *Tribunale* finally appoint the *curatore speciale*. The court of appeals held that Judge Miranda was not bound to apply the interpretation of Judge Zazzari, and that without an explicit *sentenza additiva* of the Constitutional Court, according to a 2005 *Cassazione* precedent, a special trustee could not be appointed in the face of the lack of a defendant, agreeing with the narrow interpretation of the text.⁹⁴ When the *Corte di Cassazione* heard the appeal in 2010, the court held that the issues on appeal argued by the Beaccis were essentially complaints that a *curatore speciale* had not been nominated: a tortious claim, which the *Corte di Cassazione* was not allowed to even address on appeal, since *Cassazione* appeals may only be heard on procedu-

Judge Zazzari's interpretation read article 247 alongside article 276, seeing them as mirror images of each other, and reasoned that in reference to the following articles of the Constitution: Article 2 (recognizing the inviolable rights of a person); 3 (equality before the law); 24 (anyone may bring cases before a court of law); and 30 (the law ensures such legal measures . . . as are compatible with the rights of the members of the legitimate family to any children born out of wedlock); the same opportunity to appoint a defendant needed to be available in each article.

⁹¹ See CODICE DI PROCEDURA CIVILE [C.P.C.] art. 343; Trib., 27 agosto 2009, n. 2634, slip op. at 10.

⁹² Interview with Avv. Andrea Cecchetti, Of Counsel, Chiomenti Studio Legale in Rome, Italy (Feb. 24, 2014) (on file with author).

⁹³ These three specific instances include an "incapable, [a] legal entity or [a] non-registered company where that party's representative or assistance is missing." GROSSI & PAGNI, *supra* note 18, at 136; see also Cass., sez. I, 28 maggio 2010, n. 13099.

⁹⁴ Cass., sez. I, 28 maggio 2010, n. 13099. *Sentenze additive* are opinions by the Italian Constitutional Court in which it declares the unconstitutionality of a statute and adds to the statute, where the statute "does not cover something for which it should provide." VITTORIA BARSOTTI ET AL., *The Constitutional Court: Rules and Models*, in ITALIAN CONSTITUTIONAL JUSTICE IN GLOBAL CONTEXT (forthcoming 2015).

ral grounds.⁹⁵ Therefore, the *Corte di Cassazione* only addressed whether, under Article 80 of the Civil Code of Procedure, which affords discretion to the judge to appoint a *curatore speciale*, the *Tribunale* judge acted properly. Observing that the *Tribunale* judge did act properly because the decision to not appoint a special trustee is not exempt from the judge's general power to modify or revoke decrees, the *Corte di Cassazione* held the issue inadmissible to the court.⁹⁶

In the meantime, the *Tribunale* of Florence, still in the process of deciding the principal case after some delays resulting from the *curatore speciale* appeals, rendered its own decision on the merits of the case in 2009. Noting that contrary to NYU's objections, the case had properly survived the procedural requirements of continuance of the action after Beacci's death, and that the previous resolution to appoint a *curatore speciale* was not a *sentenza*, and therefore had no decisive legal effect on the case, the *Tribunale* held that, despite the legal action's admissibility, NYU was not the proper defendant. The *Tribunale* relied on the *Corte di Cassazione*'s reasoning in a 2005 case precedent, which held that in an action for judicial declaration of paternity the necessary defendants are, in the case of the death of the presumed parent, exclusively his heirs, and not the heirs of his heirs or other subjects, even if they have an interest in challenging the legal issue. To these heirs of the heirs is instead recognized the right to solely intervene in the case to protect their own interests.⁹⁷

The *Tribunale*'s reasoning rested in a textual analysis of Article 276, which at the time provided that a biological child may only sue her presumed parent or her presumed parent's heirs, and not the heirs of her presumed parent's heirs, for a declaration of paternity. The *Tribunale* also recognized that only the legislature or the Constitutional Court could decide that Article 276 should be interpreted analogously to Article 247, and not the ordinary courts themselves. The court also recognized that the Constitutional Court had previously held that the decision to not appoint a *curatore speciale* in the face of a lack of the presumed father and his heirs and to not allow the heirs of the heirs to be sued for a declaration of paternity properly fell within the discretion of the legislature.⁹⁸ The *Tribunale* also noted that it made practical sense to only allow as defendants those who have direct knowledge of the situations relevant to a declaration of paternity and not the heirs of the heirs who know less or nothing. Likewise the *Tribunale* also justified the lack of nomination of a *curatore speciale* by citing to the Italian Constitution's decision to balance the rights of the biological child with the

⁹⁵ Cass., sez. I, 28 maggio 2010, n. 13099, slip op. at 3.

⁹⁶ *Id.*

⁹⁷ Cass., sez. un., 3 novembre 2005, n. 21287, Foro. it. 2006, I, 740. The Beacci party contests that this is the true holding of the case, arguing that the Constitutional Court did not in fact hold this, but rather noted that it was in the discretion of the legislature to accomplish either option: to allow the declaration to be brought before a special trustee or allow the heirs of the heirs to be defendants. Therefore, the Constitutional Court may not render judgment on the question because such a hypothetical produces a duplicate and alternative reason to find Article 276 unconstitutional, and therefore the question may not be decided upon by the Court. *See also* Memorandum by Avv. Andrea Cecchetti 5 (Oct. 2010) (citing Cass., sez. un., 3 novembre 2005, n. 21287) (on file with author).

⁹⁸ The reasoning being that in Article 30, the legislature is empowered by the Constitution to establish "rules and constraints for the determination of paternity." Art. 30 COSTITUZIONE [COST.].

rights of the legitimate family, or the family based on marriage, in Article 30.

The Beaccis appealed this *Tribunale* decision, which effectively left them with no person to sue in order to secure their right to a declaration of paternity as the heirs of Liana Beacci. The appeals court relied on much the same reasoning as the *Tribunale*, justifying the inclusion of NYU as defendants in the case by declaring that the admissibility proceedings had no bearing on a judgment on the merits of the paternity case and that NYU had acted as a third party in the case.⁹⁹ Again quoting from the 2005 *Corte di Cassazione* decision, the appeals court relied on statutory interpretation—namely the clarity of the term “his heirs” in Article 276; the lack of the phrase “those having cause” in the Article, which is usually included by the legislature to indicate an extension of the right to different persons; and that the clause that interested third parties may intervene in the case—as sufficient indications that the legislature did not intend to include the appointment of a *curatore speciale*.¹⁰⁰

At the time of the appeals case, the 2012 *filiazione* reform had entered into effect, modifying Article 276 to include the appointment of a *curatore speciale*. The appeals court held the law could not be applied to the Beacci case because a norm’s conditions need to be respected from the beginning of the lawsuit, the *curatore speciale* needs to be appointed before even bringing the case to court, and that the very same, as an alternate defendant, cannot simply “jump out at the moment of the final Appeals discussion.”¹⁰¹ In a judgment deposited with the court in September 2014, the *Corte di Cassazione* held that Article 276 of the current Civil Code, with the incorporated norms of the 2012 *filiazione* reform, was to be applied to the Beacci case, ruling that the Beaccis must be allowed to sue a court appointed *curatore speciale* for a declaration of paternity.¹⁰² The *Cassazione* reasoned that the *curatore speciale* was a necessary part of the litigation, whether or not the court deemed the judgment in the case “almost concluded.” The court emphasized that the Beaccis had moved for the appointment of a *curatore speciale* at the trial level, that the appointment of a *curatore speciale* was a part of this ongoing case, and therefore fell under the application of the current Civil Code, with its reforms.¹⁰³ The court deliberately characterized the procedural posture of the case as ongoing, and not almost concluded, thereby allowing the application of the new *filiazione* reform. Moreover, the *Cassazione* placed great emphasis on the legislative intent embodied in the *filiazione* reform.¹⁰⁴ The court noted that in radically modifying the legal parent-child relationship, by making the status of the child to be one and only one, and in providing that rights of succession that derive from the child’s new legal status

⁹⁹ App., 27 febbraio 2013, n. 738 (Firenze), slip op. at 25–26.

¹⁰⁰ *Id.* at 30.

¹⁰¹ *Id.* at 35. The court specifically noted that if appointed at this time, “the trustee would not only find himself to respond to a judgment that developed practically entirely without him, but he would also have to share the role of defendant with other heirs of the heir against whom the case was initially brought, and who cannot, as if under a spell, disappear from the procedural scene only because they are no longer necessary.” *Id.*

¹⁰² Cass., sez. I, 9 settembre 2014, n. 19790.

¹⁰³ *Id.* at 11, 17.

¹⁰⁴ *Id.* at 19–20.

be immediately operative, the legislature wanted to favor to the greatest extent possible the equality of children. Therefore, the scope of the application of the revised Article 276 needed to be understood as broadly as possible.¹⁰⁵ From the point of view of this legislative intent, the court interpreted Article 104 of decree law No. 154 of 2013, which provided for the application of the 2012 *filiazione* reform to children born before its entrance into force, so long as no final judgment had already been entered as to their status, to apply to the Beacci case.¹⁰⁶ Recognizing the fundamental importance of the right to know one's lineage, the *Cassazione* has allowed the Beaccis the right to have Liana Beacci declared the daughter of Arthur Acton.

IV DISPOSITION OF THE LAW

In Italy, cases involving foreign citizens, which might involve conflicts of law issues, are first governed by the norms of *Diritto Internazionale Privato*.¹⁰⁷ These norms are contained in Law No. 218 of May 31, 1995 (Law No. 218).¹⁰⁸ Article 3 generally applies Italian jurisdiction when the defendant has his domicile or residence (defined in Article 43 as “the place where he has established the principal center of his business and interests” and “the place where the person has his habitual abode,” respectively) in Italy.¹⁰⁹ Article 35 states that in legal actions for recognition of biological children, the law of the state of which the child is a citizen at the time of his birth applies.¹¹⁰ If the laws of the State of which the recognizing parent is a citizen are more favorable, then those are applied. As part of the 2012 *filiazione* reform, the Italian legislature added to Article 35 a last clause: If the laws of the State of which the recognizing parent is a citizen

¹⁰⁵ *Id.* at 21.

¹⁰⁶ *Id.* at 22–24. The court expressly noted that this application avoids the injustice that would result if only some groups of children, based only on the time they filed their action, were allowed to take advantage of the new law. Moreover, the court denied that this provided too much protection for children, noting that the statutes of limitations regarding when children or other descendants may step into the shoes of the child petitioning for a declaration of paternity upon that child's death, still applied. In other words, had the Beaccis replaced Liana Beacci as the party to the lawsuit in an untimely fashion, they would not have been able to take advantage of the application of the revised Article 276. In this way, repose for defendants is still protected by the law. *Id.*

¹⁰⁷ Italy uses a civil law system, and provides that its sources of law are laws, regulations, corporate rules, and usages, in that order. Regio Decreto 16 marzo 1942, n. 262, art. 1, G.U. Apr. 4, 1942, n. 79; see also John Henry Merryman, *The Italian Style* (pt. 1), 18 STAN. L. REV. 396, 398–99 (1966). The Italian Constitution is also considered a primary source of law. Unlike in common law systems, where case law may generate binding precedent, the Italian legal system only looks to cases as non-binding secondary sources which may help to interpret a rule promulgated by the legislature. Doctrine is regarded as more pervasive and important than case law. See John Henry Merryman, *The Italian Style* (pt. 1), 18 STAN. L. REV. 39, 42 (1965) (“The towering importance of the doctrine makes it the logical initial focus of an investigation of the Italian style.”). As a result of the emphasis placed on doctrine, I have heavily leaned on academic sources for this Note more than cases.

¹⁰⁸ Legge 31 maggio 1995, n. 218, G.U. June 3, 1995, n. 128.

¹⁰⁹ *Id.*, art. 3, translated in SUSANA BELTRAMO, *THE ITALIAN CIVIL CODE AND COMPLIMENTARY LEGISLATION*, app. f, at 855 (Mario Beltramo et al. eds. & trans., 2012).

¹¹⁰ L. n. 218/1995, art. 35.

do not allow for recognition of a child, then Italian law applies.¹¹¹

When Beacci filed her claim in 1995, the *Tribunale* applied Italian law, because at her birth, she was a citizen of Italy.¹¹² Moreover, although Beacci was born in 1917 and had not brought her claim until 1995, the court applied the rules of the 1942 Civil Code as they were at the time of the lawsuit's filing (after the 1975 Family Law reform) and not as they were at the time of her birth. According to Article 232 of the 1975 Family Law reform, the law is retroactive; that is, it applies to legal actions for declaration of paternity even when the child is born or conceived prior to the entry into force of the Reform.¹¹³ Normally in the Italian legal system, laws are not retroactive.¹¹⁴ However, in matters of civil law, Italian legislatures are allowed to deviate from this norm, if they specifically provide for the law's retroactivity within the law itself.¹¹⁵ Declarations of paternity are retroactive, that is, once pronounced, they apply to the child from the time of birth.¹¹⁶

In contrast to actions involving declarations of paternity, Article 46 of Law No. 218, which governs succession upon death, applies the law of the State of which the *de cuius*, the deceased, whose inheritance is the subject of the succession, was a citizen.¹¹⁷ In the Beacci case, this meant that English law would

¹¹¹ In Italian, the 2012 Act of Parliament, Legge 10 dicembre 2012, n. 219, G.U. Dec. 17, 2012, n. 293, called the *Riforma Filiazione*, struck any difference between children, who had previously been classified as legitimate or biological (*naturale*), from the Code and modified other aspects of the relationships between children and their parents. See L. n. 218/1995, art. 35. With this same reform, the legislature struck Article 34 from the 1995 law, which had provided for the applicable law in cases of legitimization. The 2012 reform struck the words legitimate or legitimization, and any cause of action for legitimization from the Civil Code, instead relying on the act of recognition to affirm a child's status. L. n. 219/2012.

¹¹² Interview with Avv. Andrea Cecchetti, *supra* note 92.

¹¹³ Legge 19 maggio 1975, n. 151, art. 232, G.U. May 23, 1975, n. 135; Maria Dossetti, *Dichiarazione giudiziale di paternità naturale successiva alla riforma del diritto di famiglia e diritti del figlio sulla successione del proprio genitore apertasi prima della riforma*, 2010 FAMIGLIA, PERSONE E SUCCESSIONI 667, 667–69, is extremely illuminative on this point.

¹¹⁴ This principle is rooted in Article 25 of the Italian Constitution, which provides “No punishment may be inflicted except by virtue of a law in force at the time the offence was committed.” Art. 25 COSTITUZIONE [COST.], translated in SENATO DELLA REPUBBLICA, CONSTITUTION OF THE ITALIAN REPUBLIC, http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf (last visited Aug. 8, 2015). The principle is codified in Regio Decreto 16 marzo 1942, n. 262, art. 11, G.U. Apr. 4, 1942, n. 79 (“The law does not decide but for what is to come: it does not have a retroactive effect.”).

¹¹⁵ Corte Cost., 14 gennaio 1994, n. 6, <http://www.gazzettaufficiale.it/eli/id/1994/02/02/094C0064/s1> (“In decrees it is recognized that the Constitution does not establish a prohibition on retroactive laws (excepting criminal laws), but it is emphasized that these need to correspond to the general criteria of reasonableness and cannot violate other Constitutional principles.”).

¹¹⁶ See Cass., sez. I, 22 novembre 2000, n. 15063 (“nel nostro ordinamento il riconoscimento del figlio naturale comporta, a norma dell'art. 261 c.c., tutti i doveri propri della procreazione legittima, compreso quello dell'assunzione dello status genitoriale, e, quindi, dell'obbligo di mantenimento, a partire, ovviamente, dalla nascita del figlio.”). In this case, a father's duty to pay back child support for his daughter was affirmed to arise from the time he had recognized her, whether or not he had approved of her schooling. See also Vincenzo Barba, *La successione mortis causa dei figli naturali dal 1942 al disegno di legge recante “Disposizioni in materia di riconoscimento dei figli naturali,”* 2012 FAMIGLIA, PERSONE E SUCCESSIONI 645 (discussing the evolution of succession law as applied to natural children born before the 1975 reform).

¹¹⁷ Italian law uses many terms from Roman law. *De cuius* refers to the one who has died. This

be applied. Indeed, when Beacci first filed suit in 1995, NYU argued that English inheritance law at the time of Liana's birth, which "at the time ruled out illegitimate relatives for inheritance," should apply.¹¹⁸ Under English conflict of law rules, however, "[s]uccession to movable property is governed by the law of the last domicile of the deceased" while "[s]uccession to immovable property is governed by the *lex situs*."¹¹⁹ Acton's death occurred in Florence, where he was domiciled, and Villa La Pietra is located in Florence, Italy. Therefore, if the Beacci succession claim is eventually tried in Italian court, Italian law will most likely apply.

It is important to note that NYU could still argue that English law, and not Italian law, should apply under international conflicts of law rules. There are many "modern international codifications of international private law [which] do not favor *renvoi*."¹²⁰ *Renvoi*, in which two forums ping-pong back and forth by referring to each other's rules of conflict of law rules and substantive law to decide what law applies to the issue, can theoretically lead to impossible situations. As scholars have noted, many countries apply a foreign court theory in order to avoid this perpetual *renvoi*.¹²¹ Italy is such a country. Article 13 of Italy's Law No. 218 states *renvoi* will apply when the foreign law accepts it

Note translates *de cuius* as "deceased." Please note that Italian law uses the word *successione* to refer to the act of inheriting one's patrimony. In this Note, it is translated as "succession." *Eredità* is used in Italian law to refer to inheritance—both the goods a person gives upon his death and goods another person receives. In this Note, *eredità* is translated as "inheritance." Italian law also uses the word *patrimonio*, which is translated as "heritage," and means that which a family or spouses accumulate together. *Patrimonio* is often used in Italian law in articles of the Civil Code, which regulate one spouse's use and management of family goods.

¹¹⁸ Sophie Arie, *Art Connoisseur's Body may be Exhumed in Italy to Settle Row over £300m Estate*, *GUARDIAN* (Apr. 25, 2003, 6:05 AM), <http://www.theguardian.com/world/2003/apr/25/arts.highereducation>. This argument was part of preliminary discussion of the case by the parties as noted above. The inheritance claim, although filed, has not yet been legally tried in court.

¹¹⁹ J.G. COLLIER, *CONFLICT OF LAWS* 11 (3d ed. 2001).

¹²⁰ *Renvoi* is understood as the legal phenomenon in which one State, A, looks not only to the substantive law of State B, but also to State B's choice of law rules—their "whole law." In this way, State B could point back to State A, which effectively means that while theoretically applying State B's laws, State A in practice simply applies their own law. This is what Italy would do when it applied its own law by referring to England's conflict of law rules. See also Michael Bogdan, *Private International Law as Component of the Law of the Forum*, 348 *RECUEIL DES COURS* [COLLECTED COURSES HAGUE ACAD. INT'L L.] 9, 210 (2011). The Author notes that these include the EC Regulation No. 593/2008 and also the Rome I Regulation. Specifically in matters of succession, over time, some international documents have simply stated which law should apply to the estates and succession of foreign nationals, instead of providing explicitly for no *renvoi*, although the majority of these conventions have not been ratified. See, e.g., Convention on the Law Applicable to Succession to the Estates of Deceased Persons, art. 4, Aug. 1, 1989, 28 I.L.M. 146, 150, cited in Alberto Malatesta, *Rinvio*, in *DIRITTO INTERNAZIONALE PRIVATO* [PRIVATE INTERNATIONAL LAW] 422, 430 (Roberto Baratta ed., 2010) (relative to Italian law); Convention on Conflicts between the Law of Nationality and the Law of Domicile, June 15, 1955, <http://www.hcch.net/upload/conventions/txt06en.pdf>, mentioned in COLLIER, *supra* note 119, at 393 (noting the United Kingdom was advised not to ratify this treaty). Most recently, the EU has passed Brussels IV, which applies to estates of the deceased post 2015, and which provides that where national law of the deceased has been chosen to apply by the State, no other or later *renvoi* will apply. Commission Regulation 650/12, 2012 O.J. (L 201) 107.

¹²¹ Bogdan, *supra* note 120, at 208–09.

and when that *renvoi* points to Italian law.¹²² NYU could argue that the foreign court theory application would lead to a constant loop, or an “international game of tennis,” in which neither Italian law nor English law would deem itself competent to judge the succession.¹²³ Therefore, the Italian court should only apply the English law in terms of its substance. As a result, there is an argument that the Beaccis could possibly be ruled out as legitimate relatives for inheritance purposes.

The retroactivity of the 1975 Family Reform Law allows the application of today’s Italian legislation to the Beacci declaration of paternity suit but does not, however, apply to the laws of succession and to the Beacci inheritance claim to Villa La Pietra.¹²⁴ Italy’s *Corte di Cassazione* has held that according to the *tempus regit actum* principle, a biological child who is recognized after the succession is opened will be in line for the succession according to the law in place at the time the succession was opened.¹²⁵ Legal doctrine also supports this principle.¹²⁶ It is for this reason that contextualizing the Italian laws of succession within the history of Italian family law and its evolving treatment of legitimate and illegitimate children, the rights of women, and property rights between spouses is so important. If the Beacci inheritance claim is tried in Italian court, that very same Italian court will apply the law in effect at the time of Acton’s death in 1953—the 1942 Civil Code prior to the 1975 reform. The Constitutional Court has justified such an application, grounding the application of old norms to current rights of succession in Article 30 of the Constitution, noting that by protecting legitimate children, the Constitution neither requires that legitimate children receive less to be equal to natural children, nor the opposite, that natural children receive more.¹²⁷ However, with the advent of the 2012 *filiazione* reform, some scholars have noted that there are “explosive consequences” that affect rights of

¹²² Legge 31 maggio 1995, n. 218, art. 13, G.U. June 3, 1995, n. 128. For a discussion of the foreign court theory, see Bogdan, *supra* note 120, at 208. *But see* Malatesta, *supra* note 120, at 422–23. Italian law defines *rinvio indietro* as a *renvoi* by the applicable foreign law back to the laws of the state that chose the foreign law in the first place. *Id.* at 422. For a concise definition of *renvoi* from a common law perspective, see RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 8 (AM. LAW INST. 1971). Malatesta describes the foreign court theory, in which an English court, for example, would decide the case of a Belgian national by acting as if they were “sitting in Belgium under the particular circumstances of the case.” Malatesta, *supra* note 120, at 423.

¹²³ Bogdan, *supra* note 120, at 208.

¹²⁴ Dossetti, *supra* note 113, § 1.

¹²⁵ *Tempus regit actum* stands for the principle that the law in place at the time the legal issue arose is the law that the court will apply to resolve that issue. *Id.* § 3; *see also* Cass., sez. I, 26 giugno 1984, n. 3709, Foro it. 1984, I, 2160 (holding a child born in adultery once recognized by a judicial declaration of paternity after the 1975 Family Law reform had entered into force had the right to participate in the succession to his natural father, when that succession had been opened prior to that date).

¹²⁶ *See generally* 2 COMMENTARIO DEL CODICE CIVILE: DELLE SUCCESSIONI [COMMENTARY ON THE CIVIL CODE: ON SUCCESSION] (Vincenzo Cuffaro & Francesco Delfini eds., 2009). Especially, *see* Maria Dossetti, *Art 573—Successione dei figli naturali* [Art. 573: Succession of Biological Children], in 2 COMMENTARIO DEL CODICE CIVILE: DELLE SUCCESSIONI, *supra*, at 54–55.

¹²⁷ For an enlightening description of the case, *see* Barba, *supra* note 116, at 658; *see also* Corte Cost., 8 giugno 1984 n. 168.

succession.¹²⁸ Namely, abrogating any differences between children and deeming them to have equal status affects their rights not only as to their parents but also to each other. In this sense, the application of old norms to current succession rights may be circumvented—if a sibling passes away, a child might now claim considerably more generous rights of succession under the revised and current Italian Civil Code.¹²⁹ Moreover, some Italian scholars have noted that the very fact that decree Law No. 154 of 2013, which gives legal effect to the 2012 *filiazione* reform, gives children who were previously unrecognizable a claim of right to succession at all goes against the principle of non-retroactivity of the law.¹³⁰

If NYU wants to successfully claim that Hortense owned the Villa in order to exclude a colorable claim by Beacci, it will have to apply the property regime in effect between spouses in 1953: *separazione dei beni*.¹³¹ Likewise, it will have to lay the foundations for any feasible claim that Hortense alone owned Villa La Pietra by presenting that Hortense could in fact own property under the 1865 Civil Code, which was in effect in 1907 when Villa La Pietra was purchased, and therefore that it is possible that Hortense owned the Villa herself under the *separazione dei beni* regime.¹³²

A SUMMARY OF TWENTIETH CENTURY ITALIAN LEGAL HISTORY:
NAPOLEON—FASCISM AND THE 1942 CIVIL CODE—THE ITALIAN
CONSTITUTION OF 1948—THE 1975 FAMILY LAW REFORM

The first Italian Civil Code was adopted in 1865 and was very similar to the French Napoleonic Code.¹³³ Rules governing the family in the 1865 Code were based on the model of Italy's agricultural economy; the conservative cultural framework of the Code was seen as "instrumental to the unitary concept of the family enterprise and the maintenance of concentrated ownership of land to allow for economies of scale."¹³⁴ Absolute authority of the family patriarch was perceived as vital to the continuing success of this family enterprise. Illegitimate

¹²⁸ See generally Maria Dossetti, *I nuovi successibili e il diritto intertemporale nella riforma di filiazione*, FONDAZIONE ITALIANA DEL NOTARIATO (Mar. 21, 2014) http://eventi.nservizi.it/upload/72/altro/dossetti_relazione.pdf.

¹²⁹ For a discussion of this and Article 104 of the 2013 decree-law, which address the retroactivity and applicability of the current legal regime to children born before the passing of the 2012 reform into law, see Michele Sesta, *Stato Unico di Filiazione e Successioni*, CORTE SUPREMA DI CASSAZIONE: LA FILIAZIONE DOPO LA RIFORMA (Nov. 14, 2013), http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/20131114_RelazioneSesta.pdf.

¹³⁰ *Id.* at 19.

¹³¹ Note that at the time of the opening of Arthur Acton's succession in 1953, the old Conflicts of Rules in Italy, attached to the 1942 Civil Code, provided that "Personal relationships between spouses of different citizenship are regulated by the last law of the State which was common to them during their marriage." Corte Cost., 26 febbraio 1987, n. 71, <http://www.gazzettaufficiale.it/eli/id/1987/03/11/087C0154/s1>.

¹³² Legge 31 maggio 1995, n. 218, art. 51, G.U. June 3, 1995, n. 128 confirms this, by stating rights to immovable property are regulated by the law of the state in which the immovable property is located.

¹³³ BELTRAMO, *supra* note 109, at v.

¹³⁴ JEFFERY S. LENA & UGO MATTEI, INTRODUCTION TO ITALIAN LAW 408 (2002).

children were given no inheritance or legitimization rights unless recognized by the father, presumably since they were viewed as a threat to this very same family enterprise.¹³⁵ In fact, according to Article 189 of the 1865 Code, investigations into paternity were not allowed except in cases of abduction or violent rape, when the timing of these events corresponded with the conception of a child.¹³⁶

Notwithstanding this emphasis on patriarchy, however, the 1865 Code did grant women the legal right to property, even upon marriage.¹³⁷ While other laws effectively assured the husband's continued authority, a woman's ability to own property and her ability to dispose of it after death allowed a pocket of Italian women to gain "economic citizenship," a place in the public sphere usually reserved to men.¹³⁸

The 1942 Civil Code itself, created under the Fascist regime, retained the same authoritative patriarchal model, although it did reflect changes in the law, which accommodated Italy's new and diverse economy.¹³⁹ Changes specific to family law from the 1865 Code include an expansion of the normative chapter regulating illegitimate and legitimate *filiazione*. This chapter included extending instances in which paternity could be investigated and declared without a spontaneous recognition by the parent, and the possibility of awarding the illegitimate child support upon the declaration.¹⁴⁰ Despite this, the 1942 Code still heavily distinguished between legitimate and illegitimate children.

The earliest significant change to family law in Italy came with the adoption of the Italian Constitution after World War II. Together, Articles 29, 30, and 31 of the Italian Constitution "introduced an equal-responsibility model of the family . . . now seen as a social formation based on marriage."¹⁴¹ Article 3 recognized the equal dignity of all before the law.¹⁴² Article 29 in particular recognizes the family itself as a natural association, a protected unit based on the moral and legal equality of husband and wife.¹⁴³ Scholars have noted that the Italian Constitution's recognition of the family itself as a protected unit indicated "a strong emphasis on community, on social relations, and on civil society, and a comparatively lesser emphasis merely on the autonomous individual, relative to other

¹³⁵ ROBERTO SENIGAGLIA, STATUS FILIATIONIS E DIMENSIONE RELAZIONALE DEI RAPPORTI DI FAMIGLIA 5 (2013) (citing Michele Sesta, *I disegni di legge in materia di filiazione: dalla disuguaglianza all'unicità dello status*, in FAMIGLIA DIRITTO 963 (2012)).

¹³⁶ CODICE CIVILE [C.C.] art. 189 (1865).

¹³⁷ Stefania Licini, *Assessing Female Wealth in 19th Century Milan, Italy* 5 (Mar. 2010) (unpublished thesis, University of Bergamo), http://www.victoria.ac.nz/sacl/about/events/past-events2/past-conferences/6ahic/publications/6AHIC-05_FINAL_paper.pdf.

¹³⁸ Examples of other laws, which effectively assured the husband's continued authority, include: marital authorization, the property regime in effect between spouses *separazione dei beni*, and articles regulating dowry. Marital Authorization, in effect until 1919, required a wife to receive permission from her husband to manage her own property. *Id.* at 18. For more on *separazione dei beni*, see *infra* Part V; see also Licini, *supra* note 137, at 18–19.

¹³⁹ LENA & MATTEI, *supra* note 134; see also GUIDAO ALPA & VINCENZO ZENO-ZENCOVICH, ITALIAN PRIVATE LAW 2 (2007).

¹⁴⁰ CODICE CIVILE [C.C.] arts. 269, 277 (1942).

¹⁴¹ LENA & MATTEI, *supra* note 134, at 409.

¹⁴² Art. 3 COSTITUZIONE [COST.].

¹⁴³ *Id.* art. 29.

constitutional bills of rights or to international human rights instruments.”¹⁴⁴

Notwithstanding these strong ideals, the Constitution nevertheless set up some dichotomies between groups. At the same time as Article 30 proclaimed, “It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock,” in the next breath, it announced conditions: “the law ensures such legal and social protection measures as are compatible with the rights of the members of the legitimate family to any children born out of wedlock,” and “the law shall establish rules and constraints for the determination of paternity.”¹⁴⁵ These dichotomies did and still produce tensions in the legal application of the 1942 Civil Code, and in the application of constitutional principles.¹⁴⁶

With the advent of the Italian Constitution came the Constitutional Court, which began to refine and more precisely define the limits and interpretations of these constitutional principles regarding the family.¹⁴⁷ One result of these interactions was Law No. 151 of May 19, 1975. An overhaul of the 1942 Family Law regime in many ways, one of its main innovations was to introduce the community property regime in order to give effect to Article 29 of the Constitution.¹⁴⁸

B DECLARATIONS OF PATERNITY: THE LEGAL FRAMEWORK

Traditionally in Italian law, illegitimate and biological children had no rights unless recognized by their parents.¹⁴⁹ This difference between illegitimate (but

¹⁴⁴ *Key Rights and Freedoms*, in ITALIAN CONSTITUTIONAL JUSTICE IN GLOBAL CONTEXT, *supra* note 94 (manuscript at 68).

¹⁴⁵ Art. 30 COSTITUZIONE [COST.].

¹⁴⁶ Notwithstanding this dichotomy and tension, some Italian legal scholars have noted that the specific wording of Article 30, with the use of the phrase “as are compatible,” does not in and of itself absolutely preclude (and therefore may make constitutional) a difference in the legal frameworks for natural and legitimate children. ANDREA TORRENTE & PIERO SCHLESSINGER, MANUALE DI DIRITTO PRIVATO § 604, at 1204 (Franco Anelli & Carlo Granelli eds., 21st ed. 2013).

¹⁴⁷ Examples of Constitutional Court opinions include: Corte Cost., 14 aprile 1969, n. 79, Foro it. 1969, I, 1033; Corte Cost., 30 aprile 1973, n. 50, Foro it. 1973, I, 1684; Corte Cost., 27 marzo 1974, n. 82, Foro it. 1974, I, 1293 (narrowly defining the nuclear legitimate family to consist of a marriage between the natural father and his spouse and their legitimate children only); Corte Cost., 11 marzo 1968, n. 9, <http://www.gazzettaufficiale.it/eli/id/1968/03/30/068C0009/s1> (abolished adultery as a crime, only women having been punished for it); Corte Cost., 12 luglio 1965, n. 70, Foro it. 1965, I, 1369 (extending the instances in which paternity can be investigated, since this investigation is a fundamental tool to effectuate judicial and social protection for children born out of wedlock); Corte Cost., 16 febbraio 1963, n. 7, Foro it. 1963, I, 471 (declaring a 1942 law which precluded children born before the new 1942 Civil Code from ascertaining their status to be unconstitutional); *see also* Dossetti, *supra* note 113, n.11.

¹⁴⁸ ALPA & ZENO-ZENCOVICH, *supra* note 139, at 47–54.

¹⁴⁹ Italian dictionaries distinguish a *naturale* (biological) child as a child born of parents not united in marriage, and an illegitimate child as a classification of a biological child before the 1975 Reform. *See, e.g.*, DIZIONARIO DEVOTO OLI 1095, 1318 (Luca Serragni & Maurizio Mollie eds., 2014). Under the 1942 Civil Code, legitimate children were only natural children whose parents had married after their birth, and natural children declared legitimate by royal decree. CODICE CIVILE [C.C.] art. 280 (1942). A natural child who was judicially declared to be their parent’s child was recognized, but not legitimate. CODICE CIVILE [C.C.] art. 277 (1942).

biological) children and legitimate ones was present in the 1865 Code and continued in the 1942 Code. Not existing in a vacuum, these differences between children affected other areas of law and the family, including their succession rights. One of the results of this differentiation was the *facoltà di commutazione*: a legitimate child's ability to buy a natural sibling out of an inheritance.¹⁵⁰

The 1975 Reform expanded recourse to judicial declarations of paternity introduced in the 1942 Civil Code. Changes included:

1. While previous to the 1975 Reform, a judicial declaration of paternity was only possible in four cases—notorious co-habitation between the mother and the presumed father, an indirect statement or other non-equivocal written indication by the presumed father, rape or other sexual assault, and the possession of the status of a natural child¹⁵¹—the 1975 Reform provided that if a child was legally allowed to be recognized, the child could pursue a judicial declaration of paternity.
2. Before the 1975 Reform, certain classes of children, including those conceived in adultery, could not be recognized: The 1975 Reform abolished this, effectively allowing children born as products of adulterous relationships to sue for a judicial declaration of paternity.¹⁵²
3. The 1975 Reform expanded the means of proof of paternity in the action, allowing every means of proof to be used.¹⁵³

Judicial opinions have still continued to change elements of declaration of paternity suits. Most recently, in 2006, the Constitutional Court declared Article 274, which required the court to conduct a preliminary judicial review to ascertain the declaration of paternity action, unconstitutional.¹⁵⁴ The most recent 2012 *filiazione* reform struck any semantic differences from the Code, using only the term *figlio*, and not *legittimo* or *naturale*. It has also revised Article 276, which governs who may be the *legittimato passivo*, or defendant, in a declaration of paternity suit.

¹⁵⁰ See CODICE CIVILE [C.C.] art. 541 (1942); see also GIOVANNI BONILINI, MANUALE DI DIRITTO EREDITARIO E DELLE DONAZIONI 133–35 (4th ed. 2006).

¹⁵¹ ANNA LISA BUONADONNA ET AL., *Dichiarazione giudiziale di paternità e maternità*, in LE CONTROVERSIE IN MATERIA DI FILIAZIONE 157, 158 (2010). Historically, such limits on ascertainment of paternity were justified by a desire to preserve the good name of men and to avoid scandal.

¹⁵² *Riconoscimento del figlio naturale e giudizio conseguente all'opposizione*, in LE CONTROVERSIE IN MATERIA DI FILIAZIONE, *supra* note 151, at 117, 118. Note that under the 2012 Reform there are still some classes of children who cannot be recognized, namely children who have already been recognized as the child of another. See generally TORRENTE & SCHLISSINGER, *supra* note 146, app.

¹⁵³ See LE CONTROVERSIE IN MATERIA DI FILIAZIONE, *supra* note 151, at x.

¹⁵⁴ *Dichiarazione giudiziale di paternità e maternità*, *supra* note 151, at 159; Corte Cost., 10 febbraio 2006, n. 50, Foro it. 2006, I, 966. It is important to note that, since Liana Beacci's request for declaration of paternity was filed in 1997, her claim was indeed evaluated for its admissibility, and this part of the case, in fact, was appealed all the way to the *Corte di Cassazione*.

Currently, there is no prescription on, or statute of limitations on, declaration of paternity cases in Italy.¹⁵⁵ A child may bring the action at any time, provided he is in a class of children that is able to be recognized.¹⁵⁶ Every means may be given to ascertain proof of paternity, except for a mother's sole declaration that she had relations with the father at the time of conception.¹⁵⁷ If the child dies after having brought the action but while the action is still in progress, his descendants of right may continue the action.¹⁵⁸ Prior to being held unconstitutional, Article 274 only allowed a declaration of paternity action to be admissible when there are specific circumstances sufficient to make it seem justified.¹⁵⁹ The investigation into the facts by the court is kept secret and must not be publicized.¹⁶⁰

C SUCCESSION LAWS: THE LEGAL FRAMEWORK UNDER THE 1942 CIVIL CODE AT THE TIME OF ARTHUR ACTON'S DEATH

In matters of succession, Italian civil law does not privilege a person's testamentary freedom above all else.¹⁶¹ Rather, Italian inheritance law protects a person's legal heirs in the face of a written testament or even without it. This rule has existed in Italian law throughout the twentieth century. Article 721 of the 1865 Code provided for *successione legittima*, or forced heirship when a person dies intestate, which recognized women and men as equally capable to inherit.¹⁶² The heirs succeeded in the following order: the children and descendants, the deceased's brothers and sisters, and finally, other relatives.¹⁶³ The 1865 Code framed *successione legittima* as a way to own property.¹⁶⁴

Under *successione legittima*, a deceased's heirs are entitled to a portion of the deceased's goods when the deceased dies intestate.¹⁶⁵ This guaranteed portion is generally called a *quota* or a *riserva*. Notwithstanding this guaranteed *quota*, the deceased is still legally allowed to will away a portion of his property if he

¹⁵⁵ CODICE CIVILE [C.C.] art. 270.

¹⁵⁶ CODICE CIVILE [C.C.] art. 269.

¹⁵⁷ *Id.*

¹⁵⁸ CODICE CIVILE [C.C.] art. 270.

¹⁵⁹ CODICE CIVILE [C.C.] art. 274.

¹⁶⁰ *Id.*

¹⁶¹ ANTONIO ANNUNZIATA ET AL., *SUCCESSIONI mortis causa NELLA FAMIGLIA LEGITTIMA E NATURALE*, at vii–ix, 13–15 (2012).

¹⁶² It is important here not to confuse the term *legittimo* in the Declaration of Paternity legal framework with the term *legittimario* in the Succession legal framework. A *legittimo* is a legitimate child: a child born to two parents in wedlock. A *legittimario* is one who has a right under the law. A child born out of wedlock, a biological child, becomes a *legittimario*, or one with the right to claim his inheritance, when he is judicially declared to be the natural child of his parent. This declaration does not make him, prior to the 2012 *filiazione* reform, however, a legitimate child, since legitimate children were only those born to married parents. See Barba, *supra* note 116, at 646.

¹⁶³ *Id.*; see also CODICE CIVILE [C.C.] art. 721 (1865).

¹⁶⁴ Antonio Albanese, *La successione legittima tra passato e futuro*, 2012 *FAMIGLIA, PERSONE E SUCCESSIONE* 614.

¹⁶⁵ *MANUALE DI DIRITTO EREDITARIO E DELLE DONAZIONI*, *supra* note 150, at 187; Albanese, *supra* note 164. Italian law also has a legal succession regime entitled *successione necessaria*. In general, *successione necessaria* refers to the corrective rules of succession under Italian law, while *successione legittima* refers to the system of these corrective rules which supplement or stand in for a last will and testament when all or part of the *quota* reserved for certain *legittimari*, or rights

does leave a will; that will, however, cannot affect the *quota* reserved to his so called “forced heirs”—in other words, they are guaranteed an inheritance. If it does, the heirs may enforce their legally reserved quota against the last will and testament, taking legal recourse to the rules of *successione necessaria*, upon which the *successione legittima* regime also relies and which it incorporates.¹⁶⁶ Scholars have argued that the 1942 Civil Code’s presentation of the *successione legittima* legal regime imbues meaning to what was previously one way to inherit property; they characterize this legal framework as a way to “perpetuate the family group.”¹⁶⁷

Under the 1942 Civil Code, that family group, informed by the laws regulating *filiazione*, was narrowly defined. In the 1942 Code, separate articles differentiated between the vested inheritance rights under both the *successione legittima* and *successione necessaria* regimes for recognized biological children and legitimate children.¹⁶⁸ Article 536 defines the *legittimari*, or forced heirs, in the following order of importance: legitimate children, legitimate ascendants (mother, father, etc.), the natural children, and the wife. Article 537 details specific percentages, which operate to divide the deceased goods to legitimate children: half of the patrimony if the deceased leaves an only child, and two-thirds to the legitimate children to be divided equally if they are more than one.¹⁶⁹ In contrast, Article 539 only assures a third of the patrimony to a biological child if they are the only child, and half of the patrimony to be divided among them if they are more than one.¹⁷⁰ The 1942 Code only leaves surviving spouses the right to a life estate in two-thirds of the deceased spouse’s property.¹⁷¹ In the case where there are both biological and legitimate children, Article 541 provides that no less than two-thirds of the patrimony be left to all the children collectively, and then that each biological child retain half the portion that each legitimate child

holders, is either willed away or simply left after the deceased dies intestate. See Albanese, *supra* note 164. In the United States, this legal regime is commonly referred to as “forced heirship.” For the analogous relationship with forced heirship, see THE LAW OF SUCCESSION: TESTAMENTARY FREEDOM (Miriam Anderson & Esther Arroyo i Amayueles eds., 2011). In my analysis, I generally refer to the quotas guaranteed by *successione necessaria*, which provide the floor for the quotas guaranteed to *legittimari*, or rights holders, since Arthur Acton’s will has not been found. If by chance Arthur Acton’s will does come to light in the future, the Beaccis will be able to resort to these “floors” to claim their inheritance. If, however, a will was not written and Arthur Acton truly died intestate, scholars have noted that the norms of *successione legittima* provide a potential ceiling—that is, the Beaccis may claim up to half of Arthur Acton’s estate, since under Art. 574 of the 1942 Civil Code, Liana Beacci could still have claimed only half the share that the legitimate child of Arthur Acton, Harold Acton, could have claimed. CODICE CIVILE [C.C.] art. 574 (1942); see also MANUALE DI DIRITTO EREDITARIO E DELLE DONAZIONI, *supra* note 150, at 186.

¹⁶⁶ MANUALE DI DIRITTO EREDITARIO E DELLE DONAZIONI, *supra* note 150, at 186.

¹⁶⁷ Albanese, *supra* note 164, at 614 n.1.

¹⁶⁸ CODICE CIVILE [C.C.] arts. 537, 539, 541 (1942). To be clear, where 1942 *Codice civile* is noted in this Note it refers to the 1942 Civil Code without the 1975 reform.

¹⁶⁹ CODICE CIVILE [C.C.] art. 537 (1942).

¹⁷⁰ CODICE CIVILE [C.C.] art. 539 (1942).

¹⁷¹ CODICE CIVILE [C.C.] art. 540 (1942). According to scholars, this treatment of the surviving spouse was justified by the policy to keep property within the bloodline. See generally Albanese *supra* note 164.

retains, save for the fact that the actual portion which the legitimate children retain cannot be less than a third.¹⁷² When there is a surviving spouse, a legitimate child, and a biological child, Article 542 provides that two-thirds of the property in its entirety is reserved for the forced heirs: one-fourth for the surviving spouse in the form of a life estate to the property, with the remaining portion (five-twelfths) being divided between the biological and legitimate children, according to Article 541 stipulations.¹⁷³

Under the 1942 Code, an heir may ask for his status as an heir to be recognized by whomever possesses the goods of his inheritance. This act, *petizione*, is, like the action for a declaration of paternity, without a statute of limitations.¹⁷⁴ Usually, however, the heir would bring an action for *riduzione*, or reduction of his *quota* from the patrimony the other heir had been given or held. In order to bring an act for *riduzione*, the heir must have first accepted his inheritance, and if he is a biological child, he must first have been recognized.¹⁷⁵ The Civil Code offers precise ways in which to calculate a *riduzione* of the patrimony already distributed, and yet, in regards to immovable property, it does provide for certain circumstances—namely where there is not more than one fourth of the value of an heir's own portion in the immovable property.¹⁷⁶ In this case, there are two options: (1) leave the property intact to the beneficiary and give the value of the forced heir's portion to him as part of a *riduzione*; or (2) leave the immovable property intact as part of the patrimony.¹⁷⁷ The statute of limitations for an action of *riduzione* is ten years, which begins to run from the time

¹⁷² CODICE CIVILE [C.C.] art. 541 (1942).

¹⁷³ CODICE CIVILE [C.C.] art. 542 (1942).

¹⁷⁴ CODICE CIVILE [C.C.] art. 533 (1942). The only possible bar to the action is *usucapione*, or adverse possession. While NYU might possibly make such an argument, it is generally understood that a party cannot claim adverse possession against a natural child before that child has been legally recognized and therefore able to claim her inheritance. See Vincenzo Barba, *Principi successori del figlio nato fuori del matrimonio e problem di diritto transitorio*, 5 FAMIGLIA E DIRITTO 497, 513 n.56 (2014).

¹⁷⁵ CODICE CIVILE [C.C.] art. 573 (1942) regulates recognition; CODICE CIVILE [C.C.] art. 564 regulates the need to accept. Bringing an action for *riduzione* also presupposes that the plaintiff accepts his inheritance *col beneficio d'inventario*: a way of disclaiming any debts the estate may have which might outweigh a forced heir's portion and cause him to be liable to the estate's expenses. See MANUALE DI DIRITTO EREDITARIO E DELLE DONAZIONI, *supra* note 150, at 155.

¹⁷⁶ CODICE CIVILE [C.C.] art. 560 (1942).

¹⁷⁷ *Id.* It is important to note that in order to claim a right on Harold Acton's estate, and not her father's, Beacci must be judicially recognized. But may Beacci even make a claim directly on Harold's estate if she were to be recognized? According to Article 258, recognition had no effect but towards the parent who effectuated the recognition. Some obligations have, however, been held to exist between legitimate child and natural child, but not natural children of the same parent. CODICE CIVILE [C.C.] art. 258 (1942). This has been explained under the theory of *commutazione*. In contrast, the doctrine has held there is no such obligation between two natural siblings. See Barba, *supra* note 116, at 651. What this could mean for the viability of a claim by Liana Beacci and her heirs to Harold's estate is an interesting problem to pose, keeping in mind that since Harold Acton died in 1994, the laws of succession after the 1975 reform, which recognized the full relationship between siblings and abolished *commutazione*, would be applied. There are also doctrinal arguments that inheritance between a legitimate child and a natural one does not consist of a common inheritance or *patrimonio*, as the family is defined under the 1942 statute. *Id.* at 651 n.30. But see the arguments

the right is recognized as legally valid.¹⁷⁸

V APPLYING THE LAW TO THE ACTON FAMILY, LIANA BEACCI, AND VILLA LA PIETRA: THE FOUR SCENARIOS

A NYU MIGHT HAVE SUCCESSFULLY CLAIMED THAT NYU WAS NOT THE PROPER DEFENDANT IN THE CASE, THEREBY PRECLUDING BEACCI'S HEIRS FROM BRINGING THEIR INHERITANCE CLAIM

Whereas, under Italian Law, the court of appeals reviews both the facts and the law *de novo*, the *Corte di Cassazione* reviews only for errors of law, not for fact.¹⁷⁹ Parties must appeal to the *Corte di Cassazione* on the specific grounds listed in Article 360 of the Civil Code of Procedure, which is considered an exhaustive list.¹⁸⁰ While constitutional provisions are cited in *Corte di Cassazione* cases, a judge sends questions on constitutional interpretations of the law directly to the *Corte Costituzionale*: the Constitutional Court. The Constitutional Court then renders a decision on the constitutionality of the law in question and how the judge should interpret it in the case.¹⁸¹

As a matter of law, Italian norms are not applied retroactively but for the legislature's express provision in the law itself that the law is retroactive.¹⁸² The 2012 *filiazione* reform did not expressly provide for the retroactive application of the revised Article 276 of the Code in ongoing or pending suits for declarations of paternity, even though it did expressly provide for the retroactive application of other revised norms in the reform.¹⁸³ NYU could first ground their argument in such a procedural principle.

The Beacci party could counter that a strict interpretation that the revised section of Article 276 of the Code is not to be applied retroactively renders a procedural impossibility and contradiction under the current law. Namely, declarations of paternity, which do not have a statute of limitations, are now rendered subject to a "natural" statute of limitations—the death of an eventual defendant for litigants who filed their suits prior to the entrance into force of

and hypotheses of Dossetti, *supra* note 128, and Sesta, *supra* note 129, that the intertemporal laws of *Derecho Legislativo* 28 dicembre 2013, n. 154 art. 104, G.U. Jan. 8, 2014, n. 5 create a problem of retroactivity of the laws of succession, effectively allowing children who had no claim of right of succession at the time their parent died, to have a claim of right.

¹⁷⁸ *Corte Cost.*, 21 giugno 1983, n. 191, *Foro it.* 1983, I, 2074 (where a group of natural siblings were contesting the statute of limitations after their inheritance claim was thrown out when ten years had passed from the opening of the succession); *see also* Dossetti, *supra* note 113, at nn.15–16.

¹⁷⁹ GROSSI & PAGNI, *supra* note 18, at 23.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 7–8. Unlike in the United States, parties may not directly petition the Constitutional Court.

¹⁸² *See supra* notes 106–07.

¹⁸³ Legge 10 dicembre 2012, n. 219, G.U. Dec. 17, 2012, n. 293. Article 4 of the law specifically provides that the necessity of parents to continue to support children during divorce and separation proceedings be retroactively applied to divorce and separation proceedings filed before the *filiazione* reform. *Id.* art. 4.

the 2012 *filiazione* reform.¹⁸⁴ Moreover, such an application produces terrible incentives for current defendants in declaration of paternity cases. An elderly heir sued by a natural sibling, for example, might decide it is better to run the “natural” statute of limitations clock, and delay the proceeding, effectively dying before the sibling’s suit is able to be recognized. The Beaccis could argue that not applying the revised Article 176 retroactively effectively creates a “black hole” in the law, which is contrary to the very constitutional tenets and policy of Italian family law today.¹⁸⁵

NYU could counter this argument by highlighting the tension between the protections enshrined in the Constitution. Yes, children born out of wedlock have the same protections as those born within it, and yet the specific wording of the constitutional article conditions this comparison of protection with the word “compatible.”¹⁸⁶ It could be considered “compatible” to effectively deny natural children whose litigation began before the reform the right to sue for a declaration. This might be considered “compatible” if one considers that legitimate children are also barred from suing their parents for the same benefits that would result from a declaration (support and education, for example) if their parents and their parent’s heirs are dead.

The Beaccis could again counter this by saying that nevertheless, a legitimate child could gain access to his reserved *quota* of inheritance, an act precluded to the natural child by a non-retroactive application of Article 276. Furthermore, the Beaccis could argue that it is a violation of equal protection under the law, as enshrined in Article 3 of the Italian Constitution, to discriminate between one class of natural children, those who have commenced litigation, and another, those who have not commenced their cases for a declaration of paternity.¹⁸⁷ This argument might necessitate a judgment by the *Corte Costituzionale*, which has already struck down differentiations between classes of children on these grounds.¹⁸⁸

In fact, the *Corte di Cassazione* successfully accepted the Beaccis’ arguments in 2014. The facts central to the court’s decision were that Article 104 of Law No. 154 of 2013 allowed for the application of the revised Article 276 to pending suits for declaration of paternity, even if the child had been born prior to the reform, and that it was the legislature’s intent to give effect to equality as enshrined in the Italian Constitution.¹⁸⁹

¹⁸⁴ Memorandum by Avv. Andrea Cecchetti, *supra* note 97, at 3–4.

¹⁸⁵ *Id.*

¹⁸⁶ Art. 30 COSTITUZIONE [COST.].

¹⁸⁷ Art. 3 COSTITUZIONE [COST.].

¹⁸⁸ See Luigi Balestra, *Note critiche sull’interpretazione dell’art. 276, comma primo c.c. ovvero sulla vanificazione dell’interesse (a rilevanza costituzionale) del figlio naturale all’accertamento del rapporto di filiazione*, in *FAMIGLIA E SUCCESSIONI* 61–70 (Elena Bellisario et al. eds., 2013). Balestra cites Cass., sez. I, 24 agosto 1993, n. 8915 (noting that the ascertainment of paternity is to be considered a form of legal protection) (citing Art. 30 COSTITUZIONE [COST.]). Balestra also notes that a preclusion to sue for paternity is contrary to the very tenants of the Italian Civil Code itself, which allows the action to be *imprescrittibile* (with no statute of limitations).

¹⁸⁹ Art. 3 COSTITUZIONE [COST.].

B NYU SUCCESSFULLY CLAIMS HORTENSE WAS GIVEN VILLA LA PIETRA BY
HER FATHER, THE MILLIONAIRE CHICAGO BANKER WILLIAM MITCHELL,
THEREBY RETAINING SOLE TITLE TO THE VILLA AS HER PERSONAL PROPERTY,
AND THEREFORE BEQUEATHING CLEAR TITLE TO HER SON HAROLD, AND
THEN TO NYU

The law at the time of the purchase of Villa La Pietra in 1907 governs who has title to it.¹⁹⁰ Upon the unification of Italy and the advent of the 1865 Code, all women could own property.¹⁹¹ Women were also given equal inheritance rights with men.¹⁹² Property that women received, whether by gift or through inheritance, could still be willed away by them, whether they were single or married.¹⁹³ Under the 1865 Code and up until the 1975 Family Law Reform, women and men held property independently when married, in a property regime entitled *separazione dei beni*.¹⁹⁴ Nevertheless, the 1865 Code still presented obstacles to women's ownership of property.¹⁹⁵ These obstacles included that property ac-

¹⁹⁰ Regio Decreto 16 marzo 1942, n. 262, art. 11, G.U. Apr. 4, 1942, n. 79.

¹⁹¹ Licini, *supra* note 137, at 11. Prior to the 1865 Code, women could own property and inherit in most regions in Italy. In the city of Milan, for example, "the legal right to property had been granted to women since the Restoration era." *Id.* at n.4. Discrepancies between different regional legal systems produced great debate, especially from women activists.

¹⁹² See CODICE CIVILE [C.C.] art. 724 (1865). Women are not named among those who may not succeed. Article 736 allows for legitimate children to succeed their parents, with no discrimination as to sex. This was often undermined, however, by the social mores of Italian culture of the time, in which parents tended to only give property to their sons, unless they only had daughters. Licini, *supra* note 137, at 18–19.

¹⁹³ Licini, *supra* note 137, at 5. In fact, it has been argued "inheritance was by far the main source of wealth for women belonging to the upper class." *Id.* at 14.

¹⁹⁴ This property regime, in which each spouse retained independent ownership to their own property, which they themselves acquired during marriage, was the default property regime. With limitations to a wife's ability to work outside the home, under the 1865 Code, there was a presumption that the husband owned everything in the home. 8 NUOVO DIGESTO ITALIANO 314 (Mariano D'Amelio ed., 1939). Since this was progressively seen as unfair to the wife, the 1942 Code facilitated a couple's ability to opt-in to a community property regime. *Id.* A community property regime did not, however, become the default property regime until the 1975 Family Law Reform. In the community property regime, each spouse is assured a fifty percent stake in property acquired during the marriage and, unless the couple opts-in to the *separazione dei beni*, the fruits of individual property acquired prior to the marriage becomes part of the community property regime. ALPA & ZENO-ZENCOVICH, *supra* note 139; CODICE CIVILE [C.C.] arts. 177, 179. Under both the 1865 Code and the 1942 Code, husbands had the exclusive right to manage any property the couple might (if they opted to) hold in *comunione*, or under the community property regime. Practically, unless a wife received an item as a gift, as inheritance, or if items were her personal goods, or *parafernali*, she did not legally own any property. This made the majority of wives effectively dependent on their husbands. For certain items, the 1865 Code did carve out special rules: there was a dowry regime and provisions for a wife's eventual retention of her personal goods on her husband's death. 2 IL DIGESTO ITALIANO 792 (Luigi Lucchini ed., 1929). Today, the community property regime in Italy between spouses reflects the initial reasoning of the creation of these spheres, excluding goods of a strictly personal use and goods acquired by gift or succession from the *comunione*. CODICE CIVILE [C.C.] art. 179.

¹⁹⁵ Many women decried these obstacles. See generally Anna Maria Mozzoni's contemporary publications. E.g. ANNA MARIA MOZZONI, LA DONNA E I SUOI RAPPORTI SOCIALI (Milano, Tipografia Sociale 1864), <http://books.google.com/books?id=-1nCb7uPEC>. It is important to note that even the architect of the 1865 Code, Pisanelli, had excluded the "marital authorization" clause. It was instead the Senate who placed it into the Code. For a comprehensive overview of legislation in the late nineteenth and early twentieth centuries regarding women, see 2 DONNE E DIRITTO: DUE

quired during the marriage, even in the rare circumstances it was considered a “joint” good and not exclusively the husband’s, could still only be managed by the husband.¹⁹⁶ A wife was also unable to transfer real property, mortgage the property in any way, give or obtain capital, or even be present at any of these transactions, without her husband’s consent.¹⁹⁷ This marital authorization law was not repealed until 1919.¹⁹⁸

Dowry, which was regulated yet not required by the 1865 Code, was a tool used by many to protect women’s property rights to their inheritance.¹⁹⁹ The 1865 Code expressly defined dowry as goods brought to the husband by the wife.²⁰⁰ These goods included real property.²⁰¹ Unless otherwise specified in the marriage contract, a dowry could not be mortgaged or otherwise alienated with-

SECOLI DI LEGISLAZIONE—1796/1986 (Agata Alma Cappiello et al. eds., 1988).

¹⁹⁶ MICHELE SESTA, *REGIME PATRIMONIALE DELLA FAMIGLIA* 313 (2012) (citing CODICE CIVILE [C.C.] art. 1438 (1865)).

¹⁹⁷ See CODICE CIVILE [C.C.] art. 134 (1865); see also LESLEY CALDWELL, *ITALIAN FAMILY MATTERS* 60 (1991). The marital authorization rule effectively nullified the right of a woman to own property, since, upon her marriage, she could do nothing with it on her own. No exceptions to the rule were made for personal goods, as in later Codes.

¹⁹⁸ CALDWELL, *supra* note 197, at 132 n.24. This effectively subordinated Italian married women, some of whom had previously managed their property freely, to the authority of their husbands for some fifty years. Single women, on the other hand, were still free to manage their own property. Licini, *supra* note 137, at 18–19.

¹⁹⁹ This protection was necessary, especially due to the 1865 Code’s discrimination against women in the workplace or indeed in almost any profession. Inheritance, and the proper management of it through the dowry regime, was the most common way, especially when the marriage authorization rule of 1919 was in effect, for women to be assured security after their husbands’ deaths. One of the great women leaders of the opposition, Anna Maria Mozzoni, described her frustrations with the Code, and indeed its skewed view of the reality of the lives of married women, in her many essays. Mozzoni observed how if indeed man represents the family in its business affairs then the woman represents it in society. ANNA MARIA MOZZONI, *LA DONNA IN FACCIA AL PROGETTO DEL NUOVO CODICE CIVILE ITALIANO* (Milano, Tipografia Sociale 1865), *reprinted in* 2 *DONNE E DIRITTO: DUE SECOLI DI LEGISLAZIONE—1796/1986*, *supra* note 195, at 1221. Because of this, she argued, there truly was not an Italian man in his right mind who took seriously the letter of the law which gave him dominion over his wife. Moreover, by impeding women from seeking professions, Mozzoni argued quite logically, the law was setting women up to go hungry when they were obliged by the Code to contribute to the maintenance of her husband when he did not have sufficient means to support himself. *Id.* at 1230. One of three exceptions to marital authorization in the 1865 code was when a woman *esercitava la mercatura*, or was a merchant. Hence, under the 1865 Code, women’s roles were heavily defined by what social class they were a part of, whether or not they were married. CODICE CIVILE [C.C.] art. 133 (1865). Notwithstanding the conservative nature of the 1865 Italian Civil Code, its Napoleonic influences, and its life in the shadow of the strong presence of the Catholic Church in Italy, the dialogue that surrounded its regulations of women had a distinct international flavor. Essays by Mozzoni contain many comparisons to the legal status of women in other countries, including the United States and England, and the ability of the women in these countries to be equal to men, especially in work, which did not result, as Mozzoni states “in an upended world.” MOZZONI, *supra*, at 1228. It was not only the opposition who noticed and cited to the American legal system to support their arguments. Indeed, legislatures, as they introduced bills to be passed, cited to American laws. Such was evident when Micelli, the Agricultural Minister, proposed legislation in 1880 to regulate the working conditions of women and children in the mines and factories of Italy and cited to the laws of certain states in the Union that had laws dating from 1813 on the subject. 1 *DONNE E DIRITTO: DUE SECOLI DI LEGISLAZIONE—1796/1986*, *supra* note 195, at 210.

²⁰⁰ CODICE CIVILE [C.C.] art. 1388 (1865).

²⁰¹ CODICE CIVILE [C.C.] art. 1389 (1865).

out the consent of both spouses and an appearance in court.²⁰² Like other property a wife may have owned, a dowry could only be administered by the husband, and the husband was also the only person of right under the law in regards to the dowry, whether it contained moveable or immovable goods.²⁰³ Only third parties could increase a dowry.²⁰⁴ If the husband died, the dowry could be returned to the wife upon her request.²⁰⁵ If there were no request, the dowry fully became part of the husband's *patrimonio*, to be divided between herself and their children.²⁰⁶ At the time of the 1865 Code, upon their husbands' death, women, as surviving spouses, were allowed to succeed only insofar as their husbands had no other relatives, which included relatives to the tenth degree.²⁰⁷

In 1907, when Villa La Pietra was purchased, Hortense Mitchell was a rich, sophisticated American heiress who traveled the world. Like the famed English historian and Tuscan resident Janet Ross, she had bought items abroad prior to her marriage. Her father had also traveled, and was a sophisticated banker. Arthur Acton, by comparison, was a struggling art dealer. These facts could successfully suggest that William Mitchell bought Villa La Pietra for Hortense either as a gift or as a dowry. Such a gift would have effectively secured her a home in which to make her married life, and create a social sphere worthy of an early twentieth century socialite of Hortense's caliber. William Mitchell could even have been inspired by his other daughter Mary's Italian home in Chicago, which perhaps he had purchased as well. Under the 1865 Code in effect at the time, if the Villa was a gift prior to Hortense's marriage, then she would have retained sole ownership to it under the *separazione dei beni* regime upon her marriage and could have willed it to Harold, bequeathing him clear title. Unfortunately, according to newspaper announcements, Hortense and Acton married in 1903, before the purchase of the Villa.²⁰⁸ Therefore, the strongest legal argument for NYU would be that Villa La Pietra was a gift from William Mitchell to Hortense for the purpose of her marriage, and therefore was her dowry. Under the 1865 Code, the husband managed the dowry and was entitled to the fruits of it. Therefore, it would make sense that Acton might have hired Elsie to help run it, especially if Hortense was otherwise engaged in social events in Florence. Until 1919, Hortense could not have managed the property except with Arthur's permission. This permission would seem to have been granted, especially given all the parties and events which Hortense hosted at the Villa, which included organizing lighting, decoration, and other aspects of Villa life for her children and

²⁰² CODICE CIVILE [C.C.] arts. 1404–05 (1865).

²⁰³ CODICE CIVILE [C.C.] art. 1399 (1865). Although it is important to note that a portion of the dowry could be assigned to the wife for her personal expenses. See 13 ENCICLOPEDIA ITALIANA DI SCIENZE, LETTERE ED ARTI 182 (1932), [http://www.treccani.it/enciclopedia/dote_\(Enciclopedia-Italiana\)/](http://www.treccani.it/enciclopedia/dote_(Enciclopedia-Italiana)/).

²⁰⁴ DIGESTO ITALIANO, *supra* note 194, at 792. The entry on *separazione dei beni* cites to Article 1391 of the 1865 Code, and states that the separation of the dowry was equated and understood as being the same as a *separazione dei beni*, or a separation of the wife's goods from the husband's.

²⁰⁵ CODICE CIVILE [C.C.] art. 1415 (1865).

²⁰⁶ CODICE CIVILE [C.C.] art. 1416 (1865).

²⁰⁷ CODICE CIVILE [C.C.] art. 742 (1865).

²⁰⁸ *Miss Hortense Mitchell English Artist's Bride*, CHI. DAILY TRIB., May 26, 1903, at 2.

her guests. An even more concrete indication of Hortense's ability to manage La Pietra, if she owned it, is a 1929 contract in which Hortense cedes a portion of property she owned on the Via Bolognese, between Villa Ruspoli and Villa La Pietra to the Commune of Florence.²⁰⁹

The 1942 Code continued the tradition of a woman's dependence upon her husband, making her subject to his power generally and his right to impose discipline.²¹⁰ Such a dependency was present even though a wife could own and manage her own property during marriage.²¹¹ As under the 1865 Code, a woman's husband administered her dowry, but if the dowry consisted of an immovable

²⁰⁹ The exact wording of the contract states that Hortense is ceding a piece of *her* property in order to enlarge Via Bolognese:

Signora Mitchell Acton Hortense la cessione in gratuita e pubblico suolo di una area di terreno di sua proprietà, posta in Firenze ed interessata nell'allargamento della Via Bolognese fra Villa Ruspoli e La Pietra.

See *supra* note 60. In contrast, when Arthur Acton owned property (namely the other Villas on the La Pietra property), he contracted himself with the Commune. There are other documents in the *archivio* which testify to this. For a list of these other documents, see *Risultati Ricerca, L'ARCHIVO DELLA CITTÀ: ARCHIVO STORICO DEL COMUNE DI FIRENZE*, <http://archinet.comune.firenze.it> (last visited Aug. 8, 2015). By searching Acton in the Commune of Florence's online database, one finds documents in which Arthur Acton contracted with construction workers to make modifications to other property on Via Bolognese.

²¹⁰ CODICE CIVILE [C.C.] arts. 143, 145 (1942); see also ALPA & ZENO-ZENCOVICH, *supra* note 139, at 47 ("The wife was still considered a weak person who deserved protection and advice, direction and control."). The Fascist regime, which ruled Italy from 1922 to the end of World War II, and its leader Mussolini, stood "for returning women to home and hearth, restoring patriarchal authority, and confining female destiny to bearing babies." VICTORIA DE GRAZIA, *HOW FASCISM RULED WOMEN: ITALY, 1922-1945*, at 1 (1993). De Grazia notes that ideological responses such as this one by the Italian regime were part and parcel of larger European attempts where "a restructuring of gender relations thus went hand in hand with the recasting of economic and political institutions to secure conservative interests in the face of economic uncertainty and the democratization of public life." *Id.* at 3. According to historians, recognizing women's legal rights under Fascism therefore meant recognizing women as central to "population politics." *Id.* at 9; see also Julie Thorpe, *Population Politics in the Fascist Era, Austria's 1935 Population Index*, 25 HUMAN. RES. 45 (2009). This resulted in repressive and misogynist laws and organizations which attempted to regulate everything from women's control of their household accounts, their own bodies, and their ability to work outside the home. Within this umbrella of control, however, were pockets of individualism resulting from different influences upon Italian citizens. In Florence, for example, where we have already seen Anglo-American expatriates exert considerable influence in the art and real estate markets, "one might encounter young [Italian] companionate couples in the Anglo-American style," in contrast to the strong patriarchal Fascist figure who ruled his family with a proverbial iron fist in more rural areas. DE GRAZIA, *supra*, at 12.

²¹¹ Barring women from most professions effectively prohibited most of them from obtaining enough wealth to buy their own property or goods, and therefore whatever home they lived in was the property of their husband. A wife's right in succession to only a *usufruct* of a portion of her marital patrimony, and not to a definite ownership of a portion of that patrimony, only continued to weaken a woman's ability to be independent. Notwithstanding this, as in the 1865 Code, women still had the duty to contribute to her husbands "maintenance," if he did not have the means to do so. CODICE CIVILE [C.C.] art. 145 (1942). Women were not allowed to vote in general elections in Italy until 1946. ALPA & ZENO-ZENCOVICH, *supra* note 139, at 6. A married woman was not even given full authority over her children. Instead this was given to the father and conditionally passed to the mother upon his death. CODICE CIVILE [C.C.] art. 316 (1942). According to Caldwell, any interested party could also object to the mother's guardianship of the children after the father's death and be appointed in their stead, and, upon a woman's remarriage, the court could set conditions for the children's education. CALDWELL, *supra* note 197, at 72-73.

good, then that property was not transferred automatically to the husband, as was a dowry of cash, unless expressly declared by the wife.²¹² A husband also had the exclusive right to administer the dowry during the marriage and the exclusive right to its fruits.²¹³ Article 193 also specified that if the wife retained title to her dowry, it must be returned to her in full upon the death of her spouse.²¹⁴ Under the 1942 Code, the regime of separate estates effectively swayed the balance of power in marriage in favor of the husband, who in most cases worked outside the home and therefore bought the property and goods.²¹⁵ Moreover, although the marital authorization law was abolished in 1919, transfers of property between spouses were not allowed, unless the spouses had a specific agreement, which even then applied only to property acquired after the marriage.²¹⁶ Even in this case, the husband retained an exclusive right to manage these “joint” goods.²¹⁷ The 1942 Code also regulated *parafernali*, or a wife’s personal goods, defined as what was not part of her dowry or the family patrimony.²¹⁸ The wife had the power to manage these goods herself, but she still was under the obligation to use them to contribute to the responsibilities of marriage and if her husband used her goods or retained the fruits of them, she had a right to ask him and his heirs for an accounting.²¹⁹ Under the 1942 Civil Code, any goods or property acquired during the marriage, and not exclusively by each spouse, during the marriage were considered to be community property.²²⁰

Upon Arthur’s death in 1953, there is no record of any request by Hortense for the return of Villa La Pietra. In fact, according to the Beacci account, in a document filed with the London Probate Registry upon Arthur Acton’s death, Hortense and Harold were “entitled to administer the estate of said intestate by the law of the place where the deceased died domiciled.”²²¹ This wording is interesting because under Italian law, and the 1942 Code in particular which governs the distribution of Arthur Acton’s estate, even in 1953, women were not traditionally allowed to “administer” items that were not theirs in the first place. This wording seems especially relevant given a wife’s right to only a life estate in any marital property she received upon her husband’s death. This wording may point to the fact that Villa La Pietra was actually returned to Hortense upon Arthur’s death, because it had in fact been her dowry. This would also explain

²¹² CODICE CIVILE [C.C.] art. 18 (1942).

²¹³ CODICE CIVILE [C.C.] art. 184 (1942).

²¹⁴ CODICE CIVILE [C.C.] art. 193 (1942).

²¹⁵ Valerio Pocar & Paola Ronfani, *Family Law in Italy: Legislative Innovations and Social Change*, 12 L. & SOC. REV. 607, 632 (1978).

²¹⁶ CODICE CIVILE [C.C.] arts. 210–30 (1942).

²¹⁷ *Id.* Community property, under the 1942 Code, could be contracted between the spouses and the goods they acquired during their marriage fell under this regime. CODICE CIVILE [C.C.] art. 215 (1942). Even in this situation only the husband could administer the community property. CODICE CIVILE [C.C.] art. 220 (1942).

²¹⁸ CODICE CIVILE [C.C.] art. 210 (1942).

²¹⁹ CODICE CIVILE [C.C.] arts. 211–12 (1942).

²²⁰ CODICE CIVILE [C.C.] arts. 167–76 (1942); see also *Separazione dei Beni*, DIZIONARIO TRECCANI, <http://www.treccani.it/enciclopedia/separazione-dei-beni-tra-coniugi> (last visited Aug. 8, 2015).

²²¹ ALLIATA-LENSI ORLANDI, *supra* note 26, at 438.

why the property was in her name.²²²

In this case, Hortense could will Villa La Pietra to whomever she wanted. In fact, she could have even gifted it to Harold before her death, transferring title to him.²²³ Under this scenario, Liana Beacci and her heirs have no colorable claim to the Villa since she was not a natural child of Hortense.²²⁴

²²² It is worth noting at this juncture that the passage of the Italian Constitution altered the 1942 Civil Code's codified inequality between men and women, affecting women's lives. The debates surrounding the drafting of what would become Article 29 highlighted the concern of at once regulating the family too much, and therefore repeating the mistakes of Fascist predecessors, and the desire to nevertheless still provide legal protection for the family as an entity. For a detailed discussion of the debates, see CALDWELL, *supra* note 198, at 61–63. Caldwell quotes from the transcripts of these debates, and some of these excerpts reflect members of the Constituent Assembly's concerns that, if the state were to recognize the family outright as a natural society, then this would mean recognition for families not founded upon marriage: "families . . . that are deprived of the crism [sic] of legality and the religious sacrament. In this sense concubinage would be recognized by the State." *Id.* at 64. Nevertheless, the tension in the Constitution affected women. While at once recognizing the tenet of equality, the final Italian Constitution nevertheless provides inherent limits to it. For example, Article 29 at once intimates man and wife are equal in marriage and yet that this equality is limited by the unity of the family. *Id.* at 65. Similarly, Article 37 announced, "Female labour enjoys equal rights and the same wages for the same work as male labour," and, in the very next sentence, "Conditions of work must make it possible for them to fulfill their essential family functions and ensure the adequate protection of mothers and children." Art. 37 COSTITUZIONE [COST.]. Work is presented as subordinate to family responsibilities for both sexes, and women who as mothers in need of constitutionally mandated protection in the workplace. CALDWELL, *supra* note 197, at 65. Caldwell notes, "acknowledging that men and women had a different 'mission' and that women were first and foremost familiarly located made legislating for equality impossible." *Id.* Overall, the Italian Constitution, as historians have noted, semantically equates woman with mother and mother with family. *Id.* at 67.

It is important of course to note that, even with this tension, the Constitution presented a new and previously unheard of legally sanctioned equality between the sexes, especially when compared to the previous 1865 Code and the 1942 Civil Code, which still existed alongside it. Between the ratification of the Italian Constitution and the 1975 Reform, various laws began to erode the inherent tension in laws, which affected the lives and rights of women. They included a law prohibiting the firing of women during their legally mandated absence of one month prior to the birth of their child through the first year of their child's birth (Legge 26 agosto 1950, n. 860, G.U. Nov. 3, 1950, n. 253), the famous Merlin Law which abolished the State's regulation of prostitution (Legge 20 febbraio 1958, n. 75, G.U. Mar. 4, 1958, n. 55), pensions to housewives (Legge 5 marzo 1963, n. 389, G.U. Apr. 3, 1963, n. 90), the ability of women to access all professions and public offices (Legge 9 febbraio 1963, n. 66, G.U. Feb. 19, 1963, n. 48). For a comprehensive list of laws that affected women in Italy beginning after the Constitution and which had a profound effect on the status and rights of women in Italy, see *Le leggi delle donne che hanno cambiato l'Italia*, FONDAZIONE NILDE IOTTI (Apr. 2012), <http://www.fondazioneildeiotti.it/docs/documento4338870.pdf>. Opinions by the *Corte di Cassazione* and the Constitutional Court also had profound effect, including a 1966 *Cassazione* decision that declared null and void collective contracts resulting contrary to Article 37 of the Constitution, and a 1968 Constitutional Court decision declaring it unconstitutional for female adultery to be considered a crime. *Corte Cost.*, 19 dicembre 1968, n. 126, <http://www.gazzettaufficiale.it/eli/id/1968/12/28/068C0126/s1>. The previous law punished the adulterous wife and her lover with one-year imprisonment, while a husband's adultery was not punished at all. In 1970, Legge 1 dicembre 1970, n. 898, G.U. Dec. 3, 1970, n. 306, introduced divorce into Italian law.

²²³ ALLIATA-LENSI ORLANDI, *supra* note 25, at 376.

²²⁴ It is worth noting, for completeness, that there is a small possibility that Liana Beacci and her heirs could still lay claim to the Villa. In this case, Article 538 of the 1942 Civil Code revised with the 1975 Family Law Reform would be applied, since Harold Acton died in 1994. According to the regime of *successione legittima* in place under this Code, Liana Beacci could claim one-third

C NYU SUCCESSFULLY CLAIMS HORTENSE SET UP A LEGAL ENTITY, WHETHER A CORPORATION OR TRUST, PLACING LEGAL TITLE TO VILLA LA PIETRA IN SUCH ENTITY, THEREBY BEQUEATHING CLEAR TITLE TO HER SON HAROLD, AND THEN TO NYU

In his American last will and testament, Harold Acton bequeathed his shares in the La Pietra Corporation, which holds title to Villa La Pietra, to NYU. This bequest is startling when compared to Hortense's supposed will in which she leaves no real estate. Having established that Hortense Mitchell was a rich, sophisticated American heiress, it will come as no surprise to learn that she had a trust, the Hortense Acton Charitable Trust, currently administered by Bank of America in Chicago.²²⁵ NYU is listed as the trust recipient, and NYU has in fact recorded the trust as an asset in previous litigation.²²⁶ Although Hortense's trust is registered as founded in 1995, these dates often represent the date registered by the IRS and not the true date of the trust's inception.²²⁷ If Hortense's father set up her trust prior to her marriage, and then he or Hortense placed the title to Villa La Pietra not in her name but directly into this trust, then that trust, located in the United States, would most likely have been ruled by American trust law of the early twentieth century. During this period, it was indeed common for wealthy Americans to set up trusts for their daughters and to then administer them.²²⁸ In these cases, trusts were part of a daughter's inheritance. Under this regime, early twentieth century women could inherit trusts, and in fact it was the preferred way for fathers to assure their daughters' futures in the face of irresponsible husbands.²²⁹ If Villa La Pietra was indeed part of Hortense's trust, and American law applied, Liana Beacci and her heirs would have no colorable claim to the Villa, notwithstanding that it was purchased during Hortense's marriage. The Villa would have been bought and placed in the trust by Hortense's father effectively as a gift, which is part of the *separazione dei beni* under the 1942 Code and not part of marital community property.²³⁰

The La Pietra Corporation is organized under the laws of Panama, making it

of the villa since Harold died without children, but left her, an *ascendente legittimo*, or ascendant with right (understood as the brothers, sisters, and other relatives before the sixth degree). In this scenario, Liana Beacci would also be an *ascendente legittimo* only if she were able to obtain a declaration of paternity. There is also the possibility that the Italian courts will extend the definition of the family, as suggested by the 2012 *filiatione* reform and apply current norms of succession to a Beacci inheritance suit. See generally Dossetti, *supra* note 128; Barba, *supra* note 116.

²²⁵ IRS Form 990-PF, Return of Private Foundation, Hortense Acton Charitable Trust (2009) (on file with author).

²²⁶ Brief for Appellant at i, *Eidlisz v. New York University*, 15 N.E.3d 730 (N.Y. 2010) (No. 2010-0128), 2009 WL 6692534, at *i.

²²⁷ *Using the Ruling Date for Research*, NCCS: NAT'L CTR. FOR CHARITABLE STAT., <http://nccsdataweb.urban.org/knowledgebase/detail.php?linkID=762&category=83&xrefID=3433> (last visited Mar. 7, 2014).

²²⁸ See *Women, Enterprise & Society*, HARV. BUS. SCH., http://www.library.hbs.edu/hc/wes/collections/women_law/trust_guardianship/ (last visited Mar. 7, 2014).

²²⁹ JENS BECKER, *INHERITED WEALTH* 95 (2008).

²³⁰ CODICE CIVILE [C.C.] art. 168 (1942) (describing how third parties may vest ownership of property in one spouse).

impossible to obtain its Articles of Incorporation.²³¹ However, friends of Harold Acton say that La Pietra Corporation was founded during Hortense's life, and that she then transferred her shares to Harold before his death.²³² If this is so, various issues may arise, including the legality of placing an Italian property registered as a *Bene Culturale*, in the hands of a foreign corporation.²³³ Such a discussion is beyond the scope of this Note, but if Hortense incorporated the Villa after the 1942 Code came into force, and her father had previously gifted it to her, then the laws of *separazione dei beni* would still apply. Therefore, Liana Beacci would have no colorable claim.

D HORTENSE AND ACTON ACQUIRED THE VILLA TOGETHER, THEREBY
CREATING A COLORABLE CLAIM BY LIANA BEACCI TO VILLA LA PIETRA AND
THE PROPERTY

The facts show that, contrary to the claims in Elsie Beacci's diaries, Hortense was indeed a cultured woman who was very aware of her Florentine surroundings. When she met Arthur in Egypt it is easy to imagine that they bonded over a love of art, and a common Florentine dream. Perhaps they plotted and planned to create a place of former Renaissance glory together.²³⁴ Hortense frequently accompanied Arthur on trips around Europe, and they most certainly bought artwork together, perhaps dreaming up exactly where they would place it together in the Villa.²³⁵ With the sights of other countries so prevalent in the minds of Italians as they surveyed their own legal landscape, it is easy to imagine that the many American and English women who journeyed to Italy themselves, as

²³¹ Last Will and Testament of Harold Acton, *supra* note 12, at 2–3.

²³² Interview with Giovanni Conti, Antiquarian, in Florence, Italy (Summer 2011). This interview was conducted in person during the course of my research on the life of Hortense Mitchell Acton.

²³³ ALLIATA-LENSI ORLANDI, *supra* note 25, at 183.

²³⁴ The wedding announcement of Hortense and Acton indicates that they met in Egypt: "Mrs. Acton . . . returned from Europe last summer, only to leave Chicago early in the winter for a sojourn in Egypt with her mother. It was while abroad that she met Mr. Acton." *Miss Hortense Mitchell English Artist's Bride*, *supra* note 208. One indication that both Hortense and Acton bought Villa La Pietra together, and that the Villa embodied their common vision, can be found in a newspaper article. Cousin Eve, *Writer Visits Campo Santo, City of the Dead*, CHI. DAILY TRIB., Aug. 13, 1933, at F1.

The most charming time I had in Florence was at the Acton villa, La Pietra, upon the high hill called Via Bolognese . . . The house, gloriously frescoed, was in good repair when bought by the Actons years ago. And what they have added to it is all in the picture. A small *salone*, very lovely, a walnut paneled bookroom of the cardinal with windows high and grilled against enemies and sieges In the garden the Actons have done their most remarkable magic.

Id.

²³⁵ In this way, Hortense and Arthur would have been quite similar to other expatriate couples of their day and who came before them. Newspaper articles indicate that Hortense and Arthur viewed art exhibits together. May Birkhead, *Arthur Actons view Parisian Art Exhibits*, CHI. DAILY TRIB., Dec. 18, 1938, at F4. Birkhead reports, "The former Miss Hortense Mitchell of Chicago . . . and her husband Arthur Acton, found time, during their recent stay in Paris, to interest themselves, as they have for years, in the peaceful fields of art. All who have visited their beautiful home near Florence will recall its many treasures and their superb setting. Their historic villa, La Pietra, lies on the Via Bolognese, some distance out of the city, and has a splendid view of the famous city." *Id.*

Hortense did, would have noticed the legal differences between their homes and the Italian landscape as well. Most noticeably, as Americans flocked to Florence in the nineteenth century, where the living was cheap and the artistic inspiration free flowing, the true bargain was real estate.²³⁶ Americans rented out the homes of Italian noble families for a steal, and bought entire villas.²³⁷ It is not a stretch to imagine these adventurous Americans informing themselves on the laws of the day in order to ascertain their relationship to their property.²³⁸

Famous English colonists such as Janet Ross, who moved to Florence with her husband during the reign of the 1865 Code, must have surely informed themselves about the title to the art they bought with their husbands just as assuredly as they informed themselves on local Tuscan traditions.²³⁹ In such a case, ironically, Hortense's sophistication, culture, and love for art would be Villa La Pietra and NYU's downfall. If Arthur contributed something to the purchase of the Villa, and he and Hortense bought it and flourished there together, then Villa La Pietra was part of their *patrimonio*, their marital property. Under the 1942 Code, prior to the 1975 Reform, such property, although in theory belonging to each spouse, in reality gave the surviving spouse—here, Hortense—no property interest in it, but only a life estate. Therefore, upon Arthur's death, Liana Beacci and her heirs would be entitled to a portion of five-twelfths of Villa La Pietra.

In this case, the question of how to give the Beacci family their portion of the inheritance is an open one. According to the 1942 Code, Villa La Pietra might not be able to be sold or divided. If the Beacci family does not wish to accept any monetary reimbursement (and they have said they do not in fact want to),²⁴⁰ then Villa La Pietra will have to remain intact. Moreover, as a registered

²³⁶ BEN DOWLING, *QUEEN BEE OF TUSCANY: THE REDOUBTABLE JANE ROSS* 99 (2013).

²³⁷ For a description of the numerous Florentine villas owned by Anglo-Florentines see GRAZIA GOBBI SICA *THE FLORENTINE VILLA: ARCHITECTURE, HISTORY, SOCIETY* 97–101 (2007).

²³⁸ While it is true that many members of the Anglo-American colony in Florence in particular stayed cocooned within their circle of fellow expatriates, just as many colonists became active in Italian politics. DOWLING, *supra* note 236, at 110–11. American newspapers published in Florence for the Anglo-American audience at the time Villa La Pietra was purchased contain regular updates on the financial markets of the time, in comparative perspective, and notes about curious legal incidents involving art. For example, the October 30, 1906 edition of *The Florence Herald* makes a note that “Baron Salvadori, of Trent, who sold portraits by Titian and G.B. Morone to an American a few weeks ago, is to be prosecuted by the Austrian Government for sending these works of art out of the country.” *Jottings*, FLORENCE HERALD, Oct. 30, 1906, at 12.

²³⁹ DOWLING, *supra* note 236, at 128. Dowling describes a curious antidote about Ross buying the painting *The School of Pan* by Luca Signorelli, alongside her husband, only to orchestrate a potential sale of it days later after a friend from the National Gallery came calling. It is interesting to note that under the 1865 Code in effect in Italy at the time, the movable property acquired by Janet and her husband would have been able to be managed solely by her husband, and a sale orchestrated by Janet only with her husband's permission. How this would have squared with her English mentality, her daily routine, and her English familiarity with a married woman's right to own and manage her own property under the Women's Property Act of 1870 is an interesting issue to consider. For a comparative perspective of the Married Woman's Property Act within the greater framework of Italian women's right to vote, see GIULIA GALEOTTI, *STORIA DEL VOTO ALLE DONNE IN ITALIA* 23 (2006). Ross later became the manager of her landlord's tenant *mezzadrie* farm.

²⁴⁰ See Haden-Guest, *supra* note 15. “That said, Dialta would prefer a settlement, and she accepts that La Pietra and its contents should be kept together, ‘and we would like to get in and out of La Pietra . . . I would like to give maybe a couple of events there a year.’” *Id.*

member of the International Council of Museums, Villa La Pietra may be subject to international norms precluding its partition. How these two litigious parties would manage their rights together under such circumstances remains to be seen.

VI CONCLUSION

The case involving Villa La Pietra exists in the midst of a strong tension in Italian law. The evolution of Italy's legal attitude towards traditionally subjugated groups, such as women, children, and especially illegitimate children, has a real and immediate effect on property currently located in Italy, including property that has recently been or is now being purchased by American citizens and entities. What this evolution shows is that it is crucial to provide a balance between new laws that effectuate a more equal legal regime and laws that protect and recognize historical ownership, which has characterized Anglo-Italian relations for centuries. NYU introduces Italy to so many young Americans, and yet Liana Beacci and her family have a legal right to the means NYU uses to make this introduction. Whether the two parties can move beyond their litigation to create a conversation out of the nuances of this introduction to continue to benefit the American students who study at Villa La Pietra, which could very well include an American grandchild of Liana Beacci one day, will be the fundamental result of the course Italian law and this case decide to take.

