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### Hanafin, Patrick. (2009) **Refusing disembodiment: abortion and the paradox of reproductive rights in contemporary Italy**

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**Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy”, *Feminist Theory*, Volume 10, Number 2, August 2009.**

## Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy

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Despite new laws and new ways of thinking about gender and women’s lives, the legacy of the Italian women’s movement of the 1970s and 1980s is still uncertain (Plesset, 2006: 43).

Whatever one thinks about the right to choose, the exercise of this right certainly does not free a woman from the regulatory state. Rather it further enmeshes her (Parry, 2005: 872).

**Abstract** Employing insights from Italian sexual difference theory on law and rights this article examines how both the text of the Italian Abortion Law of 1978 and its operation reveal the contradictions within liberal rights discourse on reproductive freedom. The Act itself contains traces of both Roman Catholic and liberal pluralist worldviews and has, since its introduction, been the site of conflict over competing notions of citizenship and legal identity. This article explores the impact of the Act’s paradoxical nature on its operation against the background of the complex debates within the different strands of feminist theory in Italy over the question of reproductive freedom.

**keywords** *reproductive politics, sexual difference, Italy, abortion, rights*

### **Introduction**

This article builds on my recent work on the relationship between gender, citizenship and law in contemporary Italy and on the relationship between sexual difference theory and legal subjectivity (Hanafin, 2007). In particular it examines the social and cultural impact of the Italian Abortion Act in the thirty years since its implementation and questions the extent to which deep-seated cultural conflict on bioethical issues in pluralistic societies can be resolved through law. I develop my analysis by looking at how legal discourse

stages a fantasy of accommodating difference and promoting pluralism against the background of profound societal disagreement on bioethical issues and the existence of an alternative moral and symbolic economy which sees Italy as a state which should mirror the ideological precepts of traditionalist Roman Catholic thought.

The Italian Constitution of 1948 is a key example of how law's textual fantasy of accommodating difference fails to resolve actual political and social conflicts. The Constitutional text can be seen to reflect the tension in post-war Italian society between the desire for a pluralist democracy and the concomitant desire for a traditionalist model of family relations. This mirrored the value conflict between the two major political forces of the post-war period, namely Communism (in the form of the PCI (The Italian Communist Party)) and Christian Democracy (represented by the DC (the Christian Democratic Party)).<sup>1</sup> The impact of such a paradoxical approach can be seen clearly, for example, in relation to the principle of gender equality.<sup>2</sup> Even though the principle of gender equality was proclaimed in the Constitution, one did not witness an immediate move away from the fascist regime's misogynistic values and laws.<sup>3</sup> As one commentator has observed, the relationship between the new State and its female citizens 'was still organised on the basis of the traditionalist model of controlling the sphere of female sexuality' (Filippini, 2004: 102).<sup>4</sup>

Although the wording of the constitutional text as it relates to family relations and gender equality remains as it did in 1948, the manner in which it has been interpreted by the courts has changed markedly. Beginning in 1968 the Italian Constitutional Court began to intervene more robustly in addressing questions of family unity and gender equality. In that year the Court declared that the fascist era law on adultery was

unconstitutional. Under this law a wife's adultery was considered a crime and punishable by a jail sentence, whereas a man's adultery was tolerated and was punishable only if he kept a lover in the marital home. The Court, in declaring the incompatibility of the legislation with the equality provision contained in Article 3 of the Constitution, observed that there had been a significant transformation of the status of women in society since 1948. It ruled that the legislation under challenge gave the husband a position of privilege that could not be justified in the name of maintaining family unity. The Constitutional Court's decision of 1968 marked the beginning of a slow move away from the hegemonic model of the heteropatriarchal family founded on marriage towards a more liberal model of family relations. The introduction of legalised divorce in 1970 together with the introduction of a new Family Law in 1975 appeared, on the surface, to reflect the emergence of a new more liberal thinking on the notion of the family within Italian society (See further Caldwell, 1991).

### **Questioning Abortion, Questioning the Nation**

The persistence of patriarchal values in the post-fascist period was further reflected in the post-war Republic's maintenance on the statute books of the fascist era abortion law. Prior to the introduction of the 1978 Abortion Law, abortion was deemed a criminal offence punishable by imprisonment under Title X of the 1930 Penal Code. This part of the Penal Code, entitled 'Crimes against the Integrity and Health of the Stock', provided for prison sentences ranging from two to five years for both the woman undergoing the abortion and the person carrying it out. The policy on abortion formed part of Mussolini's eugenic plan for Italy. This policy found favour with the Roman Catholic hierarchy as its

social teaching agreed on the moral unacceptability of practices which did not promote the so-called 'purity of the Italian race'. Other 'Crimes against the Integrity and Health of the Stock' contained in the 1930 Penal Code included voluntary sterilization, the transmission of venereal disease, and the use of artificial contraception. The primary drafter of this legislation was Mussolini's Justice Minister, Alfredo Rocco, who provided the following justification for this eugenic policy:

the principal *raison d'être* of the indictment of... [such]... practices was to be found in their offence against the interest that the nation has, as an ethnic unit, to defend the continuity and integrity of the stock. No one can really doubt that every act meant to suppress or sterilize the founts of procreation is an attack against the very life of the race, in the series of present and future generations that compose it, and therefore an offence against the very existence of society ethnically considered – that is, against the existence of the nation.<sup>1</sup>

In the 1970s, long after the fall of the fascist regime women continued to be prosecuted for procuring abortions under this legislation.

In the early 1970s, as part of a broader interrogation of Italy's conservative political identity, abortion and women's reproductive freedom became pivotal concerns. One of the first major demonstrations of the mass women's movement took place in Padua in 1973 in protest against the prosecution and trial of Gigliola Pierobon for procuring an abortion. During the trial women continuously disrupted the proceedings by standing up in the public gallery and announcing that they too had procured abortions thereby opening themselves up to prosecution. As a result of the large number of women who attended the trial and implicated themselves, the judges abandoned the trial and acquitted the accused. Several such protests followed including a major demonstration involving women's groups from all over Italy in Trento in 1974 on the occasion of the criminal prosecution of 273 women who were discovered to have procured abortions from a gynaecologist in the city.<sup>5</sup>

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<sup>1</sup> Cited in Horn, *Social Bodies*, p. 83.

The proposals for reform of the abortion laws varied from partial decriminalization of abortion and a legislative framework for its governance to a more radical model where abortion would be decriminalized without any further follow-up legislation. These approaches reflected the differing political approaches and ideologies which co-existed within the Italian feminist movement. The legislative approach was supported by liberal feminism and the full decriminalisation approach without more was called for by the diverse assemblage of autonomous feminist groups influenced variously by Marxist and psychoanalytic thinking.<sup>6</sup>

The autonomous women's groups did not believe that the institutionalization of women's health could solve the structural problem of the subordination of women within a patriarchal society. One such group was *Rivolta Femminile* (Female Revolt) whose co-founder Carla Lonzi advocated a politics of separatism. In her influential work of the early 1970s, *Sputiamo su Hegel (Let's Spit on Hegel)*, one of the key texts in Italian sexual difference thinking, Lonzi observed that:

Woman's difference is her millennial absence from history. Let us profit from this difference; for once we have achieved inclusion in society, who is to say how many more centuries will have to pass before we can throw off this new yoke? The task of subverting the order of the patriarchal structure cannot be left to others. Equality is what is offered as legal rights to colonized people. And what is imposed on them as culture. It is the principle through which those with hegemonic power continue to control those without (Cited in Bono and Kemp, 1991: 41).

This critique of women's role and experience required that merely legislating for abortion would not be enough to transform the cultural and symbolic position of women in society. This was to be attained through the practices of *autocoscienza* (self-knowledge/consciousness-raising) and *affidamento* (the transmission of such self-knowledge from one woman to another in a relational manner based on the model of a mother-daughter relationship) (see further Bono and Kemp, 1991; and Parati and West,

2002). This praxis, developed in a group context, aimed to undo the dominant patterns of masculine social organization by developing a pattern of relations between women which would eventually lead to a breaking down of the masculine symbolic framework. This was a thinking which sought to break the barriers between theory and practice. Sexual difference thought was a practice of doing, acting on the self in relation with others to bring about a symbolic transformation.

The split between the broadly liberal institutional approaches and those of the extra-parliamentary autonomous women's groups emerged early in the campaign for a change in abortion policy. In 1970 the *Movimento di liberazione della donna (Mld)* (*The Movement for Women's Liberation*) proposed a policy solution which would provide a framework for legal access to abortion services. The idea was to introduce this law to Parliament by popular initiative which would require the signatures of 50,000 citizens who were eligible to vote. However the required number of signatures was not obtained. A further unsuccessful attempt was made by the *Mld* a number of years later which would have provided for a legislative structure in which there would be no time limit for legal abortions. The *Mld's* attempt to introduce a legislative framework for abortion was severely criticised by the autonomous women's groups. One of these groups, the women's collective of *Col di Lana* in Milan denounced a solution to the issue of abortion based on a legislative framework of partial decriminalization. Writing in the publication of the autonomous women's groups, *Sottosopra*, in 1976 they observed that reproductive autonomy within the confines of abortion legislation was an ambiguous political objective as it would further alienate women from their bodies rather than liberate them (Sottosopra, 1976). This, they claimed, confused mere emancipation with freedom, as

women remain trapped within a masculine political symbolic and within a political community which does not allow them to be free.

On the level of mainstream politics all attempts to introduce legislation on abortion foundered until the turning point in 1975 when the Constitutional Court declared that the abortion provisions of the Penal Code of 1930 were unconstitutional. The Court observed that in cases where either the life or health of the mother was in danger abortion should not be considered unlawful. The case itself, while stating that women's health should be given due regard, also refers to the foetus as worthy of protection even though its interests would not take precedence over the life or health of the woman involved (Boccia, 2002: 180-181). The decision of the Constitutional Court gave new impetus to those in the women's movement and those political parties (particularly the Communist Party and the Socialist Party (PSI)) who favoured a legislative framework for abortion.

In 1976 the Italian Parliament set up a cross-party parliamentary commission to examine the possibility of legislative reform on the issue of abortion. The Christian Democrats (DC) even though they were the party of government were dependent on parliamentary support from the Communist Party. The Communist Party promoted a less conservative legislative model for abortion. However, even the Communist Party did not want to push a policy, desired by a growing number of autonomous women's groups, of decriminalizing abortion and not introducing a regulatory framework for its provision. The Communist Party's stance reflected the male hegemony within the Party and a still traditionalist approach to family relations. It also reflected the pragmatic concern of party elders not to lose the large potential voter base of conservative Catholics. This occurred despite much criticism from female members of the party. In 1977 a compromise



legislative framework was agreed upon by the parliamentary commission. This draft legislative initiative was debated in the lower house of Parliament, the Chamber of Deputies (*La Camera dei deputati*) where it was approved, but was defeated in the Senate. After this setback the draft legislation was further refined and a Bill was formulated which finally passed both houses in 1978. The Christian Democrats abstained from the final vote. However, a combination of centrist and leftist parties voted in favour of the Bill allowing it to be passed into law.

As a result of its legislative history the Abortion Act was an obvious compromise between liberal and traditionalist positions. The PCI, despite its ideological opposition to the DC, did not have a radically different approach to abortion and was in favour of a dissuasionary model of legislation in which, even though abortion was permitted, medical professionals had a duty to point out the alternatives to abortion to women. This of course was contrary to the vast majority of opinion within the women's movement. As Laura Conti has observed in her now classic account of the abortion law and its background:

Contrary to what is generally believed, this is not a law which allows abortion. It is a law which prohibits it, except in certain circumstances; namely, that it be carried out in a public facility, that at least seven days must elapse from the moment when the woman notified a doctor of her decision to abort (Conti, 1981: 100).

Conti's summing up of the Act reflects a wider disillusionment with framing women's freedom in legal terms. As another of the autonomous groups, the Milan Women's Bookstore Collective, observed in its critique of the abortion law:

what we got was an abortion law that, in essence, takes into account male sexual needs, birth control, and public order (by putting an end to black market abortions). There is no thought of female sexuality. Was there at least a concern for women's health? Not really, otherwise women would not have been *obliged* to abort in public hospitals (The Milan Women's Bookstore Collective, 1990: 68).

The Collective is here emphasizing the fact that the legislators were more concerned with the regulation of crime (in this case backstreet abortions) rather than legislating for

women's needs and interests in relation to reproduction. This failure to reflect women's desires was also evident in the legislature's unwillingness to allow abortions to take place in independent clinics run by and operated by women's groups, which the women's movements had lobbied for during the parliamentary debates on the legislation. Many in the women's movement viewed the legislation as a means of forcing women to abort in public facilities in an impersonal manner rather than in the more supportive environment of women only clinics. For the Milan Collective the philosophy and praxis of sexual difference would call for something more than mere emancipation from backstreet abortions. It would require full freedom to choose whether, how and where to have an abortion (The Milan Women's Bookstore Collective, 1990: 73).

### **The Abortion Law: A Failed Compromise**

The debates within the women's movement in the period leading up to abortion law reform in 1978 and immediately thereafter continue to be of relevance today in an era when conservative political elites look with suspicion on the very notion of gender equality and reproductive freedom. In recent years, particularly, but not exclusively, during the tenure of Silvio Berlusconi's last two coalition Governments (2001 to 2006 and 2008 to date) political support for the anti-abortion rhetoric of right-wing pressure groups has increased markedly. This has caused a climate in which women's groups feel it is necessary to defend the 1978 Abortion Act despite its limitations and contradictions. One of Italy's leading thinkers on sexual difference, Ida Dominijani, in writing about these campaigns by women to defend the Abortion Law, has observed that the defensive stance which women have been forced to adopt is the paradoxical result of the partial

decriminalization of abortion. In reducing abortion to a question of legal rights, she claims, women entered into a compromise with male power. Today women should not be forced to use a grammar of rights in relation to abortion which would force them into a merely defensive position (Dominijanni, 2006). This argument reflects the critiques of groups such as the Milan Collective who saw a model which decriminalized abortion and placed the decision about abortion in the hands of women themselves, in the form of women-run clinics, as providing a partial answer to the paradox of having reproductive rights in a patriarchal polity.

The critiques of the abortion law as a form of biopolitical management of women's bodies made by the autonomous women's groups is entirely justified given the contradictions to be found in the text of the legislation itself. The Act has been referred to as an example of a 'distress' model of abortion policy (Minkenberg, 2003: 208). Such a model 'emphasises the priority of... unborn life but leaves the final decision up to the woman' (Minkenberg, 2003: 208). The legislation gives special recognition to motherhood in Italian society and also upholds rhetorically the interests of the foetus. This compromise is signalled in the first article of the Act where it is stated that: 'The State guarantees the right to responsible procreation; it recognizes the social value of maternity and protects human life from its inception'. The need to uphold the traditionalist biologically determined role of woman as mother and the sanctity of life from its inception reveals the influence of the Christian Democrats' Roman Catholic traditionalist thinking on the legislation.

The Act restricts the right to terminate pregnancy to the first ninety days in cases where pregnancy would pose a serious danger to the physical or mental health of the

woman or where there is malformation of the foetus. After seven days from the date of request, the woman obtains a certificate, which allows her to terminate her pregnancy at either a public hospital or clinic in the Italian National Health Care system or alternatively in a private clinic or hospital which has been authorized to carry out pregnancy terminations by regional health authorities. In looking at the impact on the woman's physical or mental health cognisance is to be taken of her social, economic or family circumstances and the circumstances in which the foetus was conceived. This has to be confirmed by a medical professional. In cases where there are social, economic or family problems the professional has the 'duty' of helping the woman to address these issues and to put her in a position to assert her rights as a worker and mother. This is an example of the dissuasionary character of the legislation in which the doctor is obliged to discuss whether the problems which are preventing a woman from giving birth can be removed. The Act is formulated in such a way that dissuasion is an explicit goal. After the ninety-day period, abortion is permitted only in circumstances where there is a grave danger to the life of the woman involved or to her physical or mental health. If an abortion is carried out outside the limits permitted by the law it still remains a crime with penal sanctions attached including a jail sentence. The law thus retains the criminalization of abortion and is far from a model which values female self-determination.

As well as its paradoxical textual nature, the implementation of the Act has not fulfilled the promise of reproductive freedom which many of its supporters invested in it. One of the main reasons why the application of the legislation has been problematic is the inclusion in the Act of a conscientious objection clause for medical professionals who

might want to refrain from conducting a pregnancy termination on ethical or religious grounds. This conscience clause has acted as an effective gatekeeper against abortions for many women. In the 2008 annual report from the Ministry of Health on the application of the abortion law, it was reported that the rate of conscientious objection for the entire country is 70% of gynaecologists and 50.4% of anaesthetists with 42.6% of non-medical staff objecting.<sup>7</sup> There is a great variation between individual regions as to the rate of conscientious objection. For example, in Campania in Southern Italy, the rate of objection by gynaecologists is 83% and in Sicily this rate is 84.2%, while in the region of Valle d'Aosta in the North of Italy the rate is 20%. This disparity has led to women being forced to travel from one region to another where there is a more liberal application of the law.

Today, thirty years after the political struggles for abortion law reform, younger medical professionals appear to be oblivious to the hard fought battle for limited abortion provision. There is a cultural amnesia on the part of many medical professionals as to the value of the right of a woman to make an independent decision in relation to abortion. In a recent book, the journalist Ritanna Armeni interviewed a cross-section of the younger generation of medical professionals working in obstetrics and gynaecology. She concluded that:

Younger doctors did not participate in, and did not experience the elaboration of, and the performance of, a collective consciousness which made women place their destiny in their own hands, in the call to decide for themselves in relation to motherhood. They do not recognize the power of women over birth and the capacity for control which derives from this, nor do they accept the culture of women's self-determination which so strongly infused the struggles for abortion of thirty years ago (Armeni, 2006: 118 ).

In addition to this cultural amnesia many younger medical professionals appear to relegate reproductive freedom to a position inferior to their own career development.

Indeed in the conservative climate of many hospitals the impact on a medical

professional's chances of promotion if they choose to carry out pregnancy terminations is all too real. As one gynaecologist, responsible for abortions in a large hospital in Rome, put it in a 2006 interview:

Those who apply the law... are... punished... They work longer... Almost all of us are frustrated... there is constant pressure... insults... aggressive behaviour, including from the women involved. Therefore, it happens that the doctor who wants a quiet life, in the end decides to become, in her turn, a conscientious objector (Armeni, 2006: 118).

In addition to this apathy there is also a more determined cultural resistance to abortion on the part of those in the medical profession who profess an allegiance to traditionalist Roman Catholic values. Taken together, individual career progression, apathy, and ethical resistance, lead to a situation where many women have limited or no access to abortions in their locality. Moreover, the high rate of conscientious objection leads to a situation where those professionals who carry out these procedures are forced to deal with huge numbers of abortions leading to burn out and the decision not to continue. In effect the operation of the law depends on the dedication of a minority of gynaecologists.<sup>8</sup> These obstacles create a disjunction between the aspirations of the legislation and the ability to implement them in practice. Given this situation, rates of illegal abortion are substantial, with estimated rates of at least 15,000 per year. Of these 90% are based in southern Italy (Armeni, 2006). The disparity between the poorer regions of Southern Italy (which have traditionally been more culturally conservative) and the regions of the centre and northwest (on the whole, but with exceptions, more urban and less conservative) reveals another major problem in relation to raising women's level of knowledge and consciousness of reproductive freedom (Calloni, 2001: 203).<sup>9</sup>

## **Re-Fashioning the Pro-Life Nation: The Persistence of Anti-Abortion Politics**

In looking at the influence of the Roman Catholic hierarchy in countries with a culturally Catholic background the political scientist, Michael Minkenberg notes that: ‘The ‘Catholic cultural impact’ is mediated through the political role of the churches, which, in turn, depends on their room for manoeuvre in the public realm’ (Minkenberg, 2003: 209). In Italy the Roman Catholic Church, to a greater extent than even Ireland and Portugal in the European context, has a great deal of room for manoeuvre. In 1980, an alliance of conservative groups made up of the Italian right to life movement and the Roman Catholic Church succeeded in collecting sufficient signatures for a referendum on repealing the 1978 Abortion Law. The referendum took place in 1981 with a large majority, 67.9% voting against this initiative.<sup>10</sup> This defeat led to a rethinking of the Vatican’s strategy in relation to influencing public policy on so-called ‘moral’ issues. In conjunction with a well-organised network of right-wing politicians and civil society groups the Vatican has created a powerful and highly effective lobby which campaigns for laws which promise a return to the hierarchal heteropatriarchal family model and which restrict sexual freedom, abortion, and civil partnership rights for lesbian and gay citizens. This alliance of conservative forces taps into a perceived homogeneous notion of authentic Italian nationhood which has at its base an exclusion of all that is perceived as different. An example of the success of this lobby can be seen in the introduction in 2004 of a law on assisted reproductive technologies which severely limits access to assisted reproductive services as well as limiting embryo research in the name of the ‘rights’ of the embryo. This Act of course conflicts both with the established constitutional rights to

health, autonomy and equality as well as with the Abortion Act itself (See further Hanafin, 2008).

The Church's crusade and political effectiveness was aided, ironically, by the dissolution of the Christian Democratic party after the *Tangentopoli* scandals of the early 1990s.<sup>11</sup> Now that the Church was not tied to one political party, it could act as an independent political player. It became in Sandro Magister's words the 'extra-parliamentary Church' (Magister, 2001). In this new role the Church began to effect real influence on political decision-making. The new party system was made up of reincarnated versions of the former socialist, communist, Christian Democratic and neo-fascist parties. Despite diverse ideologies and allegiances, these groupings had in common an underlying allegiance to Catholic thinking. This made it easier for the Church to have a swathe of support across the party spectrum. As part of the Church's strategy to influence political policy, the Italian Conference of Bishops (*Conferenza Episcopale Italiana*) has, since the 1990s, engaged in what it calls the re-Catholicization of Italy (Magister, 2001). This new crusade is of course an implicit admission of the failure of theocratic politics. It represents an attempt to return Italy to some form of imagined *status quo ante* of Catholic tradition. This campaign focuses on a number of key themes, namely: the Family, Education, Life and Work. What the Church hopes to achieve in this campaign is to promote an idea of Italian national identity which mirrors Roman Catholic social values. In this model women are constructed first and foremost as occupying the role of domestic carer.

The rhetoric of the Italian Roman Catholic Church and its allies follows the script of global anti-abortion narratives, constructing 'Life' as an abstract value against what it



terms a ‘culture of death’. This forms part of a wider attempt to place a particular religious traditionalist thinking at the heart of secular political life (Condit, 1990). The Italian case is part of a broader and complex set of global struggles between, on the one hand, a model of politics based on the imposition of a patriarchal world-view and, on the other hand, one in which individual choice is primary. The rhetoric of foetal politics endows the foetus with the characteristics of a fully-fledged citizen. In psychoanalytic terms the provision of abortion threatens the master signifier ‘Life’ for the protagonists of pro-life politics. The rhetorical linking between ‘foetus’ and ‘Life’ become part of the fantasy narrative that the pro-life movement fashions. As Condit has noted:

the major rhetorical effort of the pro-life movement was... expended in constructing... the verbal linkages between the terms *fetus* and *Life*. The concrete term *fetus* and the abstract value of *Life* were woven together primarily through a frequent recitation of the claim that the authority of “science” had discovered that the fetus was a human being from the time of conception (Condit, 1990: 61).

In pro-life rhetoric doctors who conduct pregnancy terminations are constructed as having transgressed the ‘natural’ order of things and are somehow tainted or associated with death and murder. As Merton has put it:

the movement accuses anyone who condones legal abortion of, at the very least, standing by and doing nothing while millions of innocent human beings are slaughtered. The logic goes this way: a) zygotes/embryos/fetuses are human beings in the fullest sense of the term, and therefore deserving of protection; b) abortion kills zygotes/embryos/fetuses; therefore c) abortion is murder, and d) anyone who condones abortion condones murder (Merton, 1981: 7).

Such a politics of ‘Life’ constructs women who exercise freedom of reproductive choice as enemies of the foetus. This discourse sees the foetus as a figure faced with death from a threatening force, i.e. self-determining women. As Lauren Berlant has noted in relation to the pro-life narration of national identity:

the normativity of pro-life society dictates that once pregnant the woman loses her feminine gender, becoming primarily a mother... In protecting the fetus from the woman they divide into a nongenital ‘female’ part – the maternal womb, which really belongs to the fetus – and

a potentially malevolent section, composed of a sexual body (un)governed by a woman's pseudovereign consciousness (Berlant, 1997: 99).

In Italy these familiar characteristics of pro-life discourse are to be found in the Vatican's intervention in the debate on abortion. For example, the 1995 papal encyclical *Evangelium vitae* called for the protection of human life from the moment of conception. In such a schema all attempts to limit life in the name of women's reproductive freedom are seen as examples of a 'culture of death'. A further example which makes the Church's misogynistic stance clear is the 2004 *Papal Letter to Women*.<sup>12</sup> In this document the Church accords more importance to what it sees as the biologically determined role of women as reproducers and carers than to their intrinsic self worth as self-determining individuals. The document, in expressing official Church thinking on the role of women in the public sphere, notes:

the obscuring of the difference or duality of the sexes produces enormous consequences at different levels. [Feminism] which favoured equal opportunities for women, freeing her of every biological determinism, has in fact inspired ideologies which promote, for example, the questioning of the family in its natural two parent form, made up of a mother and a father, equalising homosexuality and heterosexuality, a new model of polymorphic sexuality (Congregazione per la dottrina della fede, 2004).

This antipathy to seeing women as self-determining beings attempts to challenge the influence on Italian political life of the feminist movement and in particular sexual difference thinking. Sexual difference thinking continues to act as a counter-weight to the dogmatic conservative hegemony in Italian society and provides a framework for an alternative thinking of Italian political community generally.

### **Undoing the Pro-Life Nation: Abortion and Sexual Difference**

In the Italian context, the philosopher Adriana Cavarero has linked the pro-life national narrative projected by the Roman Catholic Church to the more deep-seated secular

patriarchal narrative of male political elites. Cavarero herself was active in the autonomous women's groups who opposed the legislative solution to abortion in the 1970s and has continued to reflect upon alternative modes of addressing the paradox of rights-claiming in a masculine symbolic order. She was one of the multiple authors of the Milan Collective's *Don't think you have any rights*, and in her subsequent single-authored works has continued to develop an alternative thinking of feminist politics. There is a sense in her writing of a re-working of the very terms of the theory/praxis relationship. Cavarero sees Italian sexual difference thinking as: 'a plural and interactive space of exhibition that is the only space that deserves the name of politics' (Cavarero, 2000: 57). In her view, the binary division between theory and practice is not operative. She sees sexual difference thinking as 'a concrete politics tied to the material context where language is generated' (Cavarero, 2000: 99). Cavarero's reading of the patriarchal narratives of western liberal democracies provides us with a framework in which to explain the manner in which Italy has approached the question of the regulation of abortion.

In her account, Cavarero observes that legislating for abortion does not change the underlying heteropatriachal default setting of society. She argues that contemporary societies have inherited a patriarchal model of generation in which it is the male alone who is symbolized as having the power to reproduce (Cavarero, 1995: 71). This masculine philosophical appropriation of birth amounts to the symbolic theft of woman's birth-giving power. Cavarero terms this the '*original matricide*' (Cavarero, 1995: 38). The counterproductive nature of state regulated reproductive rights, as in the case of the partial compromise of the Abortion Law, can be seen as a contemporary legacy of the

*original matricide*. The foetus figured as the potential for pure, abstract, eternal life is accorded symbolic legal recognition once ‘the act of regeneration has been pulled out of the sovereign space of maternal power’ (Cavarero, 1995: 75). As a result the sovereign power grants permission to choose to have an abortion in limited circumstances and retains the power to make the decision on the scope of reproductive choice. This leads Cavarero to conclude that maternal sovereignty should remain beyond legal regulation.

This echoes a more general critique of the overinvestment in the power of rights discourse in liberal states. Rights as currently envisaged are permissions to be free, but, as with all permissions, these come severely limited by the state which gives such permission. In liberal democratic theory we are sovereign inasmuch as we are legal persons. Such legal personae do not reflect our material selves but merely give the illusion of freedom. The disjunction between the legal subject and actual citizens grows, if anything, even wider in the contemporary liberal democratic order. Wendy Brown provides an excellent description of this disjunction when she writes that:

To the extent that rights consolidate the fiction of the sovereign individual generally, and of the naturalised identities of particular individuals, they consolidate that which the historically subordinated both need access to - sovereign individuality, which we cannot not want – and need to challenge insofar as the terms of that individuality are predicated on a humanism that routinely conceals its gendered, racial, and sexual norms. That which we cannot not want is also that which ensnares us in the terms of our domination (Brown, 2002: 430).

Even though rights discourse has brought about recognition for many excluded citizens and groups, the securing of such legal recognition does not necessarily improve the material well-being of such citizens and groups. This requires that we re-imagine the way in which we conceive the political in order to undo the way in which the default setting of citizenship remains the disembodied subject of rights. In order to gain some form of agency we must refuse the personae which have been imposed on us under the guise of

autonomy. In what follows I will sketch some means of thinking this task, a task which does not lend itself to definitive answers but rather to thoughts on an alternative way of seeing law and politics.

## **Conclusion**

The thinking of Italian sexual difference feminism on the role of law in relation to women's reproductive freedom provides us with an alternative model of engagement with the politics of law and rights. The refusal on the part of sexual difference thinking to accept a masculinist model of reproductive rights signals the instantiation of another way of being political. The implications of such a thinking for the manner in which we think and relate to law can be seen in the work of Lia Cigarini. Cigarini, co-author with Adriana Cavarero of the Milan Collective's *Don't Think You Have Any Rights*, and herself a lawyer, reiterates the need for a new thinking of law with sexual difference. In doing so she calls for a strategy of what she calls making 'legislative voids' (Cigarini, 1995: 119). For example, this would mean decriminalizing abortion and not introducing legislation which would regulate where, when, and how an abortion could take place. This would create a space of freedom to act for women in determining how they address the issue of abortion in their own lives without the limits placed on such freedom to act by the state in the form of legislation. Cigarini names this space as being *above the law* [*Sopra la legge*]. For Cigarini the *above the law* is a space of relation which interrupts the male legal symbolic. It delimits a relational concept of freedom which starts from an individual in relation with other individuals. For Cigarini, in this space of relation with another a symbolic order is created which allows women to become free in their relations

with other women, with men and with the society as a whole (Cigarini, 1995: 195-197). This rethinking of the relation between law and freedom allows us to escape from what feminist legal theorist Janet Halley has referred to as ‘the seeming inability of most participants in [identity politics] to move beyond a... sentimental and moralistic view of law and legal action in which nothing short of complete and total moral vindication by the [judiciary or the legislature]... is legal power’ (Halley, 2006: 14).

The alternative approaches proffered by Italian sexual difference thinking constitute a refusal to accept the terms of the patriarchal legal institutional order. They are examples of what Italian philosopher Roberto Esposito has termed the ‘*impolitical*’. As Esposito puts it, the ‘*impolitical*’ is neither an anti-politics nor a forgetting of the political but is ‘the end of any end of the political’ (Esposito, 1999: XVI). It is the ‘limit of its own being a limit’ (Esposito, 1999: XXII). It is ‘the political as sharing [*partage*]’ (Esposito, 1999: XXII). The autonomous women’s groups of 1970s and 1980s Italy and their successors in contemporary sexual difference thinking are paradigmatic examples of how one can engage in an unthinking of the liberal political order in *impolitical* mode with the aim of creating the possibility of another politics. This provides a response to the paradoxical effects of institutionalized rights-claiming in contemporary democracies. It does not constitute a refusal of rights as such but rather refuses, as political theorist Linda Zerilli (in her study of the Milan Collective’s rereading of rights discourse) has aptly put it, ‘the kind of political thinking that mistakes legal artifacts of freedom for a practice of freedom’ (Zerilli, 2005: 127). In looking at the Milan Collective’s arguments for inscribing the thinking of sexual difference in law, Zerilli observes how rights are fetishized and in the process how their ‘relation to practices of freedom’ are forgotten

(Zerilli, (2005), p.120). She is concerned that when one falls into the trap of mistaking rights victories or legislative change for freedom, we lose the radical promise of rights as such. When groups of individuals such as the Milan Collective come together to refuse the symbolic disembodiment which the masculine social contract offered them, they expose the limits of law, its internal paradoxes, and the impersonality of the person with rights.

In refusing to accept the patriarchal model of abortion legislation, sexual difference thinking ‘threatens to bring what’s been established back into question’ (Deleuze, 1995: 153). This is a thinking of politics beyond the bureaucratic rights-giving or rights-depriving state. In this politics the self declares itself not as the subject matter of rights, but as an active participant in political affairs. Sexual difference thinking proposes, to paraphrase Zerilli, a political praxis which ‘resist[s] being incorporated into the social – and subject-centred frames that shape most stories of feminism, frames in which freedom as action has mostly disappeared (Zerilli, 2005: 24). Zerilli’s argument demonstrates the continuing importance of Italian sexual difference thinking on abortion and reproductive freedom. This thinking forces us to consider why progressive legal change, though necessary, is not sufficient to provide full freedom for women within the liberal political order. It provokes us to rethink the relation between individual rights and our conceptions of political community. Such an approach allows us to reconceptualize the institutionalized default-setting of contemporary rights discourse and to develop a more complex situationally embedded subject of rights. This conception of the subject moves from the *what* of the abstract legal subject to the *who* of actually existing human beings who come into being via a web of relations and socio-symbolic ties.

## Notes

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<sup>1</sup> Italy became a liberal Republic in 1946 after the period of fascist rule under Benito Mussolini (1922-1944), The Italian Republic was inaugurated after a referendum in June 1946. As a result of the referendum the monarchy was dissolved. Following the establishment of the Republic, a Constituent Assembly was instituted in order to draw up a Constitution for the new Republic. The Constitution was promulgated in 1948.

<sup>2</sup> Article 3 of the 1948 Constitution contains the provision in relation to equality. It states:

All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions.

It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country.

<sup>3</sup> During the period of the fascist regime (1922-1944) a legal framework was created in which women were assigned the role of secondary citizens whose place was in the home. In addition to the criminalization of birth control and abortion, the regime also introduced disincentives such as a tax on bachelors and incentives such as 'birth bonuses' for women who gave birth regularly. See further De Grazia (1992), Horn (1994) and Krause (1994).

<sup>4</sup> Examples of this paradoxical appeal to progressive and traditionalist values in relation to family relations and gender equality abound in the Constitutional text. In Article 29 of the Constitution the family is defined in strictly heteropatriarchal terms as a 'natural association founded on marriage'. Article 31 of the Constitution combines both a social democratic model of state support to large families and a Roman Catholic social model which gives material and symbolic recognition to the maternal role. Article 31 is framed in the following terms:

The Republic furthers family formation and the fulfilment of related tasks by means of economic and other provisions with special regard to large families.

The Republic protects maternity, infancy, and youth; it supports and encourages institutions needed for this purpose.

<sup>5</sup> See further on this strategy Boccia 2002: 181.

<sup>6</sup> Italian sexual difference thinking has its origins in a more radical critique of the limits of being accorded freedom in patriarchal liberal societies. The growth of a more radical approach to feminist politics began with the founding of DEMAU (*Demistificazione dell'autoritarismo*) in Milan in 1965. DEMAU began as a study group on women's experiences in patriarchal society. Its views did not coincide with feminist groups which saw law as a means of liberating women. It saw in legal change not a means of bringing freedom for women but of integrating them into a society in which their position continued to be defined and delimited by male authority. Instead DEMAU called for a politics which started from the experiences of women, a politics which would allow women to define themselves rather than to be defined according to patriarchal norms.



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Soon many such groups grew throughout Italy. While broadly forming part of a non-institutional thinking of feminist politics, these groups' strategies and theoretical allegiances diverged hugely. See further Parati and West, 2002.

<sup>7</sup> See 'Aborto, nel 2007 in calo del 3% aumenta pero tra le immigrate', *La Repubblica* 22 April, 2008, [www.repubblica.it/2008/04/sezioni/cronaca/aborto-dati2007/ab](http://www.repubblica.it/2008/04/sezioni/cronaca/aborto-dati2007/ab).

<sup>8</sup> This description provided by a gynaecologist in Milan in an interview conducted in 2006 sums up the reality on the ground as regards access to public abortions in Italy today: 'Women who want to terminate their pregnancy have to queue up like at a meat counter with numbered tickets. Maybe the first ten or twenty in line can succeed [in having an abortion], the others are sent back home. It doesn't matter if they are three or ten weeks pregnant' (Armeni, 2006: 109).

<sup>9</sup> The rates of induced abortions have decreased significantly in Italy since the introduction of the law. By 2003 the official abortion rate had dropped to 9.1 per 1,000 women compared to 19.6 per 1,000 women in 1982. This decrease can be explained by greater access to family planning as well as the problem of access due to conscientious objection (Armeni, 2006).

<sup>10</sup> There were two referenda on abortion held simultaneously in 1981. The other referendum was tabled by the Radical Party and proposed a less restrictive abortion law. The Radical Party's referendum proposal called for the extension of the 1978 Abortion Law to the private medical sector and the improvement of abortion provision for minors. This referendum was also defeated with 88% of those who voted voting against it.

<sup>11</sup> The *Tangentopoli* scandals broke in the early 1990s with the revelations of widespread political corruption. It was discovered that the main political parties the Christian Democrats and the Italian Socialist Party (*Partito Socialista Italiano*) had engaged in taking large amounts of illegal donations from private businessmen in return for political favours. The unveiling and investigation of the scandal, the so-called 'Clean Hands' (*Mani Pulite*) investigations of 1992-1994, led to the bankruptcy and decline of the main parties, the Christian Democrats and the Socialist Party. The ramifications of *Tangentopoli* and *Mani Pulite* led to a wholesale realignment of the political party system. The realignment led to the emergence of *Forza Italia*, led by Silvio Berlusconi who promised a new kind of politics, in which he envisaged running the state like one of his many corporations. This of course was merely a refinement of the old corrupt party system into a new type of anti-politics which saw the public interest turned into personal political advancement, and saw corruption becoming the norm yet again.

<sup>12</sup> Congregazione per la dottrina della fede, (2004), *Lettera ai vescovi della Chiesa cattolica sulla collaborazione dell'uomo e della donna nella chiesa e nel mondo*. (July 31).

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