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Conscientious Objection and Abortion: The Italian Pseudo-Exceptionalism

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CONSCIENTIOUS OBJECTION AND ABORTION: THE ITALIAN PSEUDO-EXCEPTIONALISM?

C. Crea*

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**I. TRANSNATIONAL AND TRANSATLANTIC THREATS TO
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AND RELIGIOUS DISCOURSES**

The problem of abortion is neither marginal nor purely technical—quite the contrary. It represents the critical locus of an entire culture, of a worldview. It is a symbolic issue historically affecting the nature of human life, women’s bodies and citizenship, sexual (bio)politics, and the social dynamics between individuals, and between individuals and the State.

The news of the U.S. Supreme Court’s decision in the *Dobbs* case,¹ which overturned the federal precedents set by *Roe v. Wade* (and *Planned Parenthood v. Casey*),² rejecting the Constitution and Bill of Rights coverage on abortion rights, has gained international attention.

This judgment has ignited intense divisions in public opinion and political discourse within the United States, where the issue of access to pregnancy termination has long been of paramount importance, particularly for marginalized populations, and economically disadvantaged, rural, and racialized women. This has come about because the revolutionary liberal stance accepted since the 1970s has been steadily eroded and even nullified over time by restrictive laws enacted in some federal states. Furthermore, both federal and state laws have empowered doctors with religious or moral objections to refuse to perform abortions or sterilizations.³ *Dobbs*, however, is not an isolated product of the American social fabric, as it has also rekindled the global and European debate on abortion.

It is equally well known that threats to sexual and reproductive rights have a strong transnational dimension. The communication networks of the international anti-abortion, ‘anti-choice,’ or ‘pro-life’ movements, which act in the name of the natural order of society against ‘death culture,’⁴ are part of

¹ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

² *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

³ Douglas NeJaime & Reva Siegel, *Conscience Wars in Transnational Perspective: Religious Liberty, Third-Party Harm, and Pluralism*, in *THE CONSCIENCE WARS: RETHINKING THE BALANCE BETWEEN RELIGION, IDENTITY, AND EQUALITY* 187, 191 (Susanna Mancini & Michel Rosenfeld eds., 2018); see also Federico Fabbrini, *The European Court of Human Rights, the EU Charter of Fundamental Rights and the Right to Abortion: Roe v. Wade on the Other Side of the Atlantic?*, 18 *COLUM. J. EUR. L.* 1, 2 (2011). For an updated survey on abortion regulation in the U.S., see *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST., <https://states.guttmacher.org/policies/> (Jan. 24, 2024).

⁴ NEIL DATTA, “RESTORING THE NATURAL ORDER”: THE RELIGIOUS EXTREMISTS’ VISION TO MOBILIZE EUROPEAN SOCIETIES AGAINST HUMAN RIGHTS ON SEXUALITY AND REPRODUCTION 19 (2018). On the rhetoric of ‘natural order,’ one may refer to, A. MERTON, *ENEMIES OF CHOICE: THE RIGHT TO LIFE MOVEMENT AND ITS THREAT TO ABORTION* (1981), and, CELESTE MICHELLE CONDIT, *DECODING ABORTION RHETORIC: COMMUNICATING SOCIAL CHANGE* (1990).

the larger phenomenon of ‘anti-gender movements.’ Such communication networks legitimize themselves through ‘constitutionally-based’ arguments and the ambivalent rhetoric of human rights.⁵ They are essentially based on the same “discursive and strategic alphabet”⁶ and a common goal, namely the fight against so-called gender ideology (or ‘gender theory,’ or ‘genderism’), which is being “attacked by conservative, partly fundamentalist groups of society, including satellite organizations of the Roman Catholic Church.”⁷ Religious discourses and narratives have deconstructed and reshaped social constructions alongside the populist wave. In this global scenario, the conceptualization of ‘anti-gender movements’ seems more in line with the current European landscape and the crisis facing its liberal democracies than paradigms such as ‘polarization’ or ‘culture wars,’⁸ given that they mainly belong to the specific North American cultural experience (and the historical rise of the Christian Right) and risk producing fallacious exportations of cultural and social ideas and taxonomies.⁹

The response of the European institutions to *Dobbs* was immediate. The European Parliament issued a resolution condemning the Supreme Court’s decision, remarking that “non-governmental organizations (NGOs) and conservative think tanks belonging to the U.S. Christian right have been funding the anti-choice movement globally” and that the milestone decision of the U.S. Supreme Court “may embolden or encourage anti-choice movements to put pressure on governments and courts outside the United States to roll back abortion rights and jeopardize the important gains made over recent decades, where more than 60 countries have reformed their laws

⁵ The lexicon of human rights is a weapon for both opponents and supporters of abortion and reproductive rights. Sharon R. Kaufman and Lynn M. Morgan, *The Anthropology of the Beginnings and Ends of Life*, 34 ANN. REV. ANTHROPOLOGY 317, 328 (2005); Rachel Rebouché, *Abortion Rights as Human Rights*, 25 SOC. & LEGAL STUD. 765, 765–82 (2016).

⁶ David Paternotte & Roman Kuhar, *The Anti-Gender Movement in Comparative Perspective*, in ANTI-GENDER CAMPAIGNS IN EUROPE: MOBILIZING AGAINST EQUALITY 253, 253–54 (Roman Kuhar & David Paternotte eds., 2017); Daniel K. Williams, *The International Pro-life Movement*, in RESEARCH HANDBOOK ON INTERNATIONAL ABORTION LAW 243, 243–62 (Mary Ziegler ed., 2023). See, for instance, the semiotic and semantic battle on gender, family, and motherhood in, PONTIFICAL COUNCIL FOR THE FAMILY, LEXICON: AMBIGUOUS AND DEBATABLE TERMS REGARDING FAMILY LIFE AND ETHICAL QUESTIONS (2006), originally published in Italian in 2003 and subsequently translated into several languages. See also Grégor Puppink, Speech at the European Parliament: The Lie of the Right to Abortion (July 5, 2022), <https://eclj.org/abortion/eu/the-lie-of-the-right-to-abortion>.

⁷ Eszter Kováts, *The Emergence of Powerful Anti-Gender Movements in Europe and the Crisis of Liberal Democracy*, in GENDER AND FAR RIGHT POLITICS IN EUROPE 175, 175 (Michaela Köttig et al. eds., 2017).

⁸ Robert Post & Reva Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. L. REV. 373, 379 (2007).

⁹ Paternotte & Kuhar, *supra* note 6, at 254; Susanna Mancini, *Il canarino nella miniera del liberalismo: i diritti riproduttivi nell’America di Trump* [*The Canary in the Mine of Liberalism: Reproductive Rights in Trump’s America*], 2 BIOLAW J. 257, 259 (2021).

and policies on abortion to remove restrictions and barriers.”¹⁰ Furthermore, the document explicitly proposes the introduction of a universal right to legal and safe abortion, namely a new Article 7a, to be inserted into the Charter of Fundamental Rights of the European Union (CFR).¹¹

More recently, in conjunction with the European Union (EU)’s accession to the Istanbul Convention, the European Commission has also taken action, and, in replying to the French National Assembly, it clearly admitted that access to abortion in Europe is under threat.¹²

However, such formal declarations may remain a dead letter. An amendment to the ‘Nice Charter’ (CFR) might never be realized or will take a very long time.¹³ The European Convention on Human Rights (ECHR), in turn, does not expressly recognize a right to abortion and leaves Member States a broad and autonomous power of choice and regulation, given the strong ethical and moral implications of the issue.

Indeed, Europe is distinguished by a multilevel human rights protection system where national, supranational (EU), and international legal sources, such as the ECHR, intertwine. This multilevel constitutional regulation in the area of human rights includes legal pluralism and heterarchy¹⁴ as opposed to legal monism and hierarchy.

Although most European States have liberalized or decriminalized abortion in recent decades, multiple cultural, economic, and regulatory obstacles, alongside complex processes of constitutionalization and judicialization, can still be found in each country. The heterogeneous domestic legal systems are fragmented, as they are linked to the specific national context, its history, and the internal dynamics among autonomous but communicating discursive systems: society/culture, ethics/morality/religion, politics, and law.

It is no coincidence that the topic of abortion represents a privileged field in which comparative legal discourse should aspire to combine, on the

¹⁰ Resolution on Global Threats to Abortion Rights: The Possible Overturning of Abortion Rights in the United States by the Supreme Court, EUR. PARL. DOC. (B9-0299/2022) § M.–N. (2022).

¹¹ Motion for a Resolution on the US Supreme Court Decision to Overturn Abortion Rights in the United States and the Need to Safeguard Abortion Rights and Women’s Health in the EU, EUR. PARL. DOC. (B9-0365/2022) § I., J.2.–3. (2022).

¹² European Commission, Reply to French National Assembly Opinion, C (2023)3952 (June 12, 2023); Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, *opened for signature* May 11, 2011, C.E.T.S. 210 (ratified by the European Union on June 28, 2023).

¹³ Ivana Isailović, *Dobbs in the EU: Not Just an American Story*, VERFASSUNGSBLOG (Aug. 19, 2022), <https://verfassungsblog.de/dobbs-in-the-eu/>.

¹⁴ See Ingolf Pernice, *Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-Making Revisited?*, 36 COMMON MKT. L. REV. 703, 707 (1999); see also Merita Huomo-Kettunen, *Heterarchical Constitutional Structures in the European Legal Space*, 6 EUR. J. LEGAL STUD. 47, 48 (2013).

one hand, the dynamic assessment of implicit formants ('cryptotypes,' in Rodolfo Sacco's lexicon),¹⁵ such as political or even religious ideologies,¹⁶ beyond the legal formants,¹⁷ and on the other hand, narratives, since each "legal tradition is . . . part and parcel of a complex normative world," and the very concept of "tradition includes not only a *corpus juris*, but also a language and a *mythos*—narratives in which the *corpus juris* is located by those whose wills act upon it." These myths "build relations between the normative and the material universe." They create an ensemble of normative moves "that may be combined into meaningful patterns culled from the meaningful patterns of the past."¹⁸

The greatest threats to abortion, as is well known, occur in countries where repressive models persist or re-emerge.

There has always been an absolute prohibition on the termination of pregnancy in the Republic of Malta. Abortion, in any form whatsoever, including in cases of rape, incest, severe fetal abnormalities, or serious threats to the mother's health, is still a criminal offense.¹⁹ This issue became particularly critical in 2022, when a woman from the United States, visiting the island, was unable to obtain a therapeutic abortion, resulting in severe health repercussions.²⁰ In response to this nearly tragic event, the local government brought changes to the penal code.²¹ However, instead of legalizing abortion in cases of risk to a woman's health, the new rules introduced one exception to the criminal prohibition, essentially restricted to cases where the pregnant woman's life is in danger, while excluding other scenarios.

Furthermore, the exception can be applied once life-threatening circumstances are confirmed by three medical professionals, without

¹⁵ Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)*, 39 AM. J. COMPAR. L. 343, 384–87 (1991).

¹⁶ See Duncan Kennedy, *Political Ideology and Comparative Law*, in THE CAMBRIDGE COMPANION TO COMPARATIVE LAW 35, 38 (Mauro Bussani & Ugo Mattei eds., 2012).

¹⁷ See Sacco, *supra* note 15, at 343.

¹⁸ Robert Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 7, 9 (1983).

¹⁹ Criminal Code (Amendment No. 3) Act, 2023 (Act No. XXII) (Malta).

²⁰ Amanda Taub, *How an Abortion Ban Trapped a Tourist on Malta*, N.Y. TIMES, (June 23, 2022), <https://www.nytimes.com/2022/06/23/world/europe/malta-abortion-andrea-prudente.html>; see Andrea Cioffi et al., *Abortion in Europe: Recent Legislative Changes and Risk of Inequality*, 33 INT'L J. RISK & SAFETY MED., 281, 282 (2021).

²¹ Criminal Code (Amendment No. 3) Act, 2023 (Act No. XXII) (Malta). See generally *Gazzetta tal Gvern ta' Malta Nru. 21,078* [Malta Government Gazette No. 21,078], GOV'T GAZETTE REPOSITORY (June 30, 2023), <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Pages/Government-Gazette-Repository.aspx#k=#s=103> (providing for a new article 243 B into the national Penal Code); Letter from Members of Euro. Parl., Nat'l Parl. & MEPs for Sexual and Reproductive Rights to Robert Abela, Prime Minister of Malta (Aug. 8, 2023) (on file with EPF), https://www.epfweb.org/sites/default/files/2023-08/Letter_Malta_July%202023.pdf.

allowing women the opportunity to consult their preferred healthcare practitioners. The repressive model in Malta can be understood in light of the strong presence of Catholicism. The religion of Malta, according to Article 2 of its Constitution, is the ‘Roman Catholic Apostolic Religion.’ Pro-life movements have influenced, and continue to influence politics and society, with the support of the Nationalist Party, thanks to their discourses, which are much more persuasive than those of pro-choice and local feminist groups.²² Pro-life movements have wielded and continue to exercise substantial sway over both politics and society, often enjoying the support of the Nationalist Party.²³ Their persuasive rhetoric has proved more compelling than the arguments presented by pro-choice and local feminist groups. The amendments do not seem to represent a real step forward. Indeed, these amendments have raised serious concerns at the supranational level, so much so that members of the European Parliamentary Forum for Sexual and Reproductive Rights have promptly called upon the local government to enact an abortion law that genuinely aligns with international human rights standards.

In Poland, one of the most conservative countries in Europe, strongly influenced by the Catholic Church, with its role as a guardian of the national identity,²⁴ a Constitutional Court decision in 2020 ruled that termination of pregnancy on grounds of severe and irreversible fetal defect or incurable illness that threatens the fetus’ life (i.e., reasons related to embryo pathologies) was unconstitutional.²⁵ The chilling effect of such an illiberal judgment has been vast and devastating.²⁶ The ECHR is unable to overturn this decision, despite recent appeals to Strasbourg, because of the absence of an explicit right to abortion in the wording of the Convention (except to the extent of the right to private and family life) and because of the wide margin

²² Michael Briguglio, *Malta’s Abortion Reform*, MALTA INDEP., (July 6, 2023), <https://www.independent.com.mt/articles/2023-07-06/blogs-opinions/Malta-s-abortion-reform-6736253143>.

²³ See Letter from Members to Robert Abela, *supra* note 21.

²⁴ Sydney Calkin & Monica Ewa Kaminska, *Persistence and Change in Morality Policy: The Role of the Catholic Church in the Politics of Abortion in Ireland and Poland*, 124 FEMINIST REV., 86, 88–89, 92–93 (2020) (showing the divergent trajectories on abortion reforms followed by Poland and Ireland, despite the historical influence of Catholicism in both countries).

²⁵ *Planowanie rodziny, ochrona płodu ludzkiego i warunki dopuszczalności przerywania ciąży* [Family Planning, Protection of the Human Fetus, and Conditions for Permitting the Termination of a Pregnancy], TRYBUNAŁ KONSTITUCYJNY [Constitutional Court] (Oct. 22, 2020), <https://trybunal.gov.pl/s/k-1-20> (Poland); Anna Młynarska-Sobaczewska, *Unconstitutionality of Access to Abortion for Embryo-Pathological Reasons*, 10 INT’L HUM. RTS. L. REV., 168, 169 (2021).

²⁶ See Agnieszka Bień-Kacała & Tímea Drinóczi, *Abortion Law and Illiberal Courts: Spotlight on Poland and Hungary*, in RESEARCH HANDBOOK ON INTERNATIONAL ABORTION LAW *supra* note 6, at 263, 283.

of appreciation left to States on moral issues concerning the beginning of life.²⁷

In contrast, the Republic of San Marino, historically shaped by conservative politics and a very marked Catholic majority, appears to stand as a small yet noteworthy example.²⁸ The micro-State decriminalized voluntary termination of pregnancy in 2022, following a referendum.²⁹ However, it is important to note that San Marino is a member of the Council of Europe but not the European Union, and the practical implementation of the new law still requires monitoring.

Apart from the above-mentioned extreme cases of regression or persistent criminalization, European countries still bear witness to numerous obstacles, both in terms of the regulation and application of abortion rights, such as mandatory waiting periods or consultations, bureaucratic and procedural requirements, and the conscientious objection of healthcare providers.

On the West side of the Atlantic, therefore, the right to abortion is still fragile, contested, or even denied in some instances. The struggles for safe, legal, and effective elective abortion are still crucial.³⁰

Starting from these premises, this Article will focus on abortion access in Italy and the barrier caused by conscientious objection among medical personnel, which appears indefensible in light of both international human rights regimes and philosophical-theoretical perspectives.

²⁷ See Julia Kapelańska-Pręgowska, *The Scales of the European Court of Human Rights: Abortion Restriction in Poland, the European Consensus, and the State's Margin of Appreciation*, 23 HEALTH & HUM. RTS. J., Dec. 2021, at 213. The European Court of Human Rights rejected some applications challenging the abolition of eugenic abortion in Poland. See *A.M. v. Poland*, App. No. 4188/21 (June 8, 2023), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-225355%22%5D%7D>.

²⁸ See Wouter P. Veenendaal, *Politics of the Four European Microstates: Andorra, Liechtenstein, Monaco and San Marino*, in HANDBOOK ON THE POLITICS OF SMALL STATES 150 (Godfrey Baldacchino & Anders Wivel eds., 2020).

²⁹ Legge 7 settembre 2022, n. 127 [Law No. 127 of Sept. 7, 2022], CONSIGLIO GRANDE E GENERALE [GREAT AND GENERAL COUNCIL] Sept. 12, 2022, <https://www.consigliograndeegenerale.sm/online/home/lavori-consigliari/verbal-sedute/scheda17177841.html> (San Marino) (Law No. 127 of September 7, 2022, was approved by the Great and General Council during its sitting of August 31, 2022); see also Veenendaal, *supra* note 28.

³⁰ See Rebecca J. Cook & Bernard M. Dickens, *Abortion*, in ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW 3, 5 (2023) (comparing abortion reforms after 2000). For helpful empirical databases on abortion law in EU countries, see COMM'R FOR HUM. RTS., COUNCIL OF EUR., WOMEN'S SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN EUROPE (2017), <https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead>, and, CENTRE D'ACTION LAIQUE, ÉTAT DES LIEUX DE L'AVORTEMENT EN EUROPE [STATE OF ABORTION IN EUROPE] (2019), <https://www.laicite.be/app/uploads/2019/07/avortement-en-europe-2019.pdf>. A global comparative map can be found in the Center for Reproductive Rights (CRR), *The World's Abortion Laws*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/worlds-abortion-laws/> (last visited Feb. 13, 2023), and, *Global Abortion Policies Database*, WHO, <https://abortion-policies.srhr.org/> (last visited Feb. 13, 2024).

The main questions explored here are the following: Is conscientious objection to abortion really based on Catholic moral teaching, which constitutes the conventional religious wisdom of the national societal fabric? How and to what extent are Catholic and conservative moral narratives and rules part of the *nomos* that has shaped and perhaps still shapes Italian abortion law and national political moves over the last few decades?

To address these questions, this analysis will use historical arguments, aiming to select, along with feminist and political perspectives, the viewpoint and role of the Catholic Church and its actors, particularly when the abortion law was passed. This study will also rely on empirical evidence, which includes data and counter-data that highlight how conscientious objection affects third-party rights, outside a genuine democratic process. Additionally, this essay will explore the normative and political aspects, analyzing the debate on conscientious objection within the domestic legal discourse.

The goal is to bring to light the legitimization process of healthcare practices that have effectively shifted the conscientious objection of medical personnel from being an ‘exception’ to protect dissenting minorities becoming a general operational rule. This process has both upheld traditional moral constructions and perpetuated social mechanisms for stigmatizing both women and non-objecting medical personnel.

II. ITALIAN PSEUDO-EXCEPTIONALISM. THE CONUNDRUM OF ‘INDEFENSIBLE’ CONSCIENTIOUS OBJECTION: FROM THE KANTIAN THEORETICAL VIEW TO PRACTICE

Within the fragmented comparative landscape of the old continent, Italy occupies an ambiguous position, since there is a significant disparity between law in action and law in the books,³¹ between formal and operational rules. The legal framework liberalized the voluntary termination of pregnancy in 1978, establishing a series of conditions and procedures for access to this health service. However, since the law was passed, there has been a process of substantial sabotage due to a multiplicity of factors related to the interpretation and practical implementation of the law in addition to a number of ambivalent provisions. As a result, the actual impact of this statute law cannot be understood by adopting a simple black-letter approach.

The sword of Damocles³² is, specifically, the widespread practice of conscientious objection by medical personnel in a country heavily influenced

³¹ Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV 12, 13 (1910).

³² Elena Caruso, *Abortion in Italy: Forty Years On*, 28 FEMINIST LEGAL STUD. 87, 92 (2020); Lucia Busatta, *Abortion Law in Italy: A Pluralist Legislation Lacking Effectiveness?*, in DEBATES AROUND ABORTION IN THE GLOBAL NORTH 97, 102 (Fabienne Portier-Le Cocq ed., 2022); Francesca Minerva, *Conscientious Objection in Italy*, 41 J. MED. ETHICS 170, 172 (2015).

by the Roman Catholic Church, the Vatican, and their conservative political allies. Exemption from the obligation to provide ‘abortion care’ is justified by a legally recognized ethical/religious imperative (Article 9, Law 194/78).³³

Domestic abortion law thus provides for explicit interference from discursive systems other than law: despite the cultural secularization of the country, morality and religion impinge on the effectiveness of access to voluntary terminations of pregnancy, which is unavailable in many regions of the country, given the presence of a considerable number of objectors.

The abuse of the conscience clause as a barrier to abortion is a problem that affects several States³⁴ including France, Spain, Portugal, Poland, Romania, and Austria.³⁵ However, Italy has long been under particular scrutiny.

The European Committee of Social Rights (ECSR), the monitoring body of the E.U. Social Charter, has denounced Italy’s critical condition on several occasions. In 2014, after a collective complaint by the NGO International Planned Parenthood Federation European Network (IPPF EN),³⁶ it argued that domestic conscientious objection in abortion procedures violates the rights to health protection and non-discrimination enshrined in the European Social Charter (Article 11 §1, alone and in conjunction with Article E, ESC), triggered by the lack of non-objecting professionals in public hospitals, which illegitimately restricts women’s right of access to pregnancy termination. Indeed, women are being forced to move to other regions or abroad, which means increasing risks to their mental or physical health and increasing levels of inequality, depending on the combination of socio-economic and geographical factors (i.e., intersectional and multiple

³³ Legge 22 maggio 1978, n. 194, G.U. May 2, 1978, n.140 (It.) [Law 194]. For an English version, see *The Legalization of Abortion*, COLUM. UNIV., http://www.columbia.edu/itc/history/degrazia/courseworks/legge_194.pdf (last visited Feb. 13, 2024).

³⁴ Christina Zampas & Ximena Andión-Ibañez, *Conscientious Objection to Sexual and Reproductive Health Services: International Human Rights Standards and European Law and Practice*, 19 EUR. J. HEALTH L. 231, 233 (2012); Anna Heino et al., *Conscientious Objection and Induced Abortion in Europe*, 18 EUR. J. CONTRACEPTION & REPROD. HEALTH CARE 231, 232 (2013); see Christian Fiala et al., *Yes We Can! Successful Examples of Disallowing ‘Conscientious Objection’ in Reproductive Health Care*, 21 EUR. J. CONTRACEPTION & REPROD. HEALTH CARE 201 (analyzing the regimes of some North European countries, such as Sweden, Finland, and Iceland where, by contrast, conscientious objection to abortion procedures is banned in public hospitals).

³⁵ BÉRENGÈRE MARQUES-PEREIRA, FOUND. FOR EUR. PROGRESSIVE STUD., ABORTION IN THE EUROPEAN UNION 17–18 (2023).

³⁶ Collective Complaint at 7, International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy, No. 87/2012, (Eur. Comm. of Soc. Rts., Sept., 3 2012); Resolution CM/ResChS (2014) 6, International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy, No. 87/2012, (Eur. Comm. of Soc. Rts., adopted Apr. 30, 2014).

discrimination).³⁷ Thus, the national abortion law is “ineffective” in as much as its Article 9.4 obligates all facilities to provide abortion services “in all cases,”³⁸ even when the number of conscientious objectors is high.

Then, in 2016,³⁹ after a complaint by the Italian General Confederation of Labour (CGIL, a well-known left-wing trade union), the Committee underlined again how access to legal abortion was almost impossible in some of the country’s regions. Furthermore, it found a breach of Article 1(2) of the Charter arising from the difference in treatment between objecting and non-objecting medical providers, and a violation of Article 26(2), since the Italian government failed to put in place any preventive training or awareness-raising measures to protect non-objecting healthcare professionals from moral harassment and discrimination.⁴⁰

Nothing has really changed since then, despite the nationwide decline in the number of abortions in recent decades.⁴¹

In the context of the follow-up to these decisions, the ECSR (2018) observed in 2018 that the lower rate of terminations of pregnancies is not in itself significant as it may be the result of a barrier to access to abortion services such as, in particular, the “large number of objecting [healthcare providers] and their distribution throughout the country,”⁴² which can give rise to recourse to clandestine abortion, as “the UN Human Rights Committee expressed concern about” in the sixth periodic report of Italy in 2017.⁴³ Therefore, a significant level of discrimination and risk to women’s health persists, also because, despite some general improvements, “there are still major disparities at the local level, especially as a number of non-objecting

³⁷ Karin Lukas & Colm Ó Cinéide, *Gender Equality Within the Framework of the European Social Charter*, in *FRONTIERS OF GENDER EQUALITY: TRANSNATIONAL LEGAL PERSPECTIVES* 219, 232 (Rebecca J. Cook ed., 2023).

³⁸ See Law 194 § 9 (It.).

³⁹ Report to the Committee of Ministers at 44, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, No. 91/2013, (Eur. Comm. of Soc. Rts., Apr. 11, 2016), <https://rm.coe.int/168058d2ab>.

⁴⁰ *Id.* at 55, 63.

⁴¹ MINISTERO DELLA SALUTE, *RELAZIONE DEL MINISTRO DELLA SALUTE SULLA ATTUAZIONE DELLA LEGGE CONTENENTE NORME PER LA TUTELA SOCIALE DELLA MATERNITÀ E PER L'INTERRUZIONE VOLONTARIA DI GRAVIDANZA (LEGGE 194/78)* [REPORT OF THE MINISTER OF HEALTH ON THE IMPLEMENTATION OF THE LAW CONTAINING RULES FOR THE SOCIAL PROTECTION OF MATERNITY AND FOR THE VOLUNTARY TERMINATION OF PREGNANCY (LAW 194/78)] 19 (2021), https://www.salute.gov.it/imgs/C_17_pubblicazioni_3367_allegato.pdf.

⁴² EUR. COMM. OF SOC. RTS., *FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS: FINDINGS 2018*, at 113 ¶ 531 (2018), <https://rm.coe.int/findings-2018-on-collective-complaints/168091f0c7>.

⁴³ *Id.*; see also United Nations Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Italy*, UN Doc. CCPR/C/ITA/CO/6 (May 1, 2017). Similar criticisms regarding the barrier of conscientious objection in Italy come from the United Nations Committee on the Elimination of Discrimination Against Women, *Concluding observations on the seventh periodic report of Italy*, UN Doc. CEDAW/C/ITA/CO/7 (July 24, 2017).

doctors are not assigned to abortion services or do not work full time.”⁴⁴ There is also no adequate evidence of a commitment by the national government to ensure effective protection of non-objector doctors in the working environment against discriminatory, offensive, or insulting actions.⁴⁵

Again, in March 2021,⁴⁶ a subtle violation of the principles of the E.U. Social Charter emerged, resulting from an unclear analysis of the data, especially at the regional level. The government reports fail to demonstrate that local inequalities in Voluntary Termination of Pregnancy (VTP) procedures have been effectively reduced and that the number of medical staff working in the facilities is adequate.⁴⁷ It is almost impossible to know how regional health systems are working to guarantee efficient and safe access to abortion. There is a lack of specific information on the number or percentage of abortion requests that are not fulfilled due to a scarcity of gynecologists or other non-objecting health personnel. In fact, according to counter-observations made by the CGIL based on data more recent than those provided by the government, there has been a significant increase in the number of gynecologists who object to performing abortions at the national level (69%). The increase is particularly concerning in the South, where the regional average exceeds 70%, reaching as high as 92.3% in the Molise region.⁴⁸

The number of objecting anesthetists is also alarming, with a regional average of 60% or more.⁴⁹ This is noteworthy considering that in Italy more than 50% of VTP procedures require the presence of anesthetists.⁵⁰ Furthermore, there are no data on clandestine abortions, nor on how many objectors among pharmacists or among staff working in family planning centers, who are supposed to provide women who intend to have an abortion with assistance and prevention services. The monitoring of access to pregnancy termination in individual hospitals and regions due to the presence of conscientious objectors is insufficient. As a result, national data are either unavailable, inconsistent, overestimated, or underestimated, making them often unreliable.

It is undeniable that the legal reasoning of the ECSR’s decisions (and their follow-ups) is lacking something essential. It does not focus on the

⁴⁴ EUR. COMM. OF SOC. RTS., *supra* note 42, at 114 ¶ 537.

⁴⁵ *Id.* at 114 ¶¶ 537–38.

⁴⁶ EUR. COMM. OF SOC. RTS., FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS—FINDINGS 2020, at 187–88 (2021), <https://rm.coe.int/findings-ecrs-2020/1680a1dd39>.

⁴⁷ *Id.* at 189.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

experiences of women, nor on their autonomy and self-determination in sexual and reproductive choices. It does not use a gendered approach, which might have developed from supplementing the legal arguments with additional international human rights regimes and standards.⁵¹

A multi-layered and integrated regulatory approach would have considered certain significant international trends that are currently emerging. Indeed, “international human rights law and standards do not require states to allow medical professionals to refuse to provide legal abortion care or other reproductive health care on grounds of conscience or religion.” However, if the domestic legal system provides for conscientious objection, that system needs to establish and implement “effective regulatory, oversight and enforcement frameworks so as to ensure that such refusals do not undermine or hinder women’s access to legal reproductive health care in practice.”⁵² This means that States are required to adopt, at the very least, some measures of substantive protection, such as guaranteeing sufficient availability and distribution of healthcare providers willing to perform abortions in both public and private healthcare systems, prohibiting institutional conscientious objection, as refusal should be a personal decision, establishing quick referral systems connecting patients to accessible non-objecting providers, disseminating information about legal rights to abortion care, setting clear legal boundaries on the permissibility of refusals, and instituting robust monitoring, oversight, and enforcement mechanisms to ensure compliance with the relevant regulations.⁵³

Besides the incompleteness of the legal reasoning, the ECSR’s decisions have one merit: they have clearly revealed the weaponization and abuse of conscientious objection, which has become a bio-political dispositive for

⁵¹ Emmanuelle Bribosia et al., *Objection Ladies! Taking IPPF-EN v Italy (ECSR) One Step Further*, in INTEGRATED HUMAN RIGHTS IN PRACTICE: REWRITING HUMAN RIGHTS DECISIONS 261, 262–63 (Eva Brems & Ellen Desmet eds., 2017) (re-writing the *IPPF-EN v Italy* case from a more gendered approach); Emmanuelle Bribosia & Isabelle Rorive, *Seeking to Square the Circle: A Sustainable Conscientious Objection in Reproductive Health Care*, in THE CONSCIENCE WARS, *supra* note 3, at 392, 401–03.

⁵² CTR. FOR REPROD. RTS., ADDRESSING MEDICAL PROFESSIONALS’ REFUSALS TO PROVIDE ABORTION CARE ON GROUNDS OF CONSCIENCE OR RELIGION: EUROPEAN HUMAN RIGHTS JURISPRUDENCE ON STATE OBLIGATIONS TO GUARANTEE WOMEN’S ACCESS TO LEGAL REPRODUCTIVE HEALTH CARE 7 (2018), https://reproductiverights.org/wp-content/uploads/2020/12/GLP_Refusals_FS_Web.pdf; see also Res. CM/ResChS(2015)13 of the Committee of Ministers on Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Complaint No. 99/2013 (June 17, 2015); Grimmark v. Sweden, App. No. 43726/17, ¶ 10 (Feb. 11, 2020), <http://hudoc.echr.coe.int/eng?i=001-201915>; Steen v. Sweden, App. No. 62309/17, ¶ 8 (Feb. 11, 2020), <http://hudoc.echr.coe.int/eng?i=001-201732>; Wojciech Brzozowski, *The Midwife’s Tale: Conscientious Objection to Abortion After Grimmark and Steen*, 10 OXFORD J.L. & RELIGION 298, 301 (2021); Simona Zaami et al., *The Highly Complex Issue of Conscientious Objection to Abortion*, 26 EUR. J. CONTRACEPTION & REPROD. HEALTH CARE 349, 350 (2021).

⁵³ CTR. FOR REPROD. RTS., *supra* note 52, at 8; WORLD HEALTH ORG. [WHO], SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 69, 96 (2d ed. 2012).

sabotaging the national law on pregnancy termination and consequently bringing about structural violence and discrimination against women.

The crucial aspect to be assessed is that conscientious or religious-based refusal, despite the existing international framework on human rights obligations, has, in certain countries (including Italy), become an “indefensible” barrier to accessing safe and timely abortion—as provocatively stated in the WHO’s new Guidelines.⁵⁴

Philosophical arguments enable us to approach the problem from a different angle and, in some respects, to simplify it at least on a theoretical level.

In 1784, Immanuel Kant questioned “what the Enlightenment is” and how a society may progress toward it, arguing that it is “man’s emergence from his self-imposed immaturity.”⁵⁵ The constitutive condition of the age of reason is embodied in the freedom to make public use of one’s reason in all matters, as it is necessary to protect public debate and promote the development of knowledge. However, public use is quite different from private use. The former is “that use which a man, as scholar, makes [of it] before the reading public.”⁵⁶ On the contrary, “private use” is the use which a person may make of it in a particular civic post or office with which he is entrusted. Now, in some affairs which affect the interests of the commonwealth, we require a certain mechanism whereby some members of the commonwealth must behave purely passively, so that they may, by an artificial common agreement, be employed by the government for public ends (or at least deterred from vitiating them). It is not, of course, permissible to argue in such Enlightenment cases; obedience is imperative.⁵⁷ In other words, private use in the context of a civil post or office could be restricted for public ends. Here, one may cite a paradigmatic example from the father of the Enlightenment: priests who disagree with some church doctrines are supposed to act and address their congregations in accordance with the basic teachings of the Church, being employed under such terms. Things change when the same priests speak or write as scholars addressing the public at large. In this case, the freedom to use one’s reason is unlimited.⁵⁸

⁵⁴ WHO, ABORTION CARE GUIDELINE 60 (2022); CTR. FOR REPROD. RTS., WHO’S NEW ABORTION GUIDELINE: HIGHLIGHTS OF ITS LAW AND POLICY RECOMMENDATIONS 13 (2022); *see also* WHO, ABORTION CARE GUIDELINE WEB ANNEX A. KEY INTERNATIONAL HUMAN RIGHTS STANDARDS ON ABORTION 18 (2022).

⁵⁵ IMMANUEL KANT, AN ANSWER TO THE QUESTION: WHAT IS ENLIGHTENMENT? (1784) (Mary C. Smith trans.), https://web.cn.edu/kwheeler/documents/what_is_enlightenment.pdf.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Transposing such reasoning from priests to physicians actually leads to a paradox. Both professions operate within private and professional contexts. Therefore, doctors ought to ensure the provision of healthcare services to all patients. If one assumes that this similarity could fit with our reasoning, conscientious disagreements cannot interfere with professional duties, since freedom of conscience does not “entitle us to special accommodation In particular, it does not entitle us to refuse to perform the duties assigned to enable the delivery of public goods while enjoying all the benefit of employment.”⁵⁹

There is something more one might learn from Kant. Conscience is not always enlightened. When conscience has internalized social or religious assumptions, it is artificial and immature. This means that one is not able “to use one’s own understanding without the guidance of another.”⁶⁰ This means also that he or she is not an autonomous (moral) agent and remains unenlightened. It is when physicians uncritically adhere to religious doctrines in their decision-making that their conscience can be considered artificial and may not warrant protection. It is widely acknowledged that religious beliefs are the most common basis for justifying conscientious refusal in healthcare.

Following Kant’s logic, at the end of the day, conscientious objector physicians who genuinely believe they cannot fulfill the task their professional role requires of them should seek alternative employment.⁶¹ After all, becoming a physician, especially a gynecologist or obstetrician, is a voluntary choice.

Conscientious objection, furthermore, is not a form of ‘civil disobedience.’ Indeed, there is a significant distinction between civil dissenters and conscientious refusers. The former demonstrates their moral integrity by accepting potential negative consequences resulting from their actions, as they openly communicate and motivate their political resistance in order to change existing laws. Conversely, the latter do not need to publicly or communicatively dissent.

The cost of individual moral refusal to provide abortion services falls solely on the patients, women in particular, whose right to health and care is

⁵⁹ Jeanette Kennett, *The Cost of Conscience: Kant on Conscience and Conscientious Objection*, 26 CAMBRIDGE Q. HEALTHCARE ETHICS 69, 74 (2017); Michael Cholbi, *The Right to Die and the Medical Cartel*, 1 ETHICS MED. & PUB. HEALTH 486, 492 (2015).

⁶⁰ KANT, *supra* note 55.

⁶¹ Kennett, *supra* note 59, at 76. Liberal political theories distinguish between civil disobedience and conscientious objection with various arguments. See JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* 263 (1979); JOHN RAWLS, *A THEORY OF JUSTICE* 293 (rev. ed. 1971); RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 249 (1977); KIMBERLEY BROWNLEE, *CONSCIENCE AND CONVICTION: THE CASE FOR CIVIL DISOBEDIENCE* (2012); Kimberley Brownlee, *Conscientious Objection and Civil Disobedience*, in *THE ROUTLEDGE COMPANION TO PHILOSOPHY OF LAW* 527, 527 (Andrei Marmor ed., 2012).

compromised or even denied. This also affects other non-objecting colleagues, creating a form of immunity,⁶² which is an exclusive privilege for those who refuse. Also, from the theoretical and philosophical perspective, the conscientious objection of healthcare personnel seems, therefore, to be quite indefensible.

And this is precisely the point: these fundamental assumptions help reveal the complex conflict that exists between healthcare professionals and patients, especially when conscientious objection collides with abortion rights. This is one of the historical issues that has long affected Italian society and its legal and cultural tradition.⁶³

III. A SHORT GENEALOGY OF ABORTION BEFORE DECRIMINALIZATION: THE ROLE AND DISCURSIVE POWER OF THE ROMAN CATHOLIC CHURCH

The debate on abortion in Italy is usually considered to have begun in the early 1970s, which is later than in the United States and Northern Europe. The push for change came from feminist movements (with the support of the Radical Party) seeking the emancipation of the female body⁶⁴ and the fight against patriarchy, particularly the ‘Movimento di liberazione della Donna,’ inspired by the American Women’s Liberation Movement, which had come into being some years earlier. The main goal was to prioritize a social problem even before addressing an ethical one, namely clandestine abortion, which primarily affected the poorer classes and encouraged ‘abortion tourism.’⁶⁵

⁶² Hugh LaFollette, *My Conscience May Be My Guide, but You May Not Need to Honor It*, 26 CAMBRIDGE Q. HEALTHCARE ETHICS 44, 44 (2017).

⁶³ GIAMBATTISTA SCIRÈ, L’ABORTO IN ITALIA. STORIA DI UNA LEGGE [ABORTION IN ITALY. HISTORY OF A LAW] (2008).

⁶⁴ On the complexity and heterogeneity of Italian feminist movements, along with the second wave of feminism and the rise of “feminism of difference,” see FIAMMA LUSSANA, IL MOVIMENTO FEMMINISTA IN ITALIA. ESPERIENZE, STORIE, MEMORIE [THE FEMINIST MOVEMENT IN ITALY. EXPERIENCES, STORIES, MEMORIES] (2012); MAUD ANNE BRACKE, WOMEN AND THE REINVENTION OF THE POLITICAL: FEMINISM IN ITALY 1968–1983 (2014); Paola Stelliferi, *An Apparent Victory? The Struggle for Abortion in Italy Prior to the 194/1978 Law*, 49 ANNALI DELL’ISTITUTO STORICO ITALO-GERMANICO IN TRENTO 97, 97–121 (2022).

⁶⁵ STEFANO RODOTÀ, LA VITA E LE REGOLE: TRA DIRITTO E NON DIRITTO [LIFE AND RULES: BETWEEN LAW AND NON-LAW] 56 (2006); Azzura Tafuro, *Italian Girls in Trouble, Abortion Travels and Transnational Abortion Referral Networks (Rome, London, Paris, 1967-1981)*, INST. TRENTO, July–Dec. 2022, at 123, 123.

At the time, abortion was numbered among the ‘Crimes against the Integrity and Health of the Stock’ (*Titolo X, Codice Rocco*),⁶⁶ to use the totalitarian language of fascism,⁶⁷ geared towards bio-political control and the promotion of childbirth through bonuses and maternity incentives. For the regime, an attack on life was an attack on the supreme interest of the nation; the ethnic identity and power of the nation absorbed the very idea of society.⁶⁸ Procreation was a truly patriotic duty. Therefore, (criminal) law, politics (eugenics supporting the purity and growth of the race), and Catholicism founded a convergent discourse of values and intentions. Prison sentences ranging from two to five years were handed down to both the woman undergoing the abortion and the person performing it. Only in cases of a state of necessity could no criminal offense be said to have occurred (Article 54 of the Italian Penal Code).

Even the distribution of contraceptives was punished under criminal law. The Catholic position, in turn, was that the “system of periodic continence,” employing the Ogino-Knaus method, was the only permissible means of preventing unwanted pregnancies. It was only in 1971 that a ruling by the Constitutional Court legalized the contraceptive pill, abolishing Article 553 of the Penal Code, which punished “the promotion of means to prevent procreation.”⁶⁹ Until then, this provision had been considered legitimate because it was in line with the national *boni mores*, i.e., a public sense of morality that, at that time, was essentially consistent with Catholic custom.⁷⁰

The Church has clearly played, and still plays, a fundamental opposing role in the debate on the issue, aligning with political groups in power. Abortion is condemned because it is deemed contrary to life (which is considered to be such from the moment of conception) and, therefore, inhumane.⁷¹

⁶⁶ Regio decreto 19 ottobre 1930, n. 1398, Dei delitti contro la integrità e la sanità della stirpe [Crimes Against Integrity and Health of the Lineage] (It.), *repealed by* L. 22 maggio 1978, n. 194, art. 22.

⁶⁷ VICTORIA DE GRAZIA, HOW FASCISM RULED WOMEN: ITALY, 1922–1945 (1992); David.D. Roberts, *Myth, Style, Substance and the Totalitarian Dynamic in Fascist Italy*, 16 CONTEMP. EUR. HIST. 1 (2007).

⁶⁸ DAVID G. HORN, SOCIAL BODIES: SCIENCE, REPRODUCTION, AND ITALIAN MODERNITY 83–84 (1994).

⁶⁹ Corte cost., 10 marzo 1971, n. 49, Racc. uff. corte cost., 1971 (It.) (overturning the previous judgment, that of Corte cost., 4 febbraio 1965, n. 9, Racc. uff. corte cost, 1965 (It.)).

⁷⁰ *Id.*

⁷¹ PAOLO SARDI, L'ABORTO IERI E OGGI [ABORTION YESTERDAY AND TODAY] (1975); Rohini Hensman, *Christianity and Abortion Rights*, 5 FEMINIST DISSENT 155, 155 (2020). Pro-choice Catholics tried to show the Church's varying historical positions on the human personhood of the embryo and fetus, demonstrating that the Church has not always considered life to be sacred from conception. JANE HURST, THE HISTORY OF ABORTION IN THE CATHOLIC CHURCH: THE UNTOLD STORY (1983).

The historical foundations of Catholic policy on the subject can be traced back to the bull of Pope Sixtus V, issued in 1588, *Against those who procure, counsel and consent in any way to abortion*.⁷² This declaration prohibited any form of induced pregnancy termination, defining it as the “‘untimely death and killing’ . . . ‘of a soul created in the image of God’ and of ‘children . . . before they could receive from nature their portion of light’—an ‘abhorrent and evil act.’”⁷³ The punishment for breaking this rule was excommunication from the faith and prosecution for homicide before both ecclesiastical and secular tribunals.⁷⁴

It is true that recent studies on the history of abortion in early modern Italy have successfully shed light (through a deep analysis of micro-histories and narratives especially from women) on more complex and ambivalent dynamics and social attitudes towards forced or voluntary terminations of pregnancy. They have demonstrated the significant divide between the official statements of authorities and real societal practices and beliefs, so that one cannot assert the existence of “an absolute and timeless anti-abortion culture, as some might wish to depict it for political ends,” which is often referred to as an exemplary “Catholic Italian” society rooted in the “traditional family.”⁷⁵

However, it is also true that, despite the natural ambiguity surrounding such a controversial topic and its potential weaponization by Catholic thought, especially by pro-life and pro-family movements, the main official communications of the ecclesiastical authorities have remained largely consistent.⁷⁶

Just to cite a few representative documents in the twentieth century, suffice it to mention *Casti Connubii* (1930), issued by Pius XI,⁷⁷ which opposed any form of pregnancy termination, even in cases of maternal health risks, accusing female emancipation—be it social, economic, or physiological—of depriving women of dignity and corrupting the family. Similarly, Pope Pius XII reiterated at the *Fronte della Famiglia* Congress of 1951 that the right to life comes directly from God, excluding that any member of civil society or the scientific community can decide on it or

⁷² JOHN CHRISTOPOULOS, ABORTION IN EARLY MODERN ITALY 2 (2021).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ MAURIZIO MORI, ABORTO E MORALE: CAPIRE UN NUOVO DIRITTO [ABORTION AND MORALITY: UNDERSTANDING A NEW RIGHT] (2008) (analyzing the moral aspects of abortion in the history of Western societies beyond the opposing narratives of pro-life and pro-choice movements).

⁷⁷ Encyclical on *Casti Connubii* (Chaste Marriage) from Pope Pius XI, (Dec. 31, 1930) (on file with the Vatican Church), https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19301231_casti-connubii.html.

balance the life of the woman with that of the fetus.⁷⁸ In its pastoral constitution, *Gaudium et spes*, the Second Vatican Council in 1965 branded abortion and infanticide as *nefanda crimina* (unspeakable crimes).⁷⁹

In 1968, Pope Paul VI's encyclical *Humanae Vitae* expressly reaffirmed the prohibition of contraception, as well as voluntary and artificial abortion.⁸⁰ Indeed, according to the fundamentals of Christian doctrine on human life and marriage, “the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children”;⁸¹ “direct sterilization, whether of the man or of the woman, whether permanent or temporary” is condemned; “excluded is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or as a means.”⁸² The stereotype underlying dogmatic communication strategy is the overlap between womanhood and motherhood: a woman is considered as such exclusively due to her vocation to bear children and devotion to the family.

The 1917 Code of Canon Law explicitly prescribed excommunication *latae sententiae* (an automatic decision) for both the mother and “anyone who procured an abortion (*qui abortum procurat, effectu secuto*),”⁸³ namely, the person or persons who conspire to commit such an offense, and any necessary accomplices (Can. 1329, paras 1 and 2).⁸⁴ Direct and intentional abortion but not unintentional abortion (as a collateral effect of another action) or

⁷⁸ POPE PIUS XII, DISCORSO DI SUA SANTITÀ PIO PP. XII AI PARTECIPANTI AL CONVEGNO DEL «FRONTE DELLA FAMIGLIA» E DELLA FEDERAZIONE DELLE ASSOCIAZIONI DELLE FAMIGLIE (Nov. 27, 1951) (It.), in *Discorsi e Radiomessaggi di Sua Santità Pio XII*, XIII, Tredicesimo anno di Pontificato [SPEECH OF HIS HOLINESS POPE PIUS XII TO PARTICIPANTS IN THE CONFERENCE OF THE «FACE OF THE FAMILY» AND THE FEDERATION OF FAMILY ASSOCIATIONS, in *Speeches and Radio Messages of His Holiness Pius XII*, XIII, Thirteenth Year of Pontificate] (2 March 1951 - 1 March 1952, Tipografia Poliglotta Vaticana), 414–15, (It.), https://www.vatican.va/content/pius-xii/it/speeches/1951/documents/hf_p-xii_spe_19511127_associazioni-famiglie.html. For more details, see GUIDO VERRUCCI, *LA CHIESA CATTOLICA IN ITALIA DALL'UNITÀ A OGGI: 1861-1998* [THE CATHOLIC CHURCH IN ITALY FROM UNITY TO TODAY: 1861-1998] 56–57 (1999).

⁷⁹ POPE PAUL VI, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD, *GAUDIUM ET SPES* [JOY AND HOPE], para. 51 (1965) (It.).

⁸⁰ LESLIE WOODCOCK TENTLER, *CATHOLICS AND CONTRACEPTION: AN AMERICAN HISTORY* 264 (2004) (arguing the impact of *Humanae vitae* on American spiritual and intellectual leaders, while American Catholics started to use artificial contraception with increasing frequency from the mid-1960s onward).

⁸¹ ENCYCLICAL LETTER FROM POPE PAUL VI TO HIS VENERABLE BROTHERS ON *HUMANAE VITAE* [Of Human Life] para. 14 (1968) (It.), https://www.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html.

⁸² *Id.*

⁸³ P. Cipriotti, *Aborto (Diritto Canonico)*, in 1 *ENCICLOPEDIA DEL DIRITTO* [*Abortion (Canon Law)*], in 1 *ENCICLOPEDIA OF LAW* 140, 140–41 (Giufè ed., 1958) (It.).

⁸⁴ Josemaria Sanchis, *L'aborto procurato: aspetti canonistici* [*Procured Abortion: Canonical Aspects*], 43 *LUS ECCLESIAE* [LUS ECC.] 663, 673 (1989) (It.).

miscarriage, was a crime. This regulation, moreover, remained unchanged even after the reform of the Code of Canon Law in 1983.⁸⁵

As early as the first years of the 1970s, the official position of the Church in Italy did not distinguish between moral law and criminal law. Following the landmark *Roe v. Wade* decision,⁸⁶ which decriminalized abortion in America based on a woman's right to privacy against State interference, an official statement from Catholic institutions reiterated strong opposition to any legislative intervention for the legalization of pregnancy terminations.⁸⁷ In particular, in 1974, the episcopate drew up a detailed text, the "Declaration on Procured Abortion,"⁸⁸ which the press, especially the communist and socialist media, referred to as an "act of interference by the Church in the State" and an incitement to "civil disobedience" by healthcare personnel for reasons of conscience.⁸⁹

The normative framework of the time was taking steps to dilute the ongoing patriarchal paradigm of "familialism" affecting the Italian legal tradition. The introduction of divorce and the reform of family law timidly opened the doors to greater consideration of the female condition and a more liberal approach. Legal scholars and the judiciary were promoting an "anti-formalist" interpretation of legal institutions and a progressive transition toward the era of "constitutionalism" in private law.⁹⁰ Such a paradigm includes all the new methodologies and techniques that, since the 1950s, have sought to permeate national private law discourse and the conventional categories laid down in the Italian Civil Code of 1942 with the principles of the Constitution, which came into force only later in 1948. In this context of endogenous change in the Italian style,⁹¹ it was the Constitutional Court, and

⁸⁵ 1983 CODE, c. 1397, §2 (It.).

⁸⁶ Following *Roe v. Wade*, the emphasis on the right to abortion for women, has been centered on the protection of privacy over equality and on the expertise of doctors rather than women's autonomy. See *Roe v. Wade*, 410 U.S. 113 (1973); Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375 (1985); Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991).

⁸⁷ SCIRÈ, *supra* note 63, at 41.

⁸⁸ Press Release, Sacred Congregation for the Doctrine of the Faith, Declaration on Procured Abortion (Nov. 18, 1974), (It.), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html.

⁸⁹ *Nuovo no della Chiesa all'aborto* [New No from the Church Regarding Abortion], AVANTI, Nov. 26, 1974, at 1, 2 (It.), https://avanti.senato.it/js/pdfjs-dist/web/viewer.html?file=/files/reader.php?f%3DAvantiIII/AVANTI_ROMA/1974/1974_10-11-12/1974_11_26_276_Edizione-romana.pdf.

⁹⁰ See Pietro Perlingieri, *Constitutional Norms and Civil Law Relationships*, 1 IT. L.J. 17, 17 (2015).

⁹¹ See John Henry Merryman, *The Italian Style I: Doctrine*, 18 STAN. L. REV. 39, 40 (1965); John Henry Merryman, *The Italian Style II: Law*, 18 STAN. L. REV. 396, 400–01 (1966); John Henry Merryman,

not the legislator (parliament), that gave concrete impetus to the decriminalization of abortion, aligning itself with a global trend of judicial activism by constitutional courts on the issue.⁹²

A landmark decision in 1975 declared Article 546 of the Italian penal code (procured abortion) partially unconstitutional.⁹³ Applying the technique of balancing constitutional rights, this ruling argued that the protection of the fetus⁹⁴ cannot take absolute precedence over the life or health of the mother⁹⁵ if it is endangered by the continuation of pregnancy. In particular, the Court observed that “there is no equivalence between the right to life or health of the mother, who is already a person, and the protection of the embryo that a person is yet to become.”⁹⁶ It is worth noting that this statement seems to echo similar arguments used by the US Supreme Court in *Roe v. Wade*, in which it stated that the fetus, before “viability,” is not a person and thus does not have constitutional rights of its own.⁹⁷

This decision was immediately labeled as hypocritical and aberrant by the Jesuit Catholic press,⁹⁸ but it was revolutionary because, for the first time, it overturned fascist penal law—which criminalized abortion—shifting the discourse on (therapeutic) abortion away from the social realm of women’s liberation struggles—particularly that of the second-wave feminist movements—to the political and legal domain. Actually, there is no mention of women’s freedom of self-determination in reproductive choices, nor of

The Italian Style III: Interpretation, 18 STAN. L. REV. 583, 583 (1966); see also Guido Calabresi, *Two Functions of Formalism: In Memory of Guido Tedeschi*, 67 U. CHI. L. REV. 479, 482 (2000) (underscoring that formalism and positivism in the Italian legal tradition were a legacy of the fascist regime).

⁹² L’ABORTO NELLE SENTENZE DELLE CORTI COSTITUZIONALI: USA, AUSTRIA, FRANCIA E REPUBBLICA FEDERALE TEDESCA [ABORTION IN THE JUDGMENTS OF THE CONSTITUTIONAL COURTS: USA, AUSTRIA, FRANCE, AND THE GERMAN FEDERAL REPUBLIC] (A. Giuffrè ed., 1976) (It.).

⁹³ Corte cost. [Constitutional Court], 18 Febbraio 1975, n. 27, (It.), <https://giurcost.org/> (translated from Italian in MAURO CAPPELLETTI & WILLIAM COHEN, *COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS* 612–14 (1979)). Before this judgment, Italian lower courts excluded penal liability in abortion cases by applying the justification (“*scriminante*”) of state of necessity under Article 54 of the Penal Code. However, the Constitutional Court stated clearly that

the condition of the pregnant woman is particular in every way and does not receive adequate protection in a law of general character like article 54 [of the penal code], which requires not only the gravity and the absolute inevitability of harm or of danger, but also imminence, whereas injury or danger resulting from continuation of a pregnancy may be foreseen, but is not always imminent.

Id.

⁹⁴ Art. 31 COSTITUZIONE [COST.] (It.).

⁹⁵ *Id.* art. 32.

⁹⁶ Corte cost. [Constitutional Court], 18 Febbraio 1975, n. 27 (It.) (translated from Italian in, MAURO CAPPELLETTI & WILLIAM COHEN, *COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS* *supra* note 93).

⁹⁷ Susanna Mancini, *UN AFFARE DI DONNE. L’ABORTO TRA EGUALE LIBERTÀ E CONTROLLO SOCIALE* [A WOMEN’S AFFAIR. ABORTION BETWEEN EQUALITY AND SOCIAL CONTROL] (2012).

⁹⁸ Salvatore Lener, *Sei proposte di legge sull’aborto* [Six Bills on Abortion], LA CIVILTÀ CATTOLICA [CIV. CAT.] 553, 553–58 (1975).

privacy, equality, or the bodies of pregnant women. Instead, the main focus is on the protection of the health of an already formed individual. This legal argument is, in a way, “paternalistic” and portrays women as weak, vulnerable, and in need of protection. However, at that moment in history, this argument was the only one capable of providing a normative justification for abortion without overturning political equilibria, instead reinforcing the legitimizing bond between “them and the constitutional order.”⁹⁹

The judges of the Constitutional Court opened a pathway for the national Parliament, indicating a possible direction to follow, albeit adopting a logic of opposition in balancing the interests of the woman and the unborn child.

IV. THE LONG MARCH OF THE ABORTION LAW: ITS FRIENDS AND ENEMIES. THE CULTURAL AND LEGAL ACCOMMODATION OF THE CONSCIENCE CLAUSE AS A ‘DISEMPowering’ AND STIGMATIZING STRATEGY

This marks the beginning of the long march toward the approval of the abortion law. Despite resistance from the Catholic world and allied political groups, as well as various abrogative referendums and legislative proposals that went unanswered, after years of debate and setbacks, Law 194 was finally enacted in 1978. The political context was one of social turmoil due to the crisis of terrorism following the kidnapping of Aldo Moro by the Red Brigades, so much so that the authorities themselves viewed the issue of abortion as a central theme for the stabilization of the country.

This statute is considered one of the most significant achievements of the feminist movements (and the Radical Party), even though even feminist voices were divided¹⁰⁰ between those in favor of partial decriminalization—or the creation of a legislative regulatory framework—and those, in more radical terms, who preferred the empty space of the “impolitical” (“above the

⁹⁹ Silvia Nicolai, *Una sfera pubblica piccola piccola. La sentenza 27/1975 in materia di aborto, in EFFETTIVITÀ E SEGUITO DELLE TECNICHE DECISORIE DELLA CORTE COSTITUZIONALE [A Small, Small World. Sentence 27/1975 on Abortion, in EFFECTIVENESS AND FOLLOW-UP OF THE DECISION-MAKING TECHNIQUES OF THE CONSTITUTIONAL COURT]* 563, 570 (Roberto Bin et al. eds., 2006).

¹⁰⁰ Maud Anne Bracke, *Feminism, the State, and the Centrality of Reproduction: Abortion Struggles in 1970s Italy*, 42 SOC. HIST., 524, 545 (2017); TAMAR PITCH, UN DIRITTO PER DUE. LA COSTRUZIONE GIURIDICA DI GENERE, SESSO E SESSUALITÀ [ONE RIGHT FOR TWO. THE LEGAL CONSTRUCTION OF GENDER, SEX, AND SEXUALITY] 63 (1998).

law”)¹⁰¹ to interrupt the male hegemonic cultural and legal norms,¹⁰² building a new politic. In the end, both decriminalization and legalization are strategies characterized by a common effect: both have shifted the debate on reproduction into the public and political arena, thereby reinforcing the biopolitical power (regulatory and discursive) of the State over individuals, and especially over women’s bodies.

The text is the result of a compromise with the Catholic world, which is already evident from the title of the law (“Norms on the social protection of motherhood and the voluntary interruption of pregnancy”) and its opening articles. Abortion is a healthcare service to be provided exclusively by public hospitals and is set within the framework of priority values such as conscious and responsible procreation, the social value of motherhood, and to “protect human life from its inception.”¹⁰³ In no case can the termination of pregnancy be used as a dispositive for birth control or limitation.¹⁰⁴ The State and the regional authorities, healthcare systems, and family planning centers¹⁰⁵ must work towards promoting informed choices for women, essentially discouraging abortion. A similar compromise, after all, underlies the Italian Constitution itself, which was approved after the Second World War. In it, somewhat paradoxically, the demands of the Communist Party, which aspired to a pluralistic democracy, converged with the viewpoint of the Christian Democratic Party, which promoted traditional family and maternity values.¹⁰⁶

¹⁰¹ Patrick Hanafin, *Refusing Disembodiment: Abortion and the Paradox of Reproductive Rights in Contemporary Italy*, 10 FEMINIST THEORY 227, 239–40 (recalling Roberto Esposito’s theories in *Categorie dell’Impolitico*).

¹⁰² LIA CIGARINI, *LA POLITICA DEL DESIDERIO E ALTRI SCRITTI [THE POLITICS OF DESIRE AND OTHER WRITINGS]* 119, 195 (1995).

¹⁰³ See Law 194 art. 1 (It.).

¹⁰⁴ *Id.*

¹⁰⁵ Family Planning Centers were established in 1975. Legge 29 luglio 1975, n.405, G.U. Aug. 27, 1975, n. 227 (It.). They are organizational structures providing integrated basic social and healthcare services with multidisciplinary expertise, crucial for the promotion and prevention in the context of women’s and developmental age health. The multidisciplinary nature of the areas of intervention of family planning centers (as defined by numerous national and regional laws) aims to consider the individual holistically, promoting sexual, reproductive, and relational health for the individual, couples, and families, while ensuring the application of Law 194/78 (voluntary termination of pregnancy).

¹⁰⁶ Some examples of this paradox arise from the Italian Constitution. Article 3 promotes substantial equality between men and women; Article 29 defines the family as a “natural society founded on marriage,” following a heteropatriarchal and heteronormative family model; and Article 31 underscores the central role of maternity in society and the State’s social support for maternity. Art. 3, 29, 31 COST. (It.).

There is then no ‘*droit subjectif*’ to free voluntary abortion,¹⁰⁷ if we understand a “subjective right” to be a legal situation that expresses women’s control over their own will. It is easier to speak of a legal “authorization” allowing terminations within certain time limits and requirements (procedural and/or substantive), or one can refer to it as a model of abortion for just cause,¹⁰⁸ as it is necessary to balance the interests of the pregnant woman and those of the conceived fetus. Violation of the legally established requirements, in fact, leads to a regression to the state of criminalization,¹⁰⁹ since both administrative and criminal sanctions are envisaged. In any case, abortion services are integrated into a public and universal healthcare system that must be accessible to all women.¹¹⁰

The expression, “right to abortion,” in the meaning embraced by liberal thinking as a paradigm of women’s autonomy and self-determination in reproductive choices, has taken root in domestic feminist discourse but has an essentially political, not legal, connotation. There is no right to abortion in the sense of a woman’s right to free choice in the law nor in the Constitution.¹¹¹ One may talk about constitutional coverage for elective abortion, but for the most part, it is confined to the narrow framework of women’s right to physical and mental health. Indeed, according to a partial legalization strategy, it is possible to request and obtain voluntary termination within the first ninety days, but only if the woman would suffer physical or psychological harm by continuing the pregnancy. The lawmaker invokes various situations capable of justifying a request for abortion, such as strictly medical issues, anomalies or malformations of the fetus, but also “the woman’s economic, social, or family situation,” and the specific “circumstances in which conception occurred” (i.e., a kind of “social abortion”).¹¹² However, each of these circumstances must have a causal link

¹⁰⁷ E. Navarretta, *Il Danno Ingiusto*, in DIRITTO CIVILE [Unjust Damage, in CIVIL LAW] 175, 175–76 (2009) (It.); Pier Giuseppe Monateri, *Il danno al nascituro e la lesione della maternità cosciente e responsabile* [The Harm to the Unborn Child and the Injury of Conscious and Responsible Motherhood] 30 CORRIERE GIURIDICO 45, 64 (2013) (criticizing the absence of a clear classification of the request for abortion as a legal right rather than an “authorized legal act” (“atto legislativamente consentito”)) (It.).

¹⁰⁸ L.V. Moscarini, *Aborto. Profili costituzionali e disciplina legislativa*, in ENCICLOPEDIA GIURIDICA [Abortion. Constitutional Profiles and Legislation, in LEGAL ENCYCLOPEDIA] 2–3 (Francesco Filomusi Giuffrè ed., 1988) (It.); A. D’Atena, *Commento all’art. 9*, in COMMENTARIO ALLA L. 22 MAGGIO 1978, N. 194, LE NUOVE LEGGI CIVILI COMMENTATE [Comment on Article 9, in Commentary to Law 194, May 22, 1978, Comments on the New Civil Laws] 1650 (C.M. Bianca & F.D. Busnelli eds., 2024) (It.).

¹⁰⁹ See Law 194 art. 19 (It.).

¹¹⁰ MARIA PIA IADICICCIO, *PROCREAZIONE UMANA E DIRITTI FONDAMENTALI* [HUMAN PROCREATION AND FUNDAMENTAL RIGHTS] 115 (2021) (It.).

¹¹¹ Silvia Niccolai, *La legge sulla fecondazione assistita e l’eredità dell’aborto* [The Law on Assisted Reproduction and the Legacy of Abortion], COSTITUZIONALISMO (May 30, 2005), <https://www.costituzionalismo.it/la-legge-sulla-fecondazione-assistita-e-leredita-dellaborto/>.

¹¹² See Law 194 art. 4 (It.).

within the meta-requirement of “a serious threat to the woman’s psychophysical health” (i.e., therapeutic abortion).¹¹³ Essentially, the only permissible voluntary abortion is therapeutic, as only in cases of a threat to the psychophysical health or life of the woman does the Italian legal system allow the sacrifice of the fetus.¹¹⁴

Furthermore, in any case, both the pregnancy and the woman’s decision to terminate it must be certified by doctors or family planning centers,¹¹⁵ which require a reflection period of seven days as a mandatory waiting time.¹¹⁶ Minors need parental (or in the case of absence, a judge’s) authorization to request an abortion.¹¹⁷

Following a gradual approach in relation to the gravity of the abortion, after ninety days, termination of pregnancies is only allowed in cases of fetal abnormalities or when the woman’s life is in danger.¹¹⁸

A feminist interpretation of these provisions highlights their paternalistic nature. Women are portrayed as weak and immature, in need of protection, assistance, and guidance from the State through counseling services and medical personnel who issue the authorization certificate for abortion. Motherhood and the continuation of pregnancy are always presented as the preferred options.¹¹⁹ However, from a comparative law perspective, the wording seems to accomplish a “discursive abortion model”: the woman chooses, but only if adequately informed and counseled by the State.¹²⁰

In this legal framework, the provision for conscientious objection assumes a prominent role as the quintessential manifestation of the Roman Catholic Church’s conservative theological agenda and its impact on reproductive politics in Italy. Article 9 of Law 194, regulates this exemption

¹¹³ See *id.*

¹¹⁴ See PATRICK HANAFIN, *CONCEIVING LIFE: REPRODUCTIVE POLITICS AND THE LAW IN CONTEMPORARY ITALY* 6 (2007).

¹¹⁵ See *supra* note 87 and accompanying text.

¹¹⁶ Law 194 art. 5–6 (It.).

¹¹⁷ *Id.* art. 12.

¹¹⁸ *Id.* art. 6 (therapeutic abortion).

¹¹⁹ Elena Caruso, *The Ambivalence of Law: Some Observations on the Denial of Access to Abortion Services in Italy*, 124 *FEMINIST REV.* 183, 187 (2020).

¹²⁰ Marilisa D’Amico, *La legge n. 194 del 1978 fra adeguamenti scientifici, obiezione di coscienza e battaglie ideologiche* [*Law n. 194/1978 Between Scientific Adjustments, Conscientious Objection and Ideological Battles*], 3 *BIOETHICS J.* 91, 95–97 (2018) (It.). The Italian ‘discursive model’ seems to follow that of Germany after reunification. MARILISA D’AMICO, *I DIRITTI CONTESI. PROBLEMATICHE ATTUALI DEL COSTITUZIONALISMO* [THE DISPUTED RIGHTS. CURRENT ISSUES OF CONSTITUTIONALISM] 35 (Franco Angeli ed., 2016) (It.).

enabling medical personnel¹²¹ to decline to perform activities “specific” and “necessary” to an abortion due to their religious or moral beliefs but not to activities that are performed “before or after termination.”¹²²

Besides such requirements, there are no other limitations for the conscience clause to work. Medical providers do not need to justify their choice to refuse, nor do they have any obligation to provide an alternative healthcare service, as they are only required to submit a clear statement of their will to refuse.¹²³ The law does not even oblige conscientious objectors to refer women to non-objecting providers, which is one of the basic recommendations of the WHO.¹²⁴ Furthermore, in line with a dynamic idea of conscience, medical personnel can raise (and also revoke) their conscientious objection at any time.¹²⁵

In any case, the exemption applies to individual physicians and not to the entire public hospital facility, which is obligated to ensure abortion as a universal healthcare service. In other words, an “institutional conscientious objection”¹²⁶ does not exist in the Italian legal system. Moreover, conscientious objection cannot be exercised if, given the specific nature of the circumstances, the intervention of medical or auxiliary personnel “is indispensable to save the life of a woman in imminent danger.”¹²⁷

It seems quite clear that Article 9 was a clear concession to pressures from Catholics, but it did not suffice to appease the most uncompromising minds.

Pope Paul VI, even in the first general audience after the law came into force, addressed the faithful, urging them to exercise conscientious objection to avoid excommunication.¹²⁸ In a pastoral note, the Italian Episcopal Conference declared that abortion is a gravely sinful act, an expression of

¹²¹ In Italy, only gynecologists and obstetricians can perform surgical or medical abortions (using RU486-mifepristone). This means that general practitioners without a specialization in gynecology or obstetrics are not legally allowed to terminate a pregnancy and that the number of medical personnel authorized is relatively small compared with other countries. Minerva, *supra* note 32, at 170–73.

¹²² See Law 194 art. 9 (It.).

¹²³ *Id.*

¹²⁴ See CTR. FOR REPROD. RTS., *supra* note 54, at 13.

¹²⁵ Andrea Pugiotta, *Obiezione di coscienza nel diritto costituzionale*, in DIGESTO DELLE DISCIPLINE PUBBLICISTICHE [*Conscientious Objection in Constitutional Law*, in DIGEST OF PUBLIC LEGAL DISCIPLINES], V, 240, 240; FEDERICA GRANDI, DOVERI COSTITUZIONALI E OBIEZIONE DI COSCIENZA [CONSTITUTIONAL DUTIES AND CONSCIENTIOUS OBJECTION] 117–33 (2012); PAOLO VERONESI, IL CORPO E LA COSTITUZIONE. CONCRETEZZA DEI «CASI» E ASTRATTEZZA DELLA NORMA [BODY AND THE CONSTITUTION. CONCRETENESS OF THE “CASES” AND ABSTRACTNESS OF THE RULE] 142 (2013).

¹²⁶ Elizabeth Sepper, *Taking Conscience Seriously*, 98 VA. L. REV. 1501, 1539 (2012); KATE GREASLEY, ARGUMENTS ABOUT ABORTION: PERSONHOOD, MORALITY, AND LAW 259 (2017).

¹²⁷ See Law 194 art. 9 (It.).

¹²⁸ Paul VI, La Santa Sede, General Audience (June 7, 1978), https://www.vatican.va/content/paul-vi/it/audiences/1978/documents/hf_p-vi_aud_19780607.html.

“moral disorder,” an unacceptable homicide, and that the civil law enacted by the Italian State is immoral and unjust itself.¹²⁹ It promotes the selfish choice of women alone, representing a culture dominated by the “logic of violence” and by an individualistic and pleasure-oriented view of sexuality, which is in contrast with the fundamental principles of the Church and human coexistence. Such an unjust law cannot authorize or excuse the consciences of those who procure or participate in abortion. Injustice creates neither rights nor duties for consciences. The right to objection, on the contrary, is grounded in the protection of dignity and personal freedom and is itself a duty of doctors in the face of a law that violates the fundamental value of human life.¹³⁰ Therefore, it is necessary to extend the right/duty of conscientious objection concerning pregnancy termination to all medical personnel (not only gynecologists and midwives), healthcare directors, members of hospital and healthcare facility boards, and even to judges who must authorize pregnancy termination for minors. The abortion law is in contrast with the Constitution and should be repealed.¹³¹

Thus, in the conscience clause, one could already discern one of the most potent “weapons” to freeze¹³² access to pregnancy termination. The freedom to object neutralizes the freedom not to object¹³³ and the application of the law as a whole.

In the late 1970s, the majority of doctors were conscientious objectors. Healthcare institutions were (and to some extent still are) affiliated with the Church. The press at the time reported tragic news of complaints against hospitals and doctors in the Lazio and Molise regions who had refused to perform abortions or assist women experiencing severe hemorrhage during termination.¹³⁴ The family planning centers created to prevent abortion and support women and motherhood were, and still are, closely associated with pro-life movements.

Law 194 sparked discontent among both proponents of totally unrestricted abortion and its conservative opponents. The fierce criticism from the staunchest Catholics and their political allies, namely the Christian Democracy party, in a climate marked by continuous appeals from Pope John

¹²⁹ IT. EPISCOPAL CONF., *La Comunità cristiana e l'accoglienza della vita umana nascente*, in NOTIZIARIO DELLA CONFERENZA EPISCOPALE ITALIANA [*The Christian Community and the Welcome of Nascent Human Life*, in NEWSLETTER OF THE ITALIAN BISHOPS' CONFERENCE] 149, 153, 156, 158, 159 (1978).

¹³⁰ *Id.* at 165–66.

¹³¹ *Id.* at 166–68.

¹³² Stefano Rodotà, *Aborto: come bloccare il sabotaggio* [*Abortion: How to Stop Sabotage*], PANORAMA (July 5, 1978).

¹³³ GIOVANNI BERLINGUER, LA LEGGE SULL'ABORTO [THE LAW ON ABORTION] 168 (1978).

¹³⁴ SCIRÈ, *supra* note 63, at 182.

Paul II for the defense of life,¹³⁵ surreptitiously transformed religious discourses into bio-political instruments sanctioned by constitutional principles. This discursive strategy asserted that the provisions on abortion violated the right to life of the unborn;¹³⁶ the principle of equality by discriminating between born and unborn individuals;¹³⁷ the moral and legal equality of spouses,¹³⁸ because it was the prerogative of the woman to decide on termination of the pregnancy without considering the opinions of the fathers; the health of the unborn;¹³⁹ and finally, the duties of parents towards their children, even if not yet born.¹⁴⁰

In 1981, pro-life movements proposed two referendums¹⁴¹ to overturn the law: one advocating the extreme step of revoking the entire law and returning to the *status quo ante*, which criminalized abortion. However, this proposal was deemed “inadmissible” by the Constitutional Court.¹⁴² The other suggested a less extreme (“minimum”) but still significant limitation of the law. A third referendum was then proposed by the Radical Party, a political group which aimed for the full legalization of abortion.¹⁴³

The law on voluntary termination of pregnancy remained in force thanks to a clear victory for the “no” vote regarding both the Radical Party and the “minimum” proposals.¹⁴⁴ Maintaining the law, which had been approved with significant effort, in effect, appeared to be a crucial act of civic engagement, both socially and politically. However, it was not sufficient to guarantee the practical availability of abortion, which continued to be largely restricted, particularly in regions with a high number of conscientious objectors.¹⁴⁵

¹³⁵ *Si alla vita per fermare la ‘cultura della morte’* [Yes to Life to Stop the ‘Culture of Death’], LA CIVILTÀ CATTOLICA, May 1981, at 209.

¹³⁶ COSTITUZIONE DELLA REPUBBLICA ITALIANA [CONSTITUTION], Dec. 22, 1947, art. 2.

¹³⁷ *Id.* art. 3.

¹³⁸ *Id.* art. 29.

¹³⁹ *Id.* art. 31.

¹⁴⁰ *Id.*; SCIRÈ, *supra* note 63, at 187–88.

¹⁴¹ Alessandra Gissi, *Destiny, Duty, Self-Determination. Abortion in Twentieth-Century Italy*, 48 ANNALI DELL’ISTITUTO STORICO ITALO-GERMANICO IN TRENTO 47, 60 (2022) (It.); Giacomo Perico, *I referendum sull’aborto* [Referendums on Abortion] 31 AGGIORNAMENTI SOCIALI 569 (1980) (It.).

¹⁴² Corte cost., 1 febbraio 1981, n. 26, Racc. uff. corte cost. 1981 (It.).

¹⁴³ SCIRÈ, *supra* note 63, at 211–13.

¹⁴⁴ *Id.* at 253.

¹⁴⁵ Stefano Rodotà, *e’ compito dello stato combattere le “mammane”* [It Is the State’s Duty to Fight “Mammane” (back-street abortion)], LA REPUBBLICA (May 16, 1981) (It.).

**V. EMPIRICAL DATA AND COUNTER-DATA: SYSTEMIC
CONSCIENTIOUS OBJECTION AS DISGUISED CIVIL
DISOBEDIENCE**

The Church's discourse has not significantly changed over the last decades despite the adoption of more modern and fresh communication strategies,¹⁴⁶ such as the "new feminism," based on the difference between men and women. It still advocates for the banning of abortion along with women-protective,¹⁴⁷ and not only fetus-protective, arguments.

The appeal to institutional conscientious objection has remained a constant subtext for the application of Catholic teaching. Insistent narratives include the transcendent and objective natural order, natural law (which absorbed and reshaped human rights lexicon in a more Catholic vision), the culture of life, and freedom of conscience, essentially understood in the post-secular era as the religious freedom of believers. All these narratives oppose Enlightenment philosophy,¹⁴⁸ founded on man's immanent reason and the pro-choice grammar of women's reproductive rights and freedoms. All these narratives are "communication matrices" that have contributed, in the national (and global) arena, to a positive social attitude towards conscientious objection; they have produced and reproduced coalitions of performative discourses which have shaped female subjectivity and guided social

¹⁴⁶ Jean-Philippe Schreiber, *En conclusion: Église et sexualité*, in LA SAINTE FAMILLE. SEXUALITÉ, FILIATION ET PARENTALITÉ DANS L'ÉGLISE CATHOLIQUE [*In Conclusion: Church and Sexuality*, in THE HOLY FAMILY, SEXUALITY, FILIATION AND PARENTING IN THE CATHOLIC CHURCH 223 (Cecile Vanderpelen-Diagre & Caroline Sägeser eds., 2017) (Fr.); Doris E. Buss, *Robes, Relics and Rights: The Vatican and the Beijing Conference on Women*, 7 SOC. & LEGAL STUD. 339 (1998). See, for instance, among official documents and discourses, which are available at the Vatican website (www.vatican.va): Letter from Pope John Paul II to Families (Feb. 2, 1994). Encyclical Letter from Supreme Pontiff John Paul II on "Veritatis Splendor" to all the Bishops of the Catholic Church on Some Fundamental Questions of the Church's Moral Teaching (Aug. 6, 1993); Encyclical Letter from the Supreme Pontiff John Paul II on "Evangelium Vitae" to the Bishops Priests and Deacons Men and Women religious lay Faithful and all People of Good Will on the Value and Inviolability of Human Life (Mar. 2, 1995). It is worthy to note that these official documents were written around the time of the 1993 World Conference on Human Rights in Vienna and the 1995 Fourth World Conference on Women in Beijing respectively. See also Letter from John Paul II to Women, (June 29, 1995), and to Families (1994); Pope Benedict XVI, Address of his Holiness Benedict XVI to the Members of Italy's Pro-life movement (May 12, 2008). The tone and discourse adopted by Pope Francis are more moderate and modernist than those of his predecessors: Pope Francis, Apostolic Exhortation, "Evangelii Gaudium" of the Holy Father Francis to the Bishops, Clergy, Consecrated Persons and the Lay Faithful on the Proclamation of the Gospel in Today's World, para. 173, 213–14 (2013) (on file with the Rome: Libreria Editrice Vaticana); Francis, Pope, General Audience: St. Peter's Square (Apr. 22, 2015) (on file with the Vatican at www.vaticana.va).

¹⁴⁷ Julieta Lemaitre, *Catholic Constitutionalism on Sex, Women, and the Beginning of Life*, in ABORTION LAW IN TRANSNATIONAL PERSPECTIVE: CASES AND CONTROVERSIES 239, 243, 249 (Rebecca J. Cook et al. eds., 2014); Reva B. Siegel, *The Right's Reasons: Constitutional Conflict and the Spread of Woman-Protective Antiabortion Argument*, 57 DUKE L.J. 1641 (2008).

¹⁴⁸ See, in particular, Encyclical Letter "Veritatis Splendor," *supra* note 146, at para. 32.

behaviors. The right/duty to disobey civil law that allows abortion is one of the most pervasive “semiotic” and operational tools for promoting and reinforcing the process of internalizing the stigma of abortion,¹⁴⁹ both for women and those who provide it.

This brief historical aside and the ostracism of the Catholic Church converge on the Gordian knot of conscientious objection. A legal dispositive of this kind “was a key reason why Law 194 was bitterly criticized and immediately disowned by feminist groups, who had been campaigning for abortion on demand for the best part of the decade.”¹⁵⁰ Even a few satirical illustrations, collected in women’s historical archives, depicted, with some irony, women’s lengthy journeys to find hospitals with non-objecting doctors. After fruitless searches, expectant mothers would turn to their parish priest who could only admit, sarcastically, that these poor women “had been pretty unfortunate.”¹⁵¹

More than forty years since the law was passed¹⁵² the conscientious objection clause remains “indefensible.”

According to the most recent official documents from the Ministry of Health, based on data reported by the regional authorities up to 2020, the national average of conscientious objectors among gynecologists is 64.6% (with peaks exceeding 70% in nine regions and up to a maximum of 84.5%), 44.6% among anesthetists (with peaks exceeding 50% in ten regions up to a maximum of 75.9%), and 36.2% for non-medical personnel (with peaks exceeding 50% in ten regions up to a maximum of 90%).¹⁵³ Thus, there are significant regional variations in all three categories and serious issues concerning the collection and submission of information by individual hospitals. Furthermore, at the national level, only 63% of healthcare facilities with a gynecology and obstetrics unit perform voluntary termination of

¹⁴⁹ M. Bengtsson Agostino & V. Wahlberg, *Adolescents’ Attitudes to Abortion in Samples from Italy and Sweden*, 33 SOC. SCI. MED. 77 (1991).

¹⁵⁰ Bracke, *supra* note 100, at 525.

¹⁵¹ *Vignetta di “Passe Partout”* (illustration), in CARTA, SCRITTI E PAROLE ATTORNO ALL’ABORTO: 1978, 1981 [*Illustration of “Master Key”*, in PAPERS, WRITINGS, AND WORDS AROUND ABORTION: 1978, 1981], at 22, https://bibliotecadelledonne.women.it/wp-content/uploads/sites/4/2019/06/Carta-scritti-e-parole-attorno_aborto_-1978_1981.pdf.

¹⁵² As already emerged from the decisions of the ECSR. See *Res. CM/ResChS(2014)2 of the Committee of Ministers on Action européenne des handicapés (AEH) v. France, Complaint No. 81/2012* (Feb. 5, 2014); *Res. CM/ResChS(2016) of the Committee of Ministers on Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013* (July 6, 2016).

¹⁵³ MINISTERO DELLA SALUTE, RELAZIONE DEL MINISTRO DELLA SALUTE SULLA ATTUAZIONE DELLA LEGGE CONTENENTE NORME PER LA TUTELA SOCIALE DELLA MATERNITÀ E PER L’INTERRUZIONE VOLONTARIA DI GRAVIDANZA (LEGGE 194/78) – DATI DEFINITIVI 2020 [REPORT OF THE MINISTER OF HEALTH ON THE IMPLEMENTATION OF THE LAW CONTAINING RULES FOR THE SOCIAL PROTECTION OF MATERNITY AND THE VOLUNTARY TERMINATION OF PREGNANCY (LAW 194/78) – FINAL DATA 2020] 56, tbl.28 (2022) (It.).

pregnancy (VTP), and in some territorial areas, the percentage falls to 30%,¹⁵⁴ with a significant impact on the increased workload for non-objecting medical personnel.

According to the Ministry's report, the number of voluntary abortions (counting both Italian women and those from other countries residing in Italy), is in constant decline and is allegedly among the lowest in Europe. However, these recent figures appear incongruent when factoring in additional indicators, such as the limited utilization of contraceptives in Italy, also due to the absence of adequate sexual education policies and the fact that contraceptives are not distributed for free.¹⁵⁵ Plus, the estimate of clandestine abortions—which in 2016, were thought to number between 10,000 and 13,000—is uncertain and outdated,¹⁵⁶ and there are no data on “abortion travels from Italy,” which instead emerge from recent European studies.¹⁵⁷

Evidence from requests for access to information by citizens and associations, as well as surveys conducted by lay associations on the national system, also suggests that the serial abuse of the conscience clause is even more critical than the documents indicate.¹⁵⁸ This is because the aggregated analysis provided by the Ministry of Health does not assess cases of “institutional refusal” by entire healthcare facilities.¹⁵⁹

Furthermore, this official report has shown that medical abortion too (introduced in Italy in 2010)—a means of avoiding surgical intervention if performed within the first nine weeks—is not adequately implemented in several regions and does not reduce the impact of conscientious objection as it requires a medical prescription.¹⁶⁰ Also, the RU486 pill must be

¹⁵⁴ *Id.* at 58.

¹⁵⁵ *Schillaci: gratuita pillola contraccettiva a valutazione Aifa* [Schillaci: Free Contraceptive Pill with AIFA Evaluation], IL SOLE 24 ORE (July 19, 2023) (It.), https://www.ilssole24ore.com/art/schillaci-gratuita-pillola-contraccettiva-valutazione-aifa-AFN8GcH?refresh_ce=1.

¹⁵⁶ MINISTERO DELLA SALUTE, RELAZIONE DEL MINISTRO DELLA SALUTE SULLA ATTUAZIONE DELLA LEGGE CONTENENTE NORME PER LA TUTELA SOCIALE DELLA MATERNITÀ E PER L'INTERRUZIONE VOLONTARIA DI GRAVIDANZA (LEGGE 194/78) – DATI DEFINITIVI 2019 E DATI PRELIMINARI 2020 [REPORT OF THE MINISTER OF HEALTH ON THE IMPLEMENTATION OF THE LAW CONTAINING RULES FOR THE SOCIAL PROTECTION OF MATERNITY AND THE VOLUNTARY TERMINATION OF PREGNANCY (LAW 194/78) – FINAL DATA 2019 AND PRELIMINARY DATA 2020] 19 (2021) (It.).

¹⁵⁷ Silvia De Zordo et al., *Gestational Age Limits for Abortion and Cross-Border Reproductive Care in Europe: A Mixed-Methods Study*, 28 BRITISH J. OF OBSTETRICS & GYNAECOLOGY 838, 838–45 (2021).

¹⁵⁸ CHIARA LALLI & SONIA MONTEGIOVE, MAI DATI. DATI APERTI (SULLA 194). PERCHÉ SONO NOSTRI E PERCHÉ CI SERVONO PER SCEGLIERE [NEVER GIVEN. OPEN DATA (ON 194). BECAUSE THEY ARE OURS AND BECAUSE WE NEED THEM TO CHOOSE] (2022) (It.); Tommaso Autorino et al., *The Impact of Gynecologists' Conscientious Objection on Abortion Access*, 87 SOC. SCI. RES. no. 102403, 2020, at 1, 14 (demonstrating how conscientious objection significantly prolongs abortion waiting time).

¹⁵⁹ LALLI & MONTEGIOVE, *supra* note 158, at 5.

¹⁶⁰ Elena Caruso, *'Much Ado About Nothing?' The New Policy on Early Medical Abortion (EMA) in Italy*, 7 IT. L.J. 647, 647–48, 653–54 (2021).

administered in authorized public hospitals or other healthcare facilities (or family planning centers). In Italy, the medical-legal paradigm, which entails the hospitalization and medicalization of abortion procedures, is currently dominant and absolute.¹⁶¹

In a scenario such as this, it seems necessary to transition from a quantitative and empirical analysis to a qualitative, philosophical-theoretical, and normative assessment. The rationale behind the conscientious and religious claims in liberal democracies is to protect the personal choice of individual citizens over obligations imposed by state laws approved by the majority. The conscience clause is a “safeguard mechanism” that allows the legal system to address the plurality of conflicting values, especially on bioethical issues such as abortion.

Society as a whole does not share just one view of the world and human life. Thus, mechanisms of political and legal accommodation must be found that will allow the minorities who do not accept a particular law within the social organization to integrate.¹⁶² Theoretically, conscientious objection is a tool able to protect minorities. However, when minorities repeatedly invoke exemption on grounds of conscience, a paradoxical effect arises: a normative means designed to ensure a liberal and pluralistic legal system is transformed into an antidemocratic institution. This seems to be the current Italian scenario.

Objecting providers in abortion procedures form the majority in relation to the total number of healthcare professionals of the same category within the national health system. They exercise discretionary public authority, because their choice to object need not be justified and can be raised at any time, and they enjoy exclusive authority, since they have a substantial monopoly of VPT services in public facilities. However, despite their tendency to obstruct statutory law affecting the rights of third parties, conscientious objecting physicians are still in the minority compared to the national population as a whole. Technically, their act of massive refusal symbolizes a form of institutional corruption¹⁶³ that has a hidden impact on political dynamics as it circumvents and undermines the foundations of the democratic process.

¹⁶¹ Elena Caruso, *Sull'aborto farmacologico in telemedicina: spunti di riflessione per un dibattito in Italia* [*Telemedical Early Medical Abortion: Notes for a Debate in Italy*], 48 ANNALI DELL'ISTITUTO STORICO ITALO-GERMANICO IN TRENTO 169 (2022).

¹⁶² Davide Paris, *Reckoning with Growing Pluralism. Potentials and Limits of Conscientious Objection: Conscience Clauses in Abortion Laws in Europe*, 92 IUS GENTIUM: COMP. PERSPS. ON L. & JUST. 89, 90 (Lucia Busatta & Carlo Casonato eds., 2021); Michel Rosenfeld, *The Conscience Wars in Historical and Philosophical Perspective: The Clash Between Religious Absolutes and Democratic Pluralism*, in THE CONSCIENCE WARS, *supra* note 3, at 79, 82, 101.

¹⁶³ Emanuela Ceva & Maria P. Ferretti, *194 e obiezione: è vera coscienza? [194 and Objection: Is It True Conscience?]*, IL MULINO, Mar. 2014, at 390, 391–92 (It.).

Furthermore, due to a peculiar idiosyncrasy on the part of the lawmaker in 1978, no alternative service is mandated for conscientious objectors, as is the case for other traditional paradigms established in the domestic legal system, such as refusal to do military service.¹⁶⁴

The point is that the domestic conscience clause for abortion belongs to a historical context very different from the present. The reasonable rationale behind Article 9 of Law 194 was to safeguard the moral and religious beliefs of healthcare professionals who began their careers in the 1970s, in an era when abortion was still criminalized and women were not permitted to undergo voluntary termination procedures.¹⁶⁵ Taken together, this served as a justification of a law that sought a compromise with the Catholic and conservative communities.

However, today, such a justification is lacking, and the serial abuse of conscientious objection seems to lead to a “paranoid” outcome that goes beyond mere paradox since it obstructs safe, timely, and equal access to abortion care. A professional minority, who monopolize abortion procedures, prevails and acts as a majority. This minority is aware that the domestic legal system allows abortions as part of the healthcare services when embarking on their medical careers. Yet, this very minority has a disproportionate impact on society and third-party rights, namely the right to abortion, which ought to be considered an essential, universal, public, and free healthcare service in the national legal system. Furthermore, as Kant taught, individual freedom of conscience, in both private and professional settings, should be restricted for the purpose of public interest, such as safeguarding women’s health.

There is another key point to assess. Conscientious objection is a form of personal, not collective, protest. It is not supposed to seek to subvert or boycott a law that clashes with one’s conscience. Rather, such a legal dispositive should be a technique to stabilize the law it opposes, and to protect the pluralism of liberal democracies. On the contrary, civil disobedience aims to pose a public challenge to the injustice of the law and implies acceptance of social or legal sanctions (due to the breach of the law itself).¹⁶⁶

The serial practice of conscientious objection in Italian abortion procedures has transformed individual refusal into collective civil disobedience without, however, putting any sanctions in place for medical

¹⁶⁴ Pugiotto, *supra* note 125, at 252–54.

¹⁶⁵ Federica Grandi, *Le difficoltà nell’attuazione della legge 22 maggio 1978, n. 194: ieri, oggi, domani* [The Difficulties in Implementing the Law n. 194 of May 22, 1978: Yesterday, Today, Tomorrow], ISTITUZIONI DEL FEDERALISMO, 2015, at 89, 101 (It.).

¹⁶⁶ See generally MICHELE SAPORITI, LA COSCIENZA DISUBBIDIENTE: RAGIONI, TUTELE E LIMITI DELL’OBIEZIONE DI COSCIENZA [THE DISOBEDIENT CONSCIENCE: REASONS, PROTECTIONS AND LIMITS OF CONSCIENTIOUS OBJECTION] (2014) (It.).

personnel or issuing any public communication of their choices. Thus, we may assume that we are facing a reversal of political needs: it is not necessary today to shield the individual consciences of minorities from a law that has been democratically approved by the majority. Conversely, it is necessary to find mechanisms to protect the abortion law from the “dissenting” objection of a limited professional category. The privilege of exemption should not translate into immunity when such a privilege affects women’s rights, health, and reproductive freedom of choice.

Conscientious objectors exercise significant political power, albeit outside the official political agenda, thus misaligning ‘law in the books’ with ‘law in action.’ In this manner, what was initially considered an exception to the law transformed itself into a general operational rule within the domestic legal system.

VI. NATIONAL FORMS OF ‘COMPLICITY-BASED’ CLAIMS: POLITICAL STASIS VS CONSERVATIVE NARRATIVES IN ACTION IN THE ITALIAN SOCIAL FABRIC

The Italian courts have not supported ‘domestic’ assumptions of ‘complicity-based conscience claims,’¹⁶⁷ at least not concerning abortion.¹⁶⁸ The regulated but essentially unconditional nature of conscientious objection in abortion procedures has encouraged a cautious attitude among judges. These claims sought to extend both the application of the conscientious objection clause—originally intended only for medical personnel—to individuals not explicitly mentioned in the law and to provide a broader interpretation of the behaviors that justify the denial of abortion services.

¹⁶⁷ Douglas NeJaime & Reva B. Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 YALE L.J. 2516, 2553 (2015) (analyzing these new emerging conscientious claims in the US legal system, as culture-war conscience claims and political tools for conservatives to promote traditional moral and social values, speaking as a minority). For similar results, in a transnational and comparative perspective, see NeJaime & Siegel, *supra* note 3, at 209–15.

¹⁶⁸ This is not the place to analyze how conservative movements, even in Italy, are attempting to oppose LGBT rights. Suffice it to mention the debate about mayors appealing to conscientious objection to refuse to celebrate gay marriages after the legal recognition of civil unions in the national legal system. The Supreme Pontiff has expressed his support. *Le pape François à La Croix: ‘Un État doit être laïque’* [Pope Francis at “La Croix”: “A State Must be Secular”], LA CROIX (May 17, 2016, 12:12 PM) (Fr.), <https://www.la-croix.com/Religion/Pape/Le-pape-Francois-La-Croix-Un-Etat-doit-etre-laique-2016-05-16-1200760526>; Sergio Rame, *Matrimoni gay, papa Francesco ai sindaci: “Obiezione coscienza è diritto”* [Gay Marriages, Pope Francis to Mayors: “Conscientious Objection is a Right”], IL GIORNALE (May 17, 2016, 3:00 PM) (It.), <https://www.ilgiornale.it/news/cronache/matrimoni-gay-papa-francesco-ai-sindaci-obiezione-coscienza-1259977.html>. However, administrative courts have considered the refusal of mayors to celebrate civil unions illegitimate because, according to the law, they are equated with heterosexual marriages. TAR, 29 dicembre 2016, n. 01791/2016 REG. PROV. COLL., 2016 (It.).

The Constitutional Court,¹⁶⁹ in particular, has firmly established that guardianship judges, who are required to authorize abortions for pregnant minors in the absence of parental consent, cannot benefit from conscientious exemption. The legal reasoning employed in this context relied on the argument that judges have merely external power to ‘supplement’ the capacity (or incapacity) of underage individuals. As a result, the woman’s will is the only one that really matters in the decision of whether to terminate or continue the pregnancy. Self-determination over one’s own body and motherhood, therefore, prevails over the protection of the judge’s conscience.

The same caution has guided a literal and restrictive interpretation of the abortion law, particularly concerning the objective limits of conscientious objection. National civil, administrative, and criminal courts confine the possibility for medical personnel to refuse to participate exclusively to acts that directly cause abortion, be they surgical or medical. They exclude all actions related to pre- or post-abortion processes, including issuing certificates confirming a woman’s intent to terminate her pregnancy. Breaching these objective limits makes doctors criminally liable for neglecting their official duties (Article 328 of the Italian Penal Code).¹⁷⁰

A drop in the ocean that has had little effect.

In the meantime, the narratives of the pro-life movements¹⁷¹ (which have a strong Catholic militant base but proclaim to be non-denominational) have introduced new biopolitical discourses. Funerals and symbolic burials of ‘abortions’ are used to advocate for the rights of embryos as living entities to be protected. The constant emphasis on women’s suffering following pregnancy termination reverses feminist and pro-choice arguments, portraying abortion not as a choice but as an act of violence and a risk to women’s psychophysical health. These arguments from anti-abortion activists have become intertwined with both official and unofficial communications from the institutions of the Roman Catholic Church (with

¹⁶⁹ Corte cost., 25 mai 1987, n. 196, Racc. uff. corte cost. (It.). More recently, see Constitutional Court, Ord., 20 June 2012, n. 196 (It.), <https://giurcost.org/>. See also BENEDETTA LIBERALI, *PROBLEMATICHE COSTITUZIONALI NELLE SCELTE PROCREATIVE* [CONSTITUTIONAL ISSUES IN PROCREATIVE CHOICES] 601 (2017) (describing the extensive debate in domestic legal literature).

¹⁷⁰ Cassazione sezione penale (Cass. Pen.), sez. sesta, 2 April 2013, No. 14979; Cassazione sezione penale (Cass. Pen.), sez. sesta, 13 May 2021, No. 18901; among administrative courts see TAR Lazio (III section), 2 August 2016, No. 8990; T.A.R. Puglia (II section), 14 September 2010, No. 3477. See also some representative civil judgments such as, Pretura di Ancona, 9 October 1979, GIURISPRUDENZA DI MERITO, 1982, II, 973; and Pretura di Penne, 6 December 1983, GIURISPRUDENZA DI MERITO ITALIANA, 1984, II, 314.

¹⁷¹ Claudia Mattalucci, *Contesting Abortion Rights in Contemporary Italy: Discourses and Practices of Pro-life Activism*, in *A FRAGMENTED LANDSCAPE: ABORTION GOVERNANCE AND PROTEST LOGICS IN EUROPE* 85–102 (Silvia De Zordo et al. eds., 2016).

the support of right-wing parties¹⁷²), aiming to radicalize the culture of objection, or more precisely, the right/duty to disobey.

Some symbolic events help reveal this phenomenon of radicalization.

The saga of the introduction of the RU-486 pill (mifepristone) in 2010 is particularly emblematic. It allowed for medical abortion up to the seventh week, with an extension to sixty-three days in conformity with European standards only in 2021.¹⁷³ Following an investigative study, a Health and Sanitation Committee of the Italian Senate approved a document with the support of right-wing groups, seeking to prevent its distribution. At the time, the former president of the Constitutional Court, Francesco Casavola, who also chaired the National Bioethics Committee, made ambiguous statements about the need to duly consider the conscientious objection of pharmacists. This was seen as a measure to avoid leaving mothers alone “in their choice.”¹⁷⁴ A few years earlier,¹⁷⁵ Pope Benedict XVI had, in turn, urged this professional category, which serves as an intermediary between doctors and patients, not to administer immoral medicines, namely those contrary to life, exercising their right to refuse. Opposition to medical abortion hindered the approval of the law and mandated the hospitalization of women, disregarding the guidelines of the World Health Organization already in existence at that time. Even after approval, pressures from conservatives and Catholics did not subside. A series of proposed laws (which never came into effect) were presented on the political agenda, with the stated aim of extending the application of Article 9 of the abortion law to pharmacists.¹⁷⁶

¹⁷² Silvia De Zordo, ‘Good Doctors Do Not Object’ Obstetricians—Perspectives on Conscientious Objection to Abortion Care and Their Engagement with Pro-Abortion Rights Protests in Italy, in A FRAGMENTED LANDSCAPE: ABORTION GOVERNANCE AND PROTEST LOGICS IN EUROPE, *supra* note 171, at 147–68 (showing how the Roman Catholic Church and pro-life movements tried to block the approval of the Law No. 40/2004 on assisted reproductive technologies and then tried to induce the lawmaker to introduce a conscientious objection clause for medical personnel similar to that of Article 9, Law 194, along with the fundamental protection of “the rights of all subjects involved, including those of the fetus” (il concepito)).

¹⁷³ MINISTERO DELLA SALUTE [MINISTRY OF HEALTH], AGGIORNAMENTO DELLE LINEE DI INDIRIZZO SULLA INTERRUZIONE VOLONTARIA DI GRAVIDANZA CON MIFEPRISTONE E PROSTAGLANDINE APPROVATE IL 24 GIUGNO 2010 [UPDATE OF THE GUIDELINES ON VOLUNTARY TERMINATION OF PREGNANCY WITH MIFEPRISTONE AND PROSTAGLANDIS APPROVED ON 24 JUNE 2010] (Aug. 4, 2020) (It.); Maria Pia Iadicicco, *Aborto farmacologico ed emergenza sanitaria da Covid-19* [Pharmacological Abortion and Covid-19 Health Emergency], 4 QUADERNI COSTITUZIONALI 823, 823–26 (2020) (It.).

¹⁷⁴ Corrado Del Bò, *L’obiezione di coscienza e la Ru-486* [Conscientious Objection and RU-486], 101 NOTIZIE DI POLITEIA 134, 137 (2011) (It.).

¹⁷⁵ Pope Benedict XVI, Address of His Holiness Benedict XVI to Members of the International Congress of Catholic Pharmacists (Oct. 29, 2007).

¹⁷⁶ Deputati Gigli e Sberna [Deputies Gigli & Sberna], Proposta di Legge: Disposizioni concernenti il diritto all’obiezione di coscienza per i farmacisti [Law Proposal: Provisions Concerning the Right to Conscientious Objection for Pharmacists] 4 maggio 2016, n. 3805, art. 1 (It.). <https://www.camera.it/leg17/126?tab=2&leg=17&idDocumento=3805&sede=&tipo=>; Senatori

Equally paradigmatic are those Italian hospitals which, in order to guarantee the VTP service, issued calls for applications reserved for non-objector doctors.¹⁷⁷ All these initiatives had been endorsed by associations of gynecologists with a non-religious affiliation, but they soon encountered protests from the Italian Episcopal Conference and members of political institutions, united in their defense of the right to conscientiously object and the principle of non-discrimination.¹⁷⁸ This solution was not genuinely capable of addressing the problem of widespread conscientious objection. In fact, under Law 194, medical personnel are permitted to exercise the right to object even after they have been hired. However, it could have served as a tool to mitigate the phenomenon and ensure access to abortion.

The conventional Catholic discourse resurfaces again with Pope Francis, who has affirmed in recent years that freedom of conscience is a fundamental and non-negotiable value. He has argued that both doctors and pharmacists should disobey. Even merely providing medications that could potentially become “poisons” would, in fact, imply complicity in homicide.¹⁷⁹

In the face of systemic conscientious objection, disguised as a form of civil disobedience, one must inquire whether the refusal to partake in abortion procedures is grounded in authentic ethical or religious convictions.

Anthropological research conducted within hospital facilities provide additional insights into the motivations that drive medical personnel to invoke the conscience clause. Alongside genuine objectors, who may or may not be closely tied to Catholic beliefs and dogma, there are, in fact, a sizable number of “fake objectors.”

D'Ambrosio Lettieri e Mandelli [Senators D'Ambrosio, Lettieri, & Mandelli], *Disegno di Legge: Disposizioni in materia di definizione e regolamentazione del diritto all'obiezione di coscienza da parte dei farmacisti* [Bill: Provisions Regarding the Definition and Regulation of the Right to Conscientious Objection by Pharmacists] 9 Ottobre 2013, n. 1097 (It.), https://www.senato.it/japp/bgt/showdoc/17/DDLPRES/0/737629/index.html?part=ddlpres_ddlpres1.

¹⁷⁷ Marilisa D'Amico, *Sui bandi di concorso per medici non obiettori: l'obiezione di coscienza è regola o eccezione in uno stato laico?* [On Competition Notices for Non-Objecting Doctors: Is Conscientious Objection the Rule or Exception in a Secular State?], 2 QUAD. COST. 350 (2017).

¹⁷⁸ Lazio, *bando per ginecologi non obiettori*. Lorenzin: 'Obiezione si rispetta'. Cei: 'E' un diritto, 194 snaturata' [Lazio, Call for Non-Objecting Gynecologists. Lorenzin: 'Objection Is Observed'. CEI: 'It's a Right, 194 Distorted'], IL FATTO QUOTIDIANO (Feb. 22, 2017), <https://www.ilfattoquotidiano.it/2017/02/22/lazio-concorso-per-ginecologi-non-obiettori-licenziati-se-non-faranno-aborti-la-cei-e-un-diritto-violata-la-legge/3407702/>; Aborto, Cei sul caso San Camillo: "Obiezione è un diritto". Presidente Consulta: concorso di dubbia legittimità [Abortion, CEI on the San Camillo Case: "Conscientious Objection Is a Right". President of the Council: Doubts About Legitimacy], LA REPUBBLICA (Feb. 22, 2017, 9:26 P.M.), https://www.repubblica.it/salute/2017/02/22/news/s_camillo_cei_obiezione_e_diritto_snaturata_194-158929177/.

¹⁷⁹ Pope Francis, Address of his Holiness Pope Francis to the Participants in the Congress promoted by the Italian Society of Hospital Pharmacy and Pharmaceutical Services of Health Authorities (Oct. 14, 2021).

Many gynecologists and anesthetists state that their decision to object arises from the desire to avoid a monotonous and repetitive “dirty job” or an over-demanding workload due to the scarcity of non-objectors. Alternatively, it may stem from the desire to engage in different and more professionally fulfilling healthcare services. In all these cases, it becomes evident that there is no authentic ethical or religious conviction to protect.

The opportunistic behavior (free-riding) of objectors is also motivated by purely personal interests. The paradox, however, lies in the fact that the legal system also legitimizes pseudo-objectors, allowing them to exercise their right with no obligation to explain their decision.

At times, however, anthropological studies have revealed a far more complex systemic social issue to contend with. In fact, the fear of discrimination, harassment, or intimidation in the workplace and in career advancement becomes apparent. These fears are well founded. With regard to Italy, The European Committee of Social Rights has indeed noted a breach of the right to work and the dignity of labor for non-objecting doctors, coupled with a lack of substantial corrective measures by the national government.¹⁸⁰

The social perception of abortion as a stigma, both for women and those who provide it,¹⁸¹ has an impact on both reproductive rights and the freedom of women’s self-determination, as well as the rights of workers (non-objecting healthcare personnel). These two issues are inherently interconnected. The act of terminating a pregnancy is essentially viewed as a breach of dominant mainstream narratives. It represents a violation of traditional gender norms and values related to sexuality, femininity, and motherhood,¹⁸² regardless of specific religious beliefs or the “culture of life.” Thus, the stigma surrounding women who seek abortion is combined with and reinforced by the stigma faced by non-objecting providers.

Alongside the passive stigmatization endured by healthcare personnel, there is also active stigmatization perpetuated by these very professionals, further impacting on the social system.¹⁸³ Hence, we find ourselves in a vicious cycle as “high rates of conscientious objection increase the marginalization and stigmatization of abortion provision by negatively

¹⁸⁰ See *supra* Part I.

¹⁸¹ Silvia De Zordo, *Lo stigma dell'aborto e l'obiezione di coscienza. L'esperienza e le opinioni dei ginecologi in Italia e in Catalogna* [*Abortion Stigma and Conscientious Objection: The Experience and Opinions of Gynecologists in Italy and Catalonia*], 28 *MEDICINA NEI SECOLI ARTE E SCIENZA* 195, 212 (2016).

¹⁸² Anuradha Kumar et al., *Conceptualizing Abortion Stigma*, 11 *CULTURE, HEALTH & SEXUALITY* 625, 635 (2009).

¹⁸³ De Zordo, *supra* note 172, at 162.

affecting abortion providers' medical training and professional life, as well as the quality of abortion care.”¹⁸⁴

VII. PRESERVATION ‘*WITHOUT*’ TRANSFORMATION: WHAT IS TO BE DONE?

The coalition of anti-abortion discursive practices within the Italian social fabric has played a role in socially justifying the systemic abuse of conscientious objection.

Faced with this state of affairs, the crucial question is this: What is to be done?

When a legal system permits conscientious objection, the legal conundrum to be addressed is as follows: how to accommodate objection without compromising fundamental public interests and without causing significant harm to other citizens.

Without proper adequate limitations on conscientious claims, legal systems “will align the public order with the belief system of the objector and against the rights to which the objector objects.”¹⁸⁵ Essentially “if accommodations are not designed in ways that limit their impact on third parties it may be an indication . . . that those opposed to the rights of third parties assert ‘conscientious objections . . . to project their private convictions in the public sphere.’”¹⁸⁶

Comparative legal analysis and WHO recommendations¹⁸⁷ point to various normative strategies of “accommodation” capable of effectively addressing conscientious objection within the context of reproductive rights, thereby ensuring authentic pluralism.

In Europe, there are liberal trends aimed at strengthening reproductive rights by directly addressing the issue of conscientious objection among healthcare personnel.

In France, for instance, the right to abortion has been established as a fundamental right since 1975 under the *Loi Veil*.¹⁸⁸ However, the legal framework includes a dual conscience clause, both a general one and a

¹⁸⁴ *Id.*

¹⁸⁵ Douglas NeJaime & Reva Siegel, *Conscience Wars in the Americas*, 5 *LATIN AM. L. REV.* 1, 19 (2020).

¹⁸⁶ *Id.* at 15.

¹⁸⁷ *See id.* at 19–20; CTR. FOR REPROD. RTS., *supra* note 54.

¹⁸⁸ Marie Mathieu, *L'avortement en France: du droit formel aux limites concrètes à l'autonomie des femmes* [*Abortion in France: From Formal Rights to Concrete Limits on Women's Autonomy*], 111 *DROIT ET SOCIÉTÉ* [DRT. SOC.] 335, 339–40 (2022) (Fr.).

“special” one dedicated to abortion procedures.¹⁸⁹ The practice of conscientious objection has long raised concerns, considering budget restrictions in healthcare policy and increasing activism on the part of “pro-life” groups strongly influenced and even financed by similar groups in the United States.¹⁹⁰ Not surprisingly, many activists have called for the abolition of the special conscience clause because it stigmatizes and blames women. The ongoing social debate has led to legislative proposals for the abolition of conscientious objection in VTP services.¹⁹¹ Furthermore, after *Dobbs*, domestic political institutions initiated a constitutional reform¹⁹² to introduce an explicit provision to strengthen the right to abortion. Although, at present, the “*droit de reserve*” (conscience clause) remains in force, France has just amended the Constitution enshrining abortion rights,¹⁹³ and the legislature has taken progressive steps by removing some barriers to pregnancy termination.

Specifically, the legislature has extended the legal timeframe for abortion under any circumstances from the twelfth to the fourteenth week of pregnancy and has enhanced access to abortion medications as an alternative to more invasive surgical procedures.¹⁹⁴ It has enabled obstetricians to perform surgical abortions and removed the two-day period of reflection

¹⁸⁹ See Code de la santé publique [C. san. pub.] [Public Health Code] art. R4127-47 (Fr.). For abortion cases, see C. san. pub. art. L2212-8 (Fr.).

¹⁹⁰ See generally Assemblée Nationale, Rapport d’information sur l’accès à l’interruption volontaire de grossesse (IVG) N°3343 [Information Report on Access to Voluntary Termination of Pregnancy (Abortion) No. 3343] (2020) (Fr.); Jennifer Merchant, *Access to Abortion: Comparative Public Policy in France and the United States*, in RESEARCH HANDBOOK ON INTERNATIONAL ABORTION LAW *supra* note 6, at 142–59.

¹⁹¹ See Proposition De Loi 743 du 28 septembre 2018 visant à supprimer la clause de conscience en matière d’interruption volontaire de grossesse [Proposed law 743 of September 28, 2018, Aimed at Removing the Conscience Clause Regarding Voluntary Termination of Pregnancy], Sénat [Senate] (Fr.); Proposition De Loi 3292 du 25 août 2020 visant à renforcer le droit à l’avortement [Proposal for Law 3292 of August 25, 2020 Aimed at Strengthening the Right to Abortion], Assemblée Nationale [National Assembly] (Fr.).

¹⁹² See Proposition De Loi Constitutionnelle 293 du 7 octobre 2022 de visant à protéger et à garantir le droit fondamental à l’interruption volontaire de grossesse et à la contraception [Constitutional Bill No. 293 of October 7, 2022 Aimed at Protecting and Guaranteeing the Fundamental Right to Voluntary Termination of Pregnancy and Contraception], Assemblée Nationale [National Assembly] (Fr.); Proposition De Loi Constitutionnelle 34 du 24 novembre 2022 visant à protéger et à garantir le droit fondamental à l’interruption volontaire de grossesse [Proposal for Constitutional Law 34 of November 24, 2022 Aimed at Protecting and Guaranteeing the Fundamental Right to Voluntary Termination of Pregnancy], Assemblée Nationale [National Assembly] (Fr.).

¹⁹³ See Eleonora Bottini et al., *Enshrining Abortion Rights in the French Constitution: A Global Statement with Little Domestic Substance?*, VERFASSUNGSBLOG (Mar. 9, 2024), <https://verfassungsblog.de/enshrining-abortion-rights-in-the-french-constitution> (analysing the impact of the new art. 34 of the French Constitution on the domestic legal system).

¹⁹⁴ Loi 2022-295 du 2 mars 2022 visant à renforcer le droit à l’avortement [Law 2022-295 of March 2, 2022 Aimed at Strengthening the Right to Abortion], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 3, 2022, art. 1.

between optional consultation with a psychologist and the abortion procedure itself. Furthermore, it has introduced explicit penalties for pharmacists who refuse to dispense emergency contraception and mandated the ARS (“*Agence régionale de santé*”) to publish a list of professionals and individual hospital facilities that provide pregnancy termination services.

Spain too is moving toward even more robust protection of the sexual and reproductive rights of all women, including lesbian and bisexual women.¹⁹⁵ A more liberal and gender-oriented legislation came into effect in 2023 that has introduced a special registry for objecting doctors, aiming to ensure both full respect for the right of women to voluntarily terminate their pregnancy and the right of healthcare personnel to conscience-based refusal. Additionally, the legislature established rules for adopting organizational measures to safeguard the quality and dignity of work for non-objecting doctors, protecting them against discriminatory practices.¹⁹⁶ Lastly, there is provision for training on gender issues, including sexual and reproductive health for all healthcare providers, that also includes education on voluntary pregnancy termination in academic curricula.

There is nothing like this in Italy.

Conscientious objection in abortion procedures has been part of the domestic legal system since the approval of the 1978 law. Originally this rule was designed to allow a minority to resist the abortion law. At that time, it represented a religious and moral accommodation in line with the pluralism of values laid down in the Italian Constitution. It was probably intended by Catholic and conservative groups to implement a “preservation through transformation” dynamic.¹⁹⁷

After forty-five years, the conscientious objection clause and the entire abortion law have remained unchanged, and the original dynamic has, in a sense, reversed. The new paradigm seems to function to enable a process of ‘preservation without transformation.’ The formal rules have stayed the same. While national courts have prevented new conscientious-based claims related to abortion procedures, they have had very little impact on such a systemic phenomenon.

The Constitutional Court has, in turn, thwarted attempts to reform the law initiated through instruments of direct democracy by citizens. Faced with

¹⁹⁵ C.E., B.O.E. n. 51, Mar. 1, 2023 (Spain). For further constitutional moves and discussion on abortion in Spain, see Ruth Rubio Marín, *On the Spanish Constitutional Court’s 2023 Landmark Abortion Case*, VERFASSUNGSBLOG (July 20, 2023), <https://verfassungsblog.de/advancing-reproductive-rights/>.

¹⁹⁶ C.E., B.O.E., n. 51, arts. 19, 19 bis., 19 ter., Mar. 1, 2023 (Spain).

¹⁹⁷ See NeJaime & Siegel, *supra* note 167, at 2518, 2552.

a request for a new repeal referendum¹⁹⁸ that aimed to remove certain administrative and procedural requirements for accessing abortion, the Court stated that the law on voluntary termination of pregnancy upholds a “minimum protection of interests considered fundamental by the Constitution.” These interests include the right to life of the fetus and safeguarding motherhood, both of which are considered fundamental responsibilities of the State. As a result, Law No. 194 has “constitutionally binding” content and cannot therefore be repealed by referendum. This argument has every appearance of an ‘exclusion’ procedure as Michel Foucault would have put it.¹⁹⁹ The question of abortion seems to represent a matter regarding which people have no say; or rather, it seems to represent a discourse on which citizens cannot directly ‘act’ because the truth of the normative discourse on the right to abortion and the right to life is encapsulated in the will of the legislator and in balancing the constitutional values it has established in the past.

While the political-institutional agenda is in stasis, the narratives and discursive strategies of those opposing abortion have continued to influence society, producing ever-newer arguments as part of broader conservative discourses (not necessarily only by Catholics) against gender ideology²⁰⁰ and in defense of traditional models of family, morality, and female sexuality. All these cryptotypes and narratives, well-rooted in the Italian social fabric, have shaped and still shape the abortion law in action, beyond the formal rules.

So far, politics have remained stagnant. However, merely refraining from taking action, despite the evident indefensibility of mass conscientious objection, has been significant.

Indeed, political inaction is still a political act. Not amending the law and specifically not addressing the issue of conscientious objection is tantamount to supporting the arguments of objectors, hindering access to abortion.

Therefore, in the domestic legal system, there are no new conscientious exemptions typical of the emerging culture wars in the transnational discourse. The paradigm of the conscience clause, at least with regard to abortion procedures, has remained the same. It is the mass abuse of the right

¹⁹⁸ Corte cost., sez. un., 30 gennaio 1997, n. 35, Gazz. Uff. 1997 (It.); see also Silvia Niccolai, *Aborto: L’ambigua Liberazione Dalla “Natura”* [Abortion: The Ambiguous Liberation from “Nature”] 28 *MEDICINA NEI SECOLI* 103, 115 (2016) (It.); MANCINI, *supra* note 97.

¹⁹⁹ See MICHEL FOUCAULT, *L’ORDINE DEL DISCORSO* [THE ORDER OF DISCOURSE] 9–10 (Alessandro Fontana trans., Einaudi 5th ed., 1979) (It.).

²⁰⁰ See Sara Garbagnoli, *Italy as a Lighthouse: Anti-Gender Protests Between the “Anthropological Question” and National Identity*, in *ANTI-GENDER CAMPAIGNS IN EUROPE: MOBILIZING AGAINST EQUALITY* *supra* note 6, at 151–167; see generally MASSIMO PREARO, *L’IPOTESI NEOCATTOLICA: POLITOLOGIA DEI MOVIMENTI ANTI-GENDER* [THE NEOCATTOLIC HYPOTHESIS: POLITOLOGY OF ANTI-GENDER MOVEMENTS] (Mimesis ed., 2020) (It.).

to object, without genuine reasons of conscience, and beyond real democratic pluralism, that has transformed this reasonable accommodation tool into an illiberal dispositive. It inflicts significant harm on third parties. On the one hand, women are deprived of their right to abortion, even within the conditions established by the law; on the other hand, the non-objecting medical personnel also suffer the consequences.

To take widespread conscientious objection seriously requires legislative action. This may ultimately lead, as a last resort, to the removal of the conscience clause for abortion services.²⁰¹

However, the truth is that in Italy, the question of abortion appears to have lost the political and cultural prominence it had when the law was passed. It has now reverted to being a battleground for feminist movements and an ethical issue, no longer a social or political one.²⁰²

The realm of the “impolitical” was the goal of the more radical feminist groups in the 1970s, mostly associated with left-wing and Marxist thought.²⁰³ The idea was that any intervention by the State in matters concerning abortion, and the use of a rights-based lexicon, had the paradoxical and perverse effect of simplifying and, above all, concealing the real issues related to abortion: control over female sexuality, women’s autonomy, and self-determination in a patriarchal and male-dominated society, as well as the moralizing social constructs of family models and motherhood.

But it is now essential to intervene through serious and systematic reforms. The debate on abortion exists, but what is lacking is the political conversation needed to catalyze action.

²⁰¹ See NeJaime & Siegel, *supra* note 185, at 20.

²⁰² See Tamar Pitch, *Decriminalization or Legalization? The Abortion Debate in Italy*, 3 WOMEN & CRIM. JUST. 27, 33 (1992).

²⁰³ See Hanafin, *supra* note 101, at 239.