FAMILY LAW IN ITALY: LEGISLATIVE INNOVATIONS AND SOCIAL CHANGE

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This article traces a panoramic picture of the changes in family law in Italy during the last decade, with special reference to: the problems of adoption, divorce, abortion, and family counseling; the profound innovations introduced into the Civil Code in 1975 concerning relationships between spouses, between parents and children, and between children born in and out of wedlock; and the consequent problems of inheritance.

The transformation of positive law is analyzed from a sociological point of view that explores both changes in the socioeconomic environment in which, and the political debate through which, they occurred.

On the basis of a broad examination of relevant empirical research and theoretical studies, the authors conclude that, even though the reforms may represent normative innovations in the context of the plurality of family models in contemporary Italy, their practical efficacy is limited by the amount of social and economic support, which until now have been inadequate.

I. A POLITICAL HISTORY OF ITALIAN FAMILY LEGISLATION

Italian family law[1] has undergone a number of major changes in the last decade. This contrasts with a marked lack of legislative interest in the subject during the preceding twenty-five years, in effect since the promulgation of the first volume of the 1942 Civil Code. Until that date, legislation in the field had been essentially limited to formalizing norms that derived from the earlier codification of 1865 (Ungari, 1974). The lack of any significant innovations was justified by the legislator who sponsored the bill introducing the 1942 Code in these terms: "Any particular approach which is required to meet the needs and usages of the day, and especially the con-

1. It is necessary to specify which norms and legal institutions are discussed in this paper. The authors are aware that family law may be defined in different ways. On the one hand family law may be defined in a proper sense as concerning the relations between spouses and between parents and children. On the other hand family law may include all the legal norms that refer to individuals as components of a family or affect the life and conditions of the family nucleus. In this broader sense family law can include the totality of welfare legislation that seeks to protect motherhood, childhood, women's work, and so on. The authors have chosen an intermediate definition and have considered legislative reforms that concern not only personal, patrimonial and successional relations between spouses and between parents and children, but also filiation in general (illegitimate children, adoption, birth control, abortion, etc.). This is the field where Italian legislative reform has been most incisive. According with the legislative formulation, the words "family law reform" are used in this paper to indicate Act No. 151 of May 23, 1975, which has practically rewritten Books I and II of the Italian Civil Code.

sequences of the phenomenon of the working woman, is perfectly reconcilable with the fundamentals of this legal regime for the family, and in the absence of any real exigency, there is no reason to amend formulas which have held the strength and prestige of a long established tradition" (Cardia, 1975:139).

Indeed, if one reflects on the transformations in Italian society during the last century, the 1942 codification appears to take a position toward wives and children that is even more conservative and discriminatory than that of its predecessor. For the 1865 Code had taken a few steps forward, even if these were very minor, when compared with the various earlier codifications that predated Italian unification. For instance, although a daughter remained subject to her father's authority until she was thirty or forty (if not for her entire life) under Italian law prior to unification, she attained majority at twenty-one under the 1865 codification; furthermore, where she previously had had no authority over her children, she was given rights over them equal to those of her husband, although the actual exercise of that authority was reserved to him, except in a few special cases. By contrast, the 1942 Code faithfully reflected the ideological vision, embraced by the Fascist regime, of a family "strongly structured in an authoritative way, the principle of paternal control taking precedence within it over that of individual autonomy" (Dogliotti *et al.*, 1977:7). As a result, the family institution was subject to a "comprehensive pyramidal control" (Cardia, 1975:140). At the apex of the pyramid was the husband-father. The parents were owed equal obligations (loyalty, respect, support) but they did not enjoy equal rights, since the husband was proclaimed the head of the family, while his wife was subordinated to him. Moreover, the husband remained privileged even when he violated a marital duty that was reciprocal: for instance, adultery was punished more severely when committed by the wife. The rules on parental authority reproduced unchanged those laid down in the 1865 Code. And children born outside wedlock were denied rights possessed by legitimate issue. It is worth recording that the only serious family reform introduced by the Fascist regime was the mass of regulations providing incentives for a higher birthrate, which nevertheless failed to attain the target of "seventy million Italians as a national and patriotic necessity" (Ungari, 1974:225).

The strongly authoritarian features of the Fascist Code were further accentuated by the even more restrictive interpretation placed upon it until very recently by the courts and by

legal doctrine. Some courts went so far as to hold that a husband may compel his wife to give up her work when family reasons require it, and even upheld the *jus corrigendi* of a husband over his wife (Canosa, 1978). One could offer many more examples of inequality in family relationships: for instance, one court granted a judicial separation on the grounds that the wife had engaged in a conversation with a family friend while away from her home and without her husband's authorization.

With the downfall of the Fascist regime and the promulgation of the 1948 Constitution, new family legislation highlighted the reactionary antidemocratic conditions that had prevailed. The Constitution defines the family as a "natural society founded on marriage" (Art. 29); it asserts the moral and juridical equality of the spouses (Art. 29); it provides that children born out of wedlock shall enjoy "all juridical and social protection compatible with the rights of legitimate children in the family" (Art. 30); and it seeks to promote "with economic measures and other provision" the establishment of the family and the fulfillment of its role (Art. 31). The contrast between the concepts of the family underlying this Constitution and the 1942 Civil Code is dramatically obvious.

Yet, from the outset, efforts were made to minimize the scope of such constitutional provisions and to delay their implementation. Once again a large sector of juridical culture (one that possessed the greatest authority) vehemently defended tradition and conformity. It asserted that in matters of family law (as in other fields) the Constitution must be confined to "vague statements of principles and programmatic starting points" (Jemolo, 1961:252). The legal establishment, in short, did not appreciate, indeed discounted, the overwhelming need for a radical reform of family law that would acknowledge the new concept of the family community contained in the Constitution.

If these entrenched conservative positions generally prevailed there were at least a few "evolutionary," if cautious, interpretations of the new family legislation. According to these, the Constitution had not aimed to postulate any specific model of family organization (much less the one envisaged by the Catholic church, as some had held, construing "natural society" as one founded on natural law and based, through a questionable interpretation, on Catholic ethics). On the contrary, the Constitution has sought to entrust "to the legislature the task of appraising, and then translating into law, the evolution

which usage, debated ideals and interested political forces have caused to emerge in society in the course of its growth and development" (Cardia, 1975:129). The Constitutional Court, too, has contributed, albeit unevenly, to the realization of the principles of parity and equality between spouses, by declaring the constitutional invalidity of legislative provisions affronting those principles (No. 126 of 1968; No. 147 of 1969).

Since 1967, which saw the promulgation of the Law on Special Adoption (see below), family law has acquired a special importance in Italian legislative output, both because of the bills that have been introduced to reform nearly the entire corpus of family law, and because such legislative reforms have entailed a protracted parliamentary process and have been accompanied by a specially ardent and involved public debate.

It is interesting that in the last decade family law and its reform have often provided the field for the most heated debate between political forces, whether these are organized parties with parliamentary representation or social movements that have frequently arisen as a result of, and in parallel with, the political battles over the reforms themselves (as for instance with the Italian Law on Divorce). In connection with this lively debate, one might note that even if legislation in the field of family law has generally represented a compromise between divergent pressures, in some cases (especially divorce and voluntary abortion) the reforms have expressed, at least in part, the demands put forward by minorities traditionally peripheral to the general political process, and opposition groups representing a plurality in the populace at large (primarily the Communist party). When the first Law on Divorce was approved, a most unusual alliance was formed. Despite the fact that the Government consisted of a Left-Center coalition, the law was approved not only by all the parties to the left of the Christian Democrats, including the Communists, but also by the Liberal party, on the Right-Center, which took a distinctly conservative position, thus leaving the Christian Democrats, together with the Extreme Right of the Monarchists and Neo-Fascists in a minority position. Thus such confrontations have had much greater significance for the Italian political system than the importance of the provisions themselves would have led one to expect. One reason for this significance is the decisive role played by public opinion, which on this occasion expressed itself (unusually for Italy) outside the normal structures of organized parties, or directly opposed to those structures, through numerous spontaneous grass-roots movements (youth associa-

tions, feminist associations, extraparliamentary movements of the Left). Such a unique participation of public opinion cannot wholly be explained by the obvious fact that every citizen is directly affected by the provisions of family law or is at least partially the object of such norms, or that the reforms directly affect the interests of specific and vast categories of citizens (in particular the young and women). Other laws of prime importance, approved and debated at the same period (such as the reform of tax law and provisions for the development of Southern Italy, industrial reconversion, and the reform of agriculture) have affected the immediate interests of every citizen at least as much, and yet the debate over them did not take place outside the ambit of the traditional political organizations. On the other hand, family law seems more comprehensible and less technical than fiscal legislation and measures to stimulate the economy. Perhaps because of this politicians were obliged to take account of the special involvement of public opinion, and therefore chose this subject as the battle ground for a political controversy that had the manifest function of transforming or conserving family law but the latent, and preeminent, function of a trial of strength that could fundamentally alter the balance of power within the political system. In this way the debate often lost its original legal character and acquired a political or moral tone, with strong emotional and irrational implications. This was especially the case in the battles over divorce and voluntary abortion, where "liberty" and "progress" were opposed to the "defense of sacred family values." This situation was broadly determined by the fact that the traditional and dominant concept of the family and family relationships in Italy is the one upheld by the Catholic church. Indeed, until recently the institutions of the Church actually controlled such relationships: in many Italian regions the ecclesiastical machine directly ran the Civil Registry until unification; the Church still administers the majority of marriages by virtue of the 1929 Concordat,[2] and consequently has jurisdic-

2. According to Article 34 of the Concordat of 1929 between the Italian government and the Holy See, religious marriages celebrated in conformity with the Concordat rite have the same effects in Italy as do civil marriages. After the Second Vatican Council the problems of Concordat marriages have caused great concern among liberal Catholics who feel a need for renewal in the Church and in the believers' community. Pier Luigi Fanetti Zamboni (1976) has studied this problem in the dioceses of Brescia and Trentó, two northern towns with deep Catholic traditions. The author has examined the attitudes of Catholics toward Concordat marriages and found that the number of civil marriages has expanded substantially in the past ten years. This expansion should be attributed not only to the availability of divorce, but also as an indication of a "secular" tendency that leads a number of baptized nonbelievers to prefer civil marriage. Another piece of evidence that emerged from this study is that the lower clergy

tion over nullity and annulment; until recently certain forms of welfare assistance for the family were the exclusive prerogative of the Church and certain religious orders. It was therefore almost inevitable that the Christian Democrat party would embrace the traditional concept of the family to the bitter end, taking positions even more inflexible than those maintained by the leaders of the ecclesiastical hierarchy, not to mention those of the few minority Catholic movements. Other parties, although holding profoundly different ideologies and thus very different secular concepts of personal and family relationships, could not avoid reckoning with the traditional concept, still strongly anchored in the conscience of sizeable slices of the Italian population, even in those strata that traditionally support parties of the Left.

The political debate during parliamentary and extraparliamentary discussions of the legislative proposals for divorce (1969-1970) and for the liberalization of voluntary abortion (1975 and 1977) unconsciously assumed the character of an irrational but radical confrontation between progressives and conservatives, where motives of policy and power have often led the parties, sometimes in response to the pressure of public opinion, to adopt stands rather more rigid than they would otherwise have wished and even at variance with the tactical choices and stands of their traditional policies. For instance, the Communist party, upholder of a community model of the family, albeit on secular and emotional bases, and for some time party to an understanding with the Government headed by the Christian Democrats, has found itself leader of the reform bloc in battles where it had not assumed the initiative. Such political confrontation reached its peak in the 1974 referendum promoted by extremist Catholic associations for the abrogation of the Law on Divorce.

II. ADOPTION

The process of revising family law began in 1967 with the approval of the Law on Special Adoption (Law of 5th June 1967, No. 431). Prior to that date adoptive parents had to be 50 years old and without legitimate or legitimated issue; adoption was a consensual arrangement between natural and adoptive parents and preserved the links between the adopted child and its natural parents. The aim of this type of adoption, clearly inspired

tends to accept the idea of separating the civil and the religious rite, whereas the higher ecclesiastical authories are extremely hostile to depriving a religious marriage of civil significance.

by Roman law, was obvious: to satisfy the patrimonial requirements of a person without an heir.

The archaic nature of such an institution, and above all its unsuitability for solving the crucial problem of the abandoned child, was made manifest in the early 1970s. The phenomenon of children received into public care in Italy (orphans and children whose parents have abandoned them or been declared unfit by some authority) reached alarming proportions: there were 207,911 persons under 21 in public care in 1962 according to figures published by the Statistics Institute, although these are notoriously inaccurate because of nonreporting. The number of "illegitimate" children (those not recognized by their either parent) was also very high—there were more than 20,000 illegitimate births in 1960, which were the source of the majority of children taken into public care. These unfortunate children, juridically handicapped as compared with those born in wedlock, have, over the years, been the subject of many law reform proposals, most requiring recognition by the natural mother, some permitting recognition by the father, and all seeking to eliminate all reference to illegitimacy. But only this last objective has been achieved, by a law that prohibits any indication of illegitimacy in birth and marriage certificates and recognition documents (Law of 3rd October 1955, No. 1064). More significantly, public opinion about homeless children has been changing. Italians have begun to acknowledge the "discovery" by modern psychiatry and child psychology that the absence of parental care resulting from institutionalization may have dire consequences for the physical and psychological development of children. Furthermore, evidence has accumulated that many instances of deviant and ill-adjusted behavior stem from the effect of institutionalization at an early age. Placing abandoned children in a normal family environment therefore was seen as a means of crime prevention and social defense.

This more indulgent attitude towards children without families was reflected in an increase in the number of adoptions of such children: the 1,496 adoptions of minors in 1952 increased to 1,917 in 1962, whereas the 1,496 adoptions of adults in the former year dropped to 587 in the latter (Ronfani and Rizzi, 1973:58). In effect, adoption was being transformed from a vehicle for the transmission of an inheritance, serving the primary interests of the adopter, to a means of remedying family deprivation, in the primary interests of the adopted party.

The first voice to be heard in favor of a radical change of the adoption law was that of the Associazione Nazionale Famiglie Adottive e Affilianti (ANFAA),[3] an association of adopting parents set up in 1962 that promotes the rights of children and the struggle against social marginalization. This body formulated the proposals for a Law on Adoption in 1964, which matured into a parliamentary bill presented that year by a member of the Christian Democrat party, Mrs. Dal Canton.

At first it seemed that the proposal would sink into oblivion, since many objected that a reform of adoption law should not proceed in isolation from a more general reform of family law. For it was just at that time that the first proposals for a reform of the entire system of family law had been presented by the then Chancellor, the Republican Mr. Reale, although they were not considered until 1967, and the reform itself was promulgated only in 1975. Fortunately, the decision to treat the reform of adoption law independently prevailed. The most heated discussions concerned the provision that severed the relationship between the adopted party and his natural parents. The extreme Right invoked the "sacredness" of blood-ties, which ought not be broken for fear of debilitating the family institution, and so leading to the disintegration of society itself. As we shall see, the Right has repeatedly used similar arguments to oppose any effective innovation in family legislation. The "extremist" defenders of blood-ties remained isolated, however, and the new rules on adoption were promulgated on 5th June 1967. Traditional adoption was preserved, subject to certain important amendments (in particular the minimum age for the adopter was lowered to thirty-five), and a new form of adoption, *special adoption*, was created, entirely distinct from the traditional institution. Beneficiaries under the new category are children under eight years of age declared to be "in a state of abandonment" by the juvenile court, indicating that they are without moral and material support from parents and family, provided that such a situation is not brought about by *force majeure*. Under the adoption order (preceded by a trial period of preadoptive care), the adopted child assumes the status of a legitimate child of the adopters and all relationship with its family of origin ceases (except for matrimonial re-

3. Affiliation establishes a much weaker bond than adoption, since it implies only that the affiliated party take the surname of the affiliator. In the past affiliation was popular in rural areas as a mean of obtaining the aid of young workers. Today, affiliations are steadily decreasing (2,801 affiliations in 1948, 2,648 in 1961, 1,442 in 1974). Since World War II they have become a way of introducing adulterine children into the family.

straints on incest and criminal laws for which the parent-child relationship is relevant).

Special adoption, as seen immediately after its institution, achieved a genuine "Copernican revolution" in that it placed the center of interests to be safeguarded in the adopted rather than the adopter. It also showed great faith in the ability of the law, by itself, to solve the problem of the abandoned child. Now, ten years later, such hopes have been disappointed. In 1972, 14,707 children under six were still housed in institutions. Special adoptions had slipped somewhat in the same period (although not for lack of adoptive parents), from 3,947 in 1970 to 3,944 in 1972, 2,568 in 1973, 2,320 in 1974, and 2,495 in 1975.

Perhaps some of the responsibility may be attributed to lack of diligence on the part of the juvenile courts, which had jurisdiction over adoption. In any case, these courts were ill prepared to tackle the task of applying the Law on Special Adoption: in 1970 there were a mere 126 judges dealing with juvenile matters. The most conscientious courts were obliged to employ volunteer personnel (Ronfani and Ricci-Signorini, 1975); others failed to meet their commitments, especially the vital duty of compiling a register of abandoned children. For example, the Catanzaro Juvenile Court in Southern Italy recorded only one adoption order during a six-month period in 1968 in which it received notification of 1,271 abandoned children. And the Lecce Juvenile Court, again in the South, was responsible for 493 of the 667 ordinary (traditional) adoptions ordered in the whole of Italy between 1968 and 1972 (Prospettive Assistenziali, 1977). Comparison of the number of preadoption placements by single juvenile courts with the number of committals to State homes in the jurisdiction shows great disparities in the application of the law between one court and another. At Turin, the Juvenile Court gave preadoption orders to 27.5 percent of the children in institutions; at Genoa, 7.5 percent; Milan, 30.3 percent; Venice, 13.3 percent; Bologna, 35.6 percent; Rome, 23.4 percent; Naples, 6.9 percent; and Palermo, 9.7 percent. From these figures it is clear that, with the exception of Genoa and to a lesser extent Venice, the law is very much less effective in the South of Italy. Yet it is there that the sad phenomenon of the "market" in children is found, quite often supported by intermediaries, midwives, heads of institutions, civil servants, etc. In the first years under the new law almost all the juvenile courts, including those in Southern Italy, had to fight against this "market."

The great disparity of results as between courts can be explained by the different adoptive practices that the various tribunals employed. A study carried out at the Bologna Juvenile Court demonstrated that the criteria used in applying the special adoption law are influential in shaping its public image (Ronfani and Ricci Signorini, 1975). Through a systematic selection of 408 files of special adoption cases it was possible to obtain precise data on the adopting parents, the adopted children, and the time elapsing between the request for adoption and the preadoptive order. These were further supplemented by interviews with judges and court personnel, as well as participant observation of the work of "maturation groups," the teams of experts responsible for selecting among the prospective adopting parents. The study confirmed, above all, that the beneficiaries of special adoption are children of tender age: about half were under two years of age and 36.2 percent were less than one. Yet there is also a modest proportion of older children: those between three and five account for about one-third of all preadoptive placements, and those over six represent about 17 percent. The study also showed that during the three years under consideration this court selected the adopting parents on the basis of their emotional capacity, giving little or no weight to their economic standing. Consequently a majority were couples in modest socioeconomic circumstances: the highest percentage of fathers were working class (28.4 percent) or in the lower grades of salaried staff (28 percent); only 6.8 percent were professionals, industrialists, executives, magistrates, or university teachers. In such a context, adoption certainly cannot be termed a middle-class institution, as might have been expected and as earlier studies abroad have found, especially in France (Marmier, 1969).

Despite the increase in juvenile court staff in 1971—thereby reducing one obstacle to their efficient operation—implementation of the law remains severely limited, as shown by the constant, and low, rate of adoptions. A large part of the explanation lies with the private, predominately religious, institutions for the care of the young, which have greatly proliferated in number and now probably exceed 5,000. Some of these, sadly, have been founded in response to news reports of violence (ill-treatment, torture, even homicide) committed against children in public care. The policy pursued by these institutions is certainly not the one outlined in the Law on Special Adoption, which seeks to empty them and abolish institutional care. In Italy, because of the sorry condition of public

welfare services, "assistance" is oriented more towards the givers than the recipients. In other words, a vast share (about 16 percent in 1970) of the public welfare expenditure (878,000 million lire in 1971 and 1,997,000 million lire in 1975) is absorbed by "management expenses of the institutions and undertakings, i.e., the self-perpetuation of the system" (Bassanini *et al.*, 1977:177).

The failure of the Dal Canton Law to satisfy the expectations it created is mainly an indication that the problem of adoption cannot be detached from the very grave deficiencies in the structure of social welfare services in Italy.[4] A study of children in public care in a city in northern Italy revealed that "the lack of parents or abandonment by parents has been the cause for committal to care in less than 10 percent of the cases. . . . A much higher proportion was due to defects in the social services. . . . Two out of three children are taken into care because society fails to provide the minimum level of services to provide an effective prevention (and perhaps solution) of the problem of abandoned children" (Bassanini *et al.*, 1977:133). Late abandonments, and cases where the parent maintains a very tenuous link with the child equivalent to a semiabandonment, represent the most frequent sources of children in public care. In the former, the child is often older than the limits established for the declaration of adoptability; in the latter, the court often has to make hard and painful choices, since the prolongation of care-custody most often results from the inability of the parent to maintain the child.

In recent years a number of proposals have been advanced to improve adoption, in particular by speeding up the procedure and raising the maximum age for adoption to eighteen. ANFAA has also urged abolition of traditional adoption because it serves the interests of the adopting party rather than those of the child. Last year members of the Communist party drafted legislation that would allow adoption by "a man and a

4. Until recently, the Italian welfare system consisted of a huge number of agencies responsible for different categories of people. It was completely reformed by the Law of 22 July 1975, No. 382, which governs local police, public charity, medical services, technical education, school assistance, local museums and libraries. The responsibility for legislation, coordination and control over most of the welfare system was transferred to regional governments, whereas local entities (cities and counties) were entrusted with actual administration. In particular, 20,000-30,000 social security agencies will be eliminated. The execution of this law will require a long time and is far from complete. But the reform was harshly criticized even before it was implemented. In particular, it was noted that this reform failed to reject "a restrictive interpretation of social security in the sense of indemnity for damages" and refused to accept "an extensive interpretation" of social security "as the set of all social structures securing to the people welfare and security" (Bassanini *et al.*, 1977:13).

woman who have lived together for not less than two years in a stable manner and with conjugal affection" and by "a person not married or in a state of judicial separation." This proposal reveals the tendency in Italy today to equate a de facto family to one that is formally constituted; but it has been severely criticized by ANFAA, which claims that there is still too little public acceptance of cohabitation and that the child adopted by a single person would be disadvantaged.

Further legislative proposals have been made to extend the application of foster families. This concept, which still lacks a formal, unified juridical basis, is intended to "guarantee to the child a normal family environment for the period in which its own family is not, for whatever reason, in a position to care for it" (see the bill that became Law No. 750 of 17th August 1972, "Regulations for family care of minors for educative purposes"). In-family care may also be seen as a means of social intervention that is yet not institutionalization (one which, moreover, offers some economic benefit to the receiving family), and its application could be extended to children who are not likely to be adopted because of some physical or mental handicap.

III. DIVORCE

Even before the unification of Italy secular forces, both on the Right and the Left, had argued in favor of divorce, but none of these diverse proposals was accepted because of the dominance of the Catholic church. In 1968, a draft bill was presented to Parliament for the *n*th time by two deputies with very different political affiliations, the Socialist Fortuna and the Liberal Baslini. The initiative was immediately supported by a vast outpouring of public opinion as well as by the Radical party which, though not then represented in Parliament, should be considered the real force behind the Bill. Grassroots organizations were also set up for the purpose and achieved considerable support, especially among the large number of families personally interested in divorce.

The debate in Parliament, first before the Chamber of Deputies and then in the Senate, lasted several months. For the first time it revealed the entire spectrum of competing views about the family which would achieve a more explicit and coherent form in the course of the debate on the reform of Book I of the Civil Code (see below). Indeed, the latter reform was accelerated by the approval of this law and the subsequent public referendum on its repeal. The Christian Democrat,

Monarchist, and Neo-Fascist parties opposed divorce; all the other political parties favored it. Although the Monarchists and the Neo-Fascists offered constitutional arguments, the Christian Democrats invoked the family as a natural society whose stability should be safeguarded by the indissolubility of marriage. The introduction of divorce they argued, would be an ill-conceived solution to the problem of adapting the family institution to the changing conditions of society, and would indeed undermine that institution. Gava (then Minister of Justice) asserted that divorce "has not shown itself to be an antidote to the ills of marriage . . . but has contributed by its very existence to multiplying them."

There were considerable differences among those who favored divorce, although all agreed that it did not, by itself, endanger family unity. Furthermore, it would legalize the large number of natural families formed as a result of marriage breakdown, which tended to be less well-to-do and therefore unable to solve their matrimonial problems in other ways.[5] Finally, they felt the need to free the country from the grip of Catholic doctrine by bringing the conduct of personal relationships wholly within secular control.

Law No. 898 of 1st December 1970 (approved, in consequence of the odd alliance referred to above, by a vote of 325-283 in the Chamber and 164-150 in the Senate), despite the necessity for compromises that resulted in a series of amendments, especially at the Senate level, must be considered a fairly advanced piece of legislation. Dissolution of marriage is permitted solely for objective causes: a long sentence of imprisonment, imprisonment for defined offenses against the spouse or children of the marriage, or separation (de facto or by court decree) for between five and seven years depending on the circumstances. Even if this last period is rather lengthy, it must be remembered that separation may also occur whenever either party finds cohabitation "intolerable," without reference to any specific offense or incident, although the judge must later determine that the situation satisfied an objective standard of intolerability. Therefore, despite the lengthy separation intended to demonstrate the impossibility of reconciliation, one can clearly speak of termination of marriage by mutual consent under Italian law.

5. For instance, by filing petitions with ecclesiastical courts in order to obtain a nullity decree or to annul the marriage *per matrimonium ratum sed non consummatum* and so on. Such proceedings were extremely lengthy and expensive. Ecclesiastical sentences may be formally examined and ratified by the Court of Appeals, thereby also obtaining validity in civil law.

Another important legislative innovation, which again conforms the law to actual behavior and popular attitudes (see Pocar, 1974; Ronfani *et al.*, 1977), concerns the maintenance of the divorced spouse. Maintenance is determined by the court without regard to the circumstances leading to separation. And although the obligation to pay maintenance is affected by the financial ability of the spouse, the court now looks to the contribution by each spouse—both personal and economic—to the conduct of family life and the constitution of family assets, and will try to assess the value of domestic labor.

It is strange that a law that stimulated so much debate and broke so sharply with tradition has not generated very much interest among research scholars and sociologists of law and has not aroused much public response. The impression that the legislative innovation was simply an adjustment of the law to attitudes that were already widely accepted and followed in practice, and that the fears expressed by those opposed to divorce were simply specious arguments concealing underlying political divisions of another sort, is confirmed by the pattern of divorce petitions presented since 1970, especially when this is compared with the pattern of separations. The incidence of divorce in Italy remained much lower than that in other European countries. In 1976, for instance, the ratio of divorces to marriages was 2.8 percent, and it is estimated that this will only increase to 4.3 percent in the period 1976 to 1981. By contrast, the percentages for other countries in 1970 were: France, 12.9; Denmark, 25.1; and the United Kingdom, 20.5 (De Sandre, 1976:176). After a brief initial surge in Italian divorces, from 19,276 in 1971 to 32,627 in 1972, there was an equally sharp falling-off until a fairly stable mean was established: 18,172 in 1973, 17,890 in 1974, 10,618 in 1975, and 10,158 in 1976 (provisional statistics). At the same time judicial separations were gradually increasing: 17,023 in 1970, 19,338 in 1971, 22,087 in 1972, 22,621 in 1973, 25,906 in 1974, 29,285 in 1975, and 29,842 in 1976 (provisional statistics). Such figures cannot be interpreted as indicating an increase in marital breakdown. Presumably many couples who separate in contemplation of divorce now tend to obtain judicial sanction since de facto separations occurring since 1968 cannot serve as a basis for a divorce petition. It was only during the transitional period that the law recognized de facto separation in order to remedy those cases of illegitimacy that already existed; thereafter judicial separations were required to avoid uncertainty.

The fact that the introduction of divorce into Italian law provoked no trauma in public opinion or usage has been confirmed by empirical research. Amedeo Cottino (1974) studied public attitudes toward the new law in two sample groups, a metropolitan area with a high industrial concentration and a rural area with a predominantly agricultural economy, during the year after it came into effect. This study sought to reexamine the traditional model of the relationship between legislator and public and to identify the factors influencing the degree of public knowledge of new legislation. It provided some interesting statistics on public acceptance and evaluation of the justifications for a divorce. The grounds adopted by the new legislation met with general public approval. The vast majority of those interviewed were in favor of retaining the mutual consent of the spouses, regardless of any "marital offense," as a valid cause of divorce. Indeed, 81 percent of those in the urban sample, and 74 percent of those in the rural sample, stated that they thought it proper to grant a divorce when both spouses were agreed in asking for it. On the other hand, marital infidelity as a ground for divorce aroused a very lukewarm response. Only 37 percent of the urban sample and 24 percent of the rural sample thought that divorce was justified on the ground of adultery. These results anticipated those obtained in subsequent studies (Pocar, 1974; Ronfani *et al.*, 1977) which show a specific trend in favor of the abolition of the concept of fault in separations as well; this was later implemented, in part at least, by the comprehensive reform of family law. It is interesting to note, in connection with Cottino's research, that the only significant independent variable was urban/rural residence; other factors, such as profession, sex, or religious practice, showed very little influence on public attitudes.

The widespread acceptance accorded divorce in Italy was reaffirmed in the debate and result of the subsequent referendum on its abolition, which took place in the spring of 1974.[6] At the instance of diehard factions of the Christian Democrat party and of the Catholic church, over a million citizens signed the petition for a referendum on the abrogation of the Law on Divorce. Despite the efforts of various political parties, especially the Communists (who wished to avoid a direct confrontation with the Christian Democrats and the consequent split of the electorate on a subject that could reopen an old and quiescent religious controversy), the referendum was fixed for 12th

6. According to Article 75 of the Italian Constitution, 500,000 voters may request a referendum on any existing law (with certain limited exceptions).

May 1974. The campaigns for and against the retention of divorce in Italian law reached an unprecedented level of bitterness, evoking appeals to liberty and civil rights on the one hand, and to the sacred values of the traditional family on the other; the faction opposed to divorce resorted to all possible arguments, however emotive and irrational.[7] Despite the virulence of the campaign and the pressure exerted by the Catholic establishment (though not by intellectuals and parish clergy), the results of the referendum were in favor of the retention of divorce by 59.1 percent to 40.9 percent (whereas those opposed to divorce had obtained as much as 47.5 percent of the vote in the preceding elections of 1972). Apart from the immediate result of preserving a law expressing a civil right, one must again underline the repercussions of the referendum, with its broad involvement of public opinion over an issue defined as an unambiguous dichotomy upon the political situation. There was a pronounced polarization of political forces around the two major parties (Christian Democrats and Communists), indicative of a two-party system that is traditional in many countries but not in Italy. The same trend has been repeated in subsequent elections.

IV. ABORTION

This new relationship between the Government coalition and the opposition parties was illustrated shortly thereafter by the debate over the Law for the voluntary termination of pregnancy, in which public opinion again was influential. This is a problem of particular importance in Italy, where the Constitutional Court only recently declared the invalidity of Art. 553 of the 1930 Penal Code, which severely punished any form of propaganda tending to diminish the birthrate, an expression of the Fascist policy of demographic expansion. Voluntary abortion, although punishable by imprisonment for up to 5 years (Penal Code Arts. 546 *et. seq.*), had become a broad and generalized system of birth control in Italy (as it still is in large measure), with all the risks for the health of women that are associated with clandestine abortion. The number of clandestine abortions in Italy each year is estimated at 600,000 by some demographers, 800,000 by the *International Planned*

7. In order to indicate the social and political climate we might mention that the secretary general of the Christian Democrat party went so far as to affirm, in a speech in Caltanissetta (in the heart of Sicily), that if divorce were not abrogated "marriages between homosexuals would become possible in Italy and husbands could be abandoned by wives running away with some girl-friends . . ." (*Corriere della Sera*, 28 April 1974).

Parenthood Association, 1,500,000 by the Associazione Italiana di Ostetricia e Ginecologia and the World Health Organization, and 3,000,000 by certain feminist associations (Teodori, 1975). Despite the great disparity in these figures, they demonstrate the extreme seriousness of the situation. In 1969 there were 43 deaths as a result of clandestine abortions, undertaken with desperate and primitive methods and 45 in 1970, according to the World Health Organization. These figures must be considered very approximate, since for understandable reasons deaths from abortion are very often attributed to other causes. In 1975, the gravity of the problem and the modified political relationships led many of the groups that had participated in the battle against the referendum abrogating divorce (the Radical party and parties of the extreme Left not represented in Parliament, and feminist and youth movements) to launch a referendum to abrogate those articles in the Penal Code that punish the voluntary termination of pregnancy. They obtained the signatures of 800,000 voters. On the one hand, this move caused the public prosecutors to take a hard line in abortion cases, which often came to light through confessions. On the other hand, because all the parties represented in Parliament feared another confrontation and because the Communist party in particular feared a further rupture between Catholic and secular forces, Parliament hastened to formulate a law to regulate abortion in order to forestall the referendum. In the spring of 1977, a vote was taken on a very complicated and controversial law that would give a pregnant woman considerable freedom to request an abortion at a public hospital (although the procedures for doing so were quite complicated), not only where birth or maternity could harm her physical or mental health (abortion on these grounds had already been decriminalized by the Constitutional Court in Judgment No. 27 of 18th February 1975), but also where it could be harmful to her personal, social, and economic conditions. Although this law was widely criticized by feminist groups and a part of the secular Left, which did not think that it adequately protected the woman's freedom of decision, it was approved by the Chamber of Deputies in the face of fierce opposition by the Christian Democrat deputies (in the name of the protection of life) and the Neo-Fascists (in the name of the integrity of the race). However, it was rejected by a narrow margin in the Senate when a sudden vote was taken, which had every appearance of being motivated by political considerations far removed from the proper aims of the proposal; the latter thus paid the

price of an adverse combination in the ordering of relationships between the Italian political forces after the elections of June, 1976. At the time of writing (March, 1978) the referendum on abortion is planned for June, 1978, but it is hard to predict with certainty whether it will take place then, or will again be preempted by legislative reform of the regulations currently operative. [*Editor's note*: A liberalization of abortion was enacted by the legislature on May 17th and the referendum was not held.]

V. COMPREHENSIVE REFORM OF FAMILY LAW

In the 1960s, when the Law on Special Adoption was debated and approved, other proposals were also advanced to reform particular aspects of family law; for instance the Socialist party urged changes in the laws on paternal authority and the illegitimacy of children born in adultery. But none of these succeeded. It was insisted that family law required a total organic reform rather than piecemeal amendment.

In January 1967, the first bill to reform family law was presented by the Republican, Reale. It was the starting point of an arduous, protracted parliamentary struggle that continued through three legislatures until the spring of 1975, mainly because of opposition by traditionalists and by certain sectors of the Catholic world. All the principal political forces offered proposals at one time or another, but it was not until the end of 1970 that it was possible to discuss a unified scheme of reform. Even then the process dragged on, delayed first by the anticipated dissolution of Parliament, then by the obstructive tactics of the Christian Democrats in the Senate Commission, and finally by the referendum on the abrogation of divorce. Although every party, especially the Christian Democrats, agreed to support the reform on this last occasion, that party and those on the extreme Right raised additional obstacles and must take responsibility for having postponed enactment of the law beyond all reason. The extreme Right totally rejected the values that had inspired the reform, especially equality between spouses and between children, whether born in or out of wedlock. For its part, the Christian Democrat party pretended to hold fast to the principle that the matrimonial tie was indissoluble and that therefore legitimate families took precedence over natural ones. The most important and strongly debated amendments presented by this party, in fact, concerned marital separation, where it insisted on the requirement of fault and consequent liability of one spouse, and its opposition to the

recognition of illegitimate children, which would result in their absolute equality to those born in wedlock for purposes of inheritance.

After almost a decade of parliamentary debates (public opinion participated only in the last year, though the proposals for divorce generated vigorous and incisive controversy) the reform of family law was finally approved with the support of all the parties except the Neo-Fascists, and came into force on September 20, 1975.

We will examine below the most important aspects of the reform, both substantive and procedural, from juridical and social points of view, but first it seems appropriate to clarify the ideologies underlying the positions adopted by the various political forces.

Every party contributed to the reform of family law and sought to advance its own concept of the family institution. One cannot speak of a precise Republican or Liberal concept since they confined themselves to underlining the secular nature of marriage and the family. Moreover, the bill presented by the Republican, Reale, was sponsored by the Government, and therefore represented a compromise that accommodated the viewpoints of the various parties in the Government without being dominated by any single ideology.

The Catholic concept of family and marriage, which had long exercised a profound influence on our civil legislation, was clearly the basis of the position of the Christian Democrat party. Christian marriage is both a contract and a sacrament. The contractual element regulates when the marriage is made, at which point the sacramental element becomes paramount. It is because of this dual nature that marriage is indissoluble and matrimonial life must be regulated by public rules. The Christian marriage claims to be the only permissible terrain for sensuality, "towards which it envisages a more or less generic disapproval, with the result that anything redolent of extramarital sexual activity deserves to be punished, with sanctions not only for the protagonists but also for any children that might issue from such extramarital unions" (Cardia, 1975:33; but see Cerroni, 1974). This concept has recently undergone certain significant changes, especially after the Second Vatican Council, which proposed a new "community" vision of marriage, in which "the various generations meet and help each other reciprocally to attain a more complete human wisdom and to reconcile properly the rights of individuals with other social needs" (Enchiridium Vaticanum, 1976:49).

Consequently, the reform presented by the Christian Democratic party conceived the family as an institution of natural law. The "objective value" of marriage and the family "is fixed by the same natural law and does not derive from the subjective will of the spouses, who integrate themselves freely (as the condition for the validity of the marriage) into natural law, adhering to it body and soul" (Falcucci, 1963:12). The family is a community within which there must be parity of rights and duties, but also a hierarchy of responsibility, and above all the presence of an authority. This authority is not to be centered in one of the spouses (although the conservative wing of the party would have placed it in the hands of the husband-father) but in an institution external to the family nucleus, namely the Family Court.[8] This, therefore, was the institution to which the party, fearful that the autonomy of the spouses would compromise the stability of the family, gave the role of "reconstructing the value, crucial to society, of the family" (Falcucci, 1963:22).

In contrast to the Christian Democrats, who effectively adopted the Catholic concept, the Italian Communists might have been expected to formulate a precise theoretical conception of the family and of family relationships, especially since no precise alternative to the bourgeois family model was ever elaborated by Marx or Engels. In practice, the Communist party showed little interest in problems relating to the family, between 1945 and the late seventies, essentially accepting the Soviet thesis that "since the thirties the family had arisen as the basic cell of society" (Il Manifesto, 1974:77). The only exception was the seminar organized in 1964 by the Gramsci Institute of Rome, in which party cadres and Marxist scholars discussed the role and future of the family (*Critica marxista*, 1964). Even on that occasion, the debate was conducted on a highly theoretical plane, focusing on whether the family was destined to disappear in a Communist society, and the final conclusions were not without ambiguity. Only when the debate opened on the reform of family law did the Communist party begin to reconsider the problems associated with the family institution, proposing "a Marxist concept of the family"

8. A bill to create a special Family Court was presented by the Christian Democrat party in 1971. Anyone was authorized to report to the Court any fact or situation that could "compromise" a well-ordered family life. The Court could make an investigation and take a wide range of measures with respect to the people involved and their families. The proposal was heavily criticized and was not enacted.

that emphasized "*positive family values* to which the superior type of family should aspire" (Cardia, 1975:48).

> The development of community responsibility and sexuality represent the two primary values to which Marx subordinates the whole discourse on the family and sexual relationships. In this context other specific indications of Marxist thought for the construction of a superior type of family find their justification. Primary among these, equality between man and woman . . . becomes a parameter for judging the whole social structure and a prerequisite for the rationalization of sexual and family relationships. [*Ibid.*:50]

For the Communist party, the reform of the family institution is, in fact, strictly linked with the process of women's emancipation. In the Communist vision, the family thus appears as a community of equals, based on a free choice that must constantly be renewed: "Whenever dissent intervenes, divides, and wounds the unity of the family . . . there remains neither family nor marriage, and juridical indissolubility becomes a mere fiction" (*Relazione al progretto di legge n. 1378,* 1969:3). Although the spouses should have "broad freedom to determine the principles by which they intend to lead their lives" (*ibid.*:9), the Communists conceived of the family as always retaining a public significance. Consequently, the state must sometimes intervene first and foremost to protect and defend the interests of the offspring, but also, in the person of the family court magistrate, to effect "a beneficial preventative action in order to solve conflicts that may be serious but not irremediable so that the family may be helped in their search for a new equilibrium in their relationships" (*ibid.*:3).

Thus, although the Communist party considered the family law reform a significant contribution to the process of constructing the "superior type of family," it felt that the legislature had not fulfilled its task "to prepare good legislation for family relationships: in practice the legislature *can and must ask much more*, namely to regulate in proper form the multiple links connecting the family and society" (Cardia, 1975:17).

The Socialists, on the other hand, asserted the complete and unconditional autonomy of the spouses, consistently with their political stance in recent years as supporters of civil rights: the intervention of the judge must be limited to separation and divorce. Yet the Socialist party does not oppose the institution of the Judge for the Family,[9] although severe criti-

9. The family law reform covers many situations when it is possible to apply to the Judge for the Family (a member of the first instance court—*pretore*) in effect, whenever disagreements arise between spouses concerning the life and the management of the family. It is important to point out that empirical data demonstrate that this innovation is not favored by the people. Within a sample from a northern urban population, 68.7 percent stated that they preferred not to apply to the judge in order to resolve conflicts concerning intrafamily relations and would even prefer

cisms have been made by scholars close to the Socialist or Radical camp, who maintain that "this choice is profoundly contradictory to the whole logic of the reform, from the moment that it introduces a general form of judicial 'substitution,' incompatible equally with the vigorous exaltation of the autonomous responsibility of the spouses and the resolution to remove hierarchical subordination" (Rodotà, 1974:65). Nevertheless, if there is doubt "that the solution of family conflicts may be achieved through the vehicle of judicial paternalism" (Rodotà, 1974:65), the fear that the family judge may prejudice the autonomy of the family appears to be exaggerated, since his intervention "*may only be requested* when conjugal collaboration cannot be completely achieved, but can never be *imposed* authoritatively" (Cardia, 1975:159). Judicial intervention was expected to be, and has been, infrequent: in Milan, for example, since the introduction of the reform, the relevant court has had occasion to "assist" less than ten couples in solving their problems.

Passage of the family law of the reform seemed to have left neither victors nor vanquished, since almost all the conceptions advocated by the different parties were reconciled within the new law. The Christian Democratic party did have to give ground on a few points (the indissolubility of marriage, for a start), but the rules on the parity of spouses and community of family property responded to their conception of the family as a community.

The Communist party favored the reform, considering it "an effective contribution to the foundation of a higher family institution; it did not reach that result by theorizing on the annulment of family ties or the lack of individual responsibility, but by moving from a *communitarian concept* of the family, in which affection gives rise to solid and responsible, human, social and ethical ties" (Cardia, 1975:12).

The Socialist party also generally supported the way the law safeguarded the autonomy of the family (as long as it did not dramatize the problem of judicial intervention).

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not to seek help from other agencies (such as advisory centers, psychologists, and so on) (Ronfani *et al.*, 1977:128). On the basis of data deriving from other empirical research one may conclude that intrafamily relations are considered extremely private in Italian custom. The very existence of legal norms that seek to regulate intrafamily relations is regarded with great distaste. In rural areas people clearly prefer extralegal solutions for marriage conflicts (Cottino, 1974:134). In the field of family relations, knowledge of legal norms sometimes produces a reaction against those norms, either in a liberal or authoritarian direction, whereas in other fields research has suggested that knowledge of legal norms encourages acceptance (Pocar, 1974).

In fact, if different (though not totally contradictory) concepts have been embraced in this law it is because the law itself, in the final analysis, does not seem to have designated any precise model of the family: "There is no substitution of the authoritarian and hierarchical model with a more up-to-date one, but even a contemporary model would be imposed on the family and thus constitute a constraint; the new legislative discipline is seen more as an open design, such as will attribute to each family a broad margin to adopt the form of regulation that best suits it" (Rodotà, 1974:65). It is important to remember that Italy today still presents major contrasts in culture and daily usage between the industrialized zones and those with a predominantly agricultural economy, between town and country, between North and South. As a result, there are many different family structures (Resta, 1977), which cannot be integrated into a single abstract model. The same consideration applies to the whole discourse on family legislation.

The reform law is lengthy and detailed, and has effectively rewritten a large part of Books I and II of the Italian Civil Code amending in depth, although less from the technical-juridical point of view, the rules governing relations between parents and children and between spouses, and everything that derives from these. Consequently there is room here to record only the most important innovations so as to permit a general appraisal of the scope of the reform and the extent to which it fulfills the principles that ostensibly inspired it.

One significant innovation has been the reformulation of the content of parental authority, which is now shared equally by both parents. The 1942 Code defined the duties of parents toward their children—"marriage imposes on both parents the obligation to maintain and educate their children. Their upbringing and instruction must conform to ethical principles" (Art. 147)—but it considered the essence of the relationship to be rights held by parents over their children, expressed in the concept of parental authority—"a child, of any age, must honor and respect its parents" (Art. 315); "the child is subject to the authority of its parents until the age of majority" (Art. 316). The age of majority at that time was twenty-one. Authority was normally vested in the father, although after his death, it was exercised by the mother (Art. 316). The reform not only qualifies the duties of the parents to educate and instruct their children "taking account of their capabilities, natural inclinations and aspirations" (Art. 147), but also makes substantial changes in the reciprocal obligations of the children: "the child must re-

spect its parents and must contribute, from its own assets and income, to the family maintenance, so long as it lives with the family" (Art. 137). It abolishes the correctional power of the father and grants authority over the children to both parents "in common accord." The age of majority has been lowered to eighteen (Act No. 39 of 8 March 1975).

Although these juridical provisions are fairly liberal, their effect should not be overestimated. We are dealing with strictly private relationships, in which the weaker party can obtain effective protection only with difficulty. It is in just this type of relationship that the abstract juridical formula is likely to ignore the demands of practical experience. In fact research (Pocar, 1974)[10] has shown that in Italian families, especially in rural regions and in the South, a definite tendency toward authoritarianism still prevails. In the period just before the reform, as many as 41.0 percent of the respondents in an urban sample, and 44.8 percent in an urban sample in the South, identified parental authority "in the power of control and command over children and in the latter's duty of obedience." The study also revealed that the great majority of the urban population, whether in the North or South, considers it fair that children no longer in their infancy should be subject to some parental authority. Nonetheless, the same respondents thought that the parents should support their children even beyond majority, if it is to enable them to obtain further educational or professional qualifications. The same trend is confirmed by later studies, which have detected a very rapid transformation in intrafamily usages in the direction of nonauthoritarian relationships between parents and children (Ronfani *et al.*, 1977). Authoritarian attitudes among parents thus seem to be in decline; they may still affect intimate interaction within the im-

10. This research was conducted in 1972 and 1973, before the promulgation of the family law reform, using questionnaires administered by interviewing stratified samples of the urban population of Milan (in the North of Italy) and Messina and Reggio Calabria (in the South). It surveys public knowledge of and attitudes towards those patrimonial institutions of family and succession law that were most likely to be reformed, in order to assess whether the proposed reforms corresponded to the concrete evolution of public practice, and thus measure their probability of general acceptance. Parallel interviews were carried out in the same areas using a revised questionnaire with control samples in order to assess the capacity of the formal system to induce normative change in a field, such as family law, characterized by a profound internalization of those norms. The conclusion is that equality between spouses in matters of inheritance appears to be accepted in practice as well as in the legislative reform, but an authoritarian tendency still dominates other relationships between the spouses and all relationships between parents and children. However, a more incisive legislative reform of these latter relationships would probably meet with a large measure of approval because of growing antiauthoritarian sentiment among women and young people and because of the capacity of formal law to mold opinion even in this area.

mediate family, but they do not apply to matters of inheritance or to relations outside the family. As for the attribution of authority to both parents, the studies confirm that the legislative innovation fully corresponds to current practice. At least in industrialized urban areas 96.3 percent of the population express their approval of it (Ronfani *et al.*, 1977:119).[11]

This last statistic is also relevant in analyzing the parity of rights and duties between spouses mandated by the legislature. Central to this reform is the abolition of every residual trace of the husband's marital authority. Where the 1942 Code laid down that "the husband is the head of the family; the wife's civil status follows that of her husband, she assumes his surname and is obliged to accompany him wherever he deems it opportune to set up their home" (Art. 143), the same article of the reformed Code decrees that "in marriage husband and wife acquire the same rights and assume the same duties; both spouses are bound, in relation to their respective assets and capacity to work whether professionally or in the home, to contribute to the needs of the family" (Art. 143); and "the spouses are to agree mutually the direction of the family life and to establish the family home according to the requirements of both of them and, above all, of the family itself" (Art. 144). This radically new equality of rights in organizing family life and controlling family property, unprecedented in Italian custom, is given material expression in a series of innovations dealing with property relations between spouses, founded on a reevaluation of the economic contribution of the wife, especially that of the housewife. Although we cannot present the details, two

11. This research was conducted one year after the reform using a questionnaire administered by interview to a stratified sample of 396 people in the industrialized urban area of Milan. The study sought to determine: (a) whether, and to what extent, the more important innovations introduced by the reform of family law were known; (b) whether, and to what extent, the values of parity between spouses in the conduct of family life and equality between children born in and out of wedlock were accepted and shared by the population. The results of this investigation demonstrate that the majority of people interviewed are aware of the principal provisions of the reform, especially those concerning the equal decisionmaking and economic power of spouses. Educational level, occupation, and regional origin barely influenced awareness of the law among respondents, but it is interesting to note that in general women were better informed than men. This datum, which contradicts other empirical studies (Kutchinsky, 1973), is probably due to the fact that women felt more directly involved in the innovations introduced by the reform. It was also discovered that in an urban society under advanced capitalism, such as the Milanese, the values of parity and equality are broadly accepted among all strata of the population. The authors concluded that in a highly industrialized urban center the reform has not brought about any significant change in the existing family model. But they emphasized the necessity of instituting an organic social policy in support of the nuclear family and women's liberation in order to translate the theoretical values of parity and equality into actual behavior.

particularly important changes should be recorded. Before the reform, assets acquired during a marriage were the property of the spouse acquiring them; in most instances this was the husband, who worked outside the home, and not the wife, who worked within it. The legal regime of separate property was reinforced by a rule prohibiting property gifts between spouses (which was obviously outflanked, in the most ingenious way, until it could be declared unconstitutional); this could only be overcome through a specific agreement by the spouses to pool their acquisitions; even this applied only to goods acquired after the marriage and the husband remained the exclusive manager of such jointly owned goods.

The reform has radically altered this. Goods acquired after marriage, with a few narrowly defined exceptions, are the property of both spouses, who have full equality of rights over them. The regime of separate property has become the exception and requires an explicit expression of intention by the spouses at the time of marriage. This important innovation, treating the contribution of spouses to the family property as equal, has generated widely divergent opinions. On the one hand, it has been said that "the system appears very complex" and more consistent with a "firm and enduring" concept of matrimony than with the "progressively more fragile" matrimonial bond that the new provisions on annulment and marital separation, and the introduction of divorce, seem to have accepted (Ferrari, 1975:50-51). But other authors have seen this innovation as one of the definitive elements of the whole reform, giving the renovated family institution an emotional and patrimonial unity founded on the parity of the marriage partners (Cardia, 1975). Despite such disagreement among observers, this reform has received widespread and thorough acceptance by those for whom it was designed.

Although we lack precise statistical data, we believe that only a very small percentage of those couples who had married before the reform came into effect have chosen to maintain the regime of separate property, as was their prerogative up to January 1978 under a transitional regulation; the great majority thus embraced the regime of common property provided in the new legislation. We also lack precise statistics on the couples who married since the reform came into operation and who opted for the regime of separate property, but provisionally we estimate the proportion at about 1.5 percent in the major cities. This level of acceptance is consistent with the profound transformation of the role of the married woman inside and outside

the family. The tendencies revealed in prior empirical studies have thus been confirmed. Before the reform, a study of separated couples in representative urban samples in North and South showed that property acquired after marriage was divided equally in 81.7 percent of the former and 77.1 percent of the latter (Pocar, 1974:391). After the reform, 91.7 percent of an urban sample in the North considered the communality of property acquired after marriage to be just (Ronfani *et al.*, 1977:108).

Another innovation consistent with the new definition of the female role and of the wife's economic contribution to the family property is represented by the right of the surviving spouse to at least part of the deceased spouse's estate. Under the 1942 Code, in a case of intestacy where there was issue, the surviving wife only had usufruct of a third to a half of the estate, depending on the number of children; similarly, where there was a will, the surviving spouse was only guaranteed the usufruct of a portion of the estate. By contrast the reformed Civil Code states that in the case of intestate succession, "when there are legitimate or natural children, the spouse is entitled to half the estate where there is only one competing child, and a third in other cases" (Art. 581). Where there is a will, the survivor is guaranteed half the estate in the absence of issue, and a third or a quarter if there are one or more children. In any case, the surviving spouse is guaranteed "the right of residence in the family home, and the right to use its furniture, whether the property of the deceased or owned jointly," and these rights are a charge on the disposable share (Art. 540). These innovations meet the felt needs of the Italian people, at least those in the Northern urban areas. In an important study of the use and function of testamentary succession Ferrari (1972:111)[12] found that, in a contest between the surviving

12. In the course of this research, carried out by Vincenzo Ferrari in 1971, 1,239 testaments deposited with the court record office in an area of "intense urbanization and advanced industrialization" and in a rural area in Lombardy were analyzed with the purpose of determining "the concrete enforcement of the system of norms regulating testamentary succession." In particular, he sought to discover who makes use of the testamentary institution, the principal objectives of these users, and how the testamentary institution functions. The author found that those who made wills generally belonged to the middle classes, the petite bourgeoisie, and the peasants. However, intestate succession is more common than testamentary succession in both the urban and the rural context. In rural areas wills are used to distribute the estate among legitimate heirs, but in such a way as to limit excessive division of the property into little bits and pieces. In urban areas, on the contrary, the prevailing intent is "to protect the surviving spouse from the regime of succession ab intestato." The author concludes that testamentary disposition nowadays "seems to be an instrument to correct dysfunctions not related to its specific domain rather than a typical instrument to transfer an estate from generation to generation."

spouse and the children, an analysis of testamentary dispositions shows clearly

> the almost universal intention to preserve for the surviving spouse the position of marital preeminence enjoyed during the life of the marriage. The most widespread means is the extension of the right of enjoyment to the whole patrimony. . . . But what is striking is the common recurrence of provisions aimed at granting the spouse both a right of inheritance over the disposable quota and a normally general usufruct; a symptom of an intention aimed at favoring the spouse exclusively, restrained only by a duty of conscience to respect the hereditary rights of the children.

The study reveals that in urban areas a preponderance of wills (63.9 percent in 1969) left the estate to the surviving spouse. This general tendency to opt out of the laws prevailing before the reform in order to favor the surviving spouse has been confirmed in other research, although there are important regional differences. The principle that the surviving spouse should share in the estate was accepted by 66.1 percent of a sample in a Northern urban area but only 30.2 percent in a Southern urban area (Pocar, 1974:397). And after the family law reform nearly all of a Northern urban sample (93.7 percent) believed that the surviving spouse should receive a share of the deceased's property equal to that of the children (Ronfani *et al.*, 1977:115). Yet it must be remembered that these studies have been limited to urban populations, where most family income is in the form of wages and there is rarely a large estate of movables or immovables to be transmitted by succession.

The foundation of the reform in a full and equal evaluation of the economic contribution made by the wife, including her work in the house, is reflected in the regulations dealing with crises in the matrimonial relationship, especially in cases of marital separation. The 1942 Code only provided for separation by mutual consent or on the ground of "fault," which was defined as adultery, desertion, misdemeaners, cruelty, threats, or serious abuse. Until the Constitutional Court declared the rule invalid, judicial separation could not be requested on the ground of the husband's adultery except when this was likely to bring harm to the wife. After separation the innocent party retained all the rights that accrued through the marriage and the guilty party lost all rights except that of maintenance. The reform of family law introduced notable changes. First and foremost, separation by mutual consent was supplemented by separation "for just cause . . . [when] regardless of the interest of either or both spouses, facts are proved such as to render continuation of cohabitation intolerable or to prejudice severely the upbringing of the children" (Art. 151). Separation for

"fault" (marital offense) has been abolished although the court, upon the request of a party, may declare which spouse is to be blamed for the breakdown of the marriage. The reform introduces many detailed provisions for safeguarding the interests of the children. As between husband and wife, the party held not to blame for the breakdown of the marriage retains the right of maintenance but only in cases of need. But this reform does not seem to conform to prevailing attitudes; some 63.2 percent of the Italian population feel that "the guilty spouse should maintain the innocent one in any event" (Pocar, 1974:393). Furthermore, 37 percent think it unjust for the well-to-do innocent partner to have to pay anything to the guilty party even when the latter is totally without means of support (Pocar, 1974:396). These statistics would seem to indicate that public opinion favors predicating maintenance upon fault regardless of economic circumstances. Nevertheless, usage is gradually evolving along the lines of the reform (Ronfani *et al.*, 1977).

One last innovation must be mentioned because of its marked social significance and the extent to which it negates one of the cornerstones of the traditional concept of the family: the provisions creating total equality between children born in and out of wedlock, provided the latter are acknowledged by one or both parents. First many of the constraints on recognizing natural children have been removed, only the issue of incestuous unions may not be recognized. This legislative reform also corresponds fully with usage and public opinion. Even before it there was a tendency towards parity between natural and legitimate children, though this was less pronounced in the field of inheritance (Pocar, 1974:400). There was also evidence of a modest trend to use testamentary devices to overcome the limitations upon rights of succession by children born out of wedlock (Ferrari, 1972). When questioned after the reform, 74.4 percent of an urban population in the North knew that the law now allows the recognition of natural children, even those born in adultery, and 88.5 percent knew that the parent has the same rights and duties toward natural and legitimate children. Moreover, 62.2 percent approved the rule allowing recognition of adulterine children even without the consent of the other spouse; 88.1 percent approved the total parity in rights and duties of natural and legitimate children; 89.4 percent approved the rule allowing natural children to be incorporated into the family; and 85.1 percent thought it fair for

the natural child to enjoy the same rights of inheritance as the legitimate child (Ronfani, 1977:119-26).

Overall, the empirical results support the view that the reform has achieved juridical, and to a large extent patrimonial, parity between spouses, at least as far as this has occurred in practice as a result of socioeconomic evolution; that the authoritarian relationship between parents and children has largely been abolished; and that the legal prejudice against illegitimate children has been reduced at least to the level of actual usage in the urban and industrialized areas.

VI. PUBLIC FAMILY COUNSELING SERVICE

In 1975, approval was given to a law introducing the public family counseling service (Law No. 405 of 29th July 1975). The aims of the consultancy, defined in the law as "a service of assistance to the family and to motherhood," are to provide "psychological and social" counseling to the marriage partners and the family, give birth-control advice, and protect the health of women and the procreative function. The priorities and organization of this service are determined by the regions under subordinate legislation implementing the national law, while the communes actually operate it.

The family consultants are intended to operate under the aegis of the local health units, once these have been established by the provisions of a reformed public health system. Although this service may appear to be peripheral to the subject of the present article, in fact it is closely linked with two moments of great importance in the history of Italian family legislation: the reform of family law on the one hand, and the legislative proposals for voluntary abortion on the other. This "support and assistance" service is intended to assume part of the functions of the Family Court and to facilitate collaboration between court and family, and court and juveniles. It therefore must be included in order to complete our review of the reform of family law and regulations.

Its role in contraception indicates the links between counseling activity and the need to stem the ills of recourse to abortion as a system of birth control. As we have seen, Italian law punished contraceptive propaganda until recently, thus imposing a strict silence on the subject of birth control and sexual education, although the diffusion of contraceptives continually increased due mainly to the efforts of private associations operating outside the law. Once Art. 553 of the Penal Code had

been declared unconstitutional (in 1971), it was essential that the state become involved in birth control.

This was the framework for the Parliamentary debate on the question of a family consultancy. The bills presented by the Communist, Socialist, Social Democrat and Republican parties proposed a model of family counseling concentrating specifically on birth control and maternity support. This was opposed by the Christian Democrats who envisaged the consultancy as "a structure fulfilling a complex role in relation to the family, and undertaking an organic range of services (health, social, psychological, educative, juridical, etc.)" (Dalla Torre, 1976:12). In this situation once again, a compromise was reached between the two positions: the law does not speak explicitly of contraception but rather of "responsible" parenthood; yet it is clear that contraception is a concern if not the dominant one. Currently, only nine out of the twenty regions have issued legislation implementing the law, although all were required to do so within a year of its promulgation. These subordinate regulations acknowledge both the function of psychological and social help to the married couple and the health and welfare function, but place greater emphasis on the latter.

The law instituting the family consultancy, which "stands out more for what it does not, rather than what it does, say" (Balducci and Camarda, 1977:117), has given rise to a number of problems (Ronfani, 1977). There has been much debate, to begin with, on the aims of the counseling service. Some experts and scholars feel that it should only undertake tasks related to health and welfare, such as contraception, and the problems of antenatal deaths and infant mortality, both of which remain high in contemporary Italy; others, mainly Catholics, but also secularists, argue that it should be "a specific and comprehensive service to the married couple, both at the beginning and in the critical points of later developments" (Liggeri, 1976:270). Those closest to the Communist viewpoint contend that the consultancy should become "a service giving tangible support to motherhood, as a social value helping the woman to free herself from the burdens of maternity seen as her role in life" (Cavicchi *et al.*, 1976:33). The feminist movement takes a similar position, seeking the emancipation and ultimately the liberation of woman, for whom the counseling service should become "a place for the establishment and development of woman and for the forging of a new relationship between woman and medicine" (Bolognese, 1977:28).

Another problem of great importance is the training and role of the counselors themselves. The law provides for the service to be operated by specialists in medicine, psychology, education and social welfare, but neither the national law nor the regional laws implementing it specify the training in detail. In particular, there is no provision for a nonmedical person to conduct an initial interview to assess the real needs of the client and determine which expert would be most appropriate. A "family" or "matrimonial" counselor is required, who becomes the hub around whom the consultancy service turns (see Balducci and Camarda, 1977; Bartholini, 1976). A number of fully trained counselors have been operating for several years within private consultancy services, especially those of a Catholic persuasion, whereas the counseling role in those public consultancies established thus far has normally been undertaken by social workers without any specific training for that role. Because the institution is a new one there is no published empirical study. But research is in progress at the Faculty of Philosophy and Sociology of Law at Milan University, under the direction of R. Treves, on the implementation of the law in Milan and the Milanese hinterland. The partial results (available because one of the present authors is part of that research team) indicate that women predominate as clients and in some consultancies are the only clients; that medical problems (primarily contraception, and then other problems connected with health and welfare during pregnancy) greatly outnumber psychological, social, and juridical problems; and that the role and training of the consultant is still uncertain.

The counseling service, at least at its present stage appears much closer to the model postulated by the secular parties of the Left and Center than to the "family style" proposed by the Christian Democrats. However, it must not be forgotten that the nature and objectives of the service are influenced not only by its users, through their applications, but also by the consultants, who publicize their specific activities and services. Thus the absence of requests for psychological, social, and juridical help to the consultants in the Milanese hinterland must be attributed, at least in part, to the decision of those practitioners to concentrate on medical-contraceptive activities. Equally, the infrequency of requests for juridical help may be due to the fact that the law does not provide for a lawyer to participate in the consultancy.

Research has also shown that the vast majority of women using the service have more than one or two children. Such wo-

men probably already know about and employ birth-control methods, whereas those with larger families seem to avoid the counseling service. The service thus appears to have little prospect for significantly affecting demographic policy at the present time.

VII. CONCLUSION

The recent and important innovations in the field of family law, of which we have given a summary exposition, have helped to reduce the disparity between the legal provisions in force and the evolution of family relationships in Italian society. Individual rights are no longer sacrificed to the concept of family unity. A family model in which the wife and children were subordinated to the authority of the husband-father has been relegated to history.

Nevertheless, the reform of family law is not complete. As we have seen, the problem of abortion has not yet achieved a legislative solution; the law on family counseling has been implemented only partially, and even then only in a few regions; equality between men and women remains riddled with gaps and anomalies, even in its formal aspects; in practice it is far from effective, either within the family nucleus or outside, although there have been numerous legislative initiatives to abolish those legal provisions that most flagrantly violate the principle of parity, for instance, "crimes of honor."

All the legislative interventions of which we have spoken, and especially the reform of family rights, are the results of compromises between political opponents over both ends, the ideal of the family, and means, the role of legislation. The two main adversaries have sought to use law instrumentally: the Christian Democrat party sees law as a means of control, to traditional family forms; the Communist party wishes to use law to promote new family forms. Both have been opposed by other forces (such as the Socialist, Republican, Social Democratic, and Liberal parties) who argue that, given the intense emotional bonds within the family, its need for privacy, and the strong internalization of family norms, legislation must harmonize with usage, respect the reality of concrete and spontaneous relationships, and confine its intervention to crisis situations such as marital separation and divorce.

The compromise, agnostic solution adopted by the legislature has generated a major ongoing debate over the diverse, and seemingly inconsistent, models of the family which have been followed in practice.

For instance, Cardia (1975:43), observing that the new family law provisions proclaim parity between spouses and equality between children born in and out of wedlock, has concluded that the legislature has thereby laid the foundations for the construction of a "superior model" of the family—a communitarian type, inspired by the concepts of Marx and Engels—which contrasts with the traditional Catholic concept and the bourgeois concept deriving from it, both of which agree "in the supposed naturalness that the family organization could claim relative to other schemes."

Other authors engage in an analysis that is sociological rather than ideological or political; Ferrari (1975:54), for instance, holds that the new family law has not proposed a "superior model of the family," but that the reform, which should be appraised in its totality as a "cautious, compromise legislative instrument," has simply adopted the typical model of the conjugal and nuclear family postulated by Parsons.

In contrast, Donati (1976) has expressed the view that the reform decisively rejected the Parsonian model of a nuclear family. Using both sociological concepts (especially those of Marx, Durkheim, and Weber) and three ideological-political approaches (the Catholic "naturalistic" and "organic" concept, the Marxist notions of "superstructure" and "conflict," and the non-Marxist secular theories of "culture" and "adoptive functionalism"), Donati considers that although the reform could be explained by a plurality of models, it clearly favors such organizational forms as the symmetrical family and the two-career family. The reform thus represents a compromise between the organic concepts of Durkheim and Weber and the Marxist conflict approach to the family, in the sense that if

> on the one hand, on the level of the family model, the principal values embraced by Marxism are proclaimed, albeit with a cultural syncretism with many Catholic features . . . on the other, on the general level of law, the Marxist concept does not prevail: indeed the reform adopts a complex of legal provisions and rationalization of the legal system in the family field more akin to the viewpoints of Durkheim and Weber, especially in relation to the latter's recognition in it of an "economic" substratum. [Donati, 1976:150]

In practice, we believe that it would be very difficult to relate the legislative reform to a single model of the family and that it is more accurate to see the legislature as making limited responses, on successive occasions, to the various problems posed, giving rise to a composite model that represents the fruit of cautious compromise and, on occasion, legislative impotence.

Nevertheless, that does not mean that the reform is merely declaratory of existing usage. Confronted by the traditional dilemma of legislative policy, the legislature, as we have seen, has opted for the prudent reconciliation of law with usage, rather than strive for radical behavioral change (Pocar, 1974:403). Yet it must be remembered that in contemporary Italian society there is great diversity in actual family behavior, reflecting stratification, urbanization, and geographical and generational variables, and there are also genuine family and matrimonial subcultures (Donati, 1976). In the face of so many inconsistent family models, the law can only propose and regulate a single abstract and unequivocal mode (Resta, 1977), even if it is a composite. In this sense, the legislature (which seems to have favored the usages associated with the urban industrialized population and the tenant-farmer sector), has achieved some rationalization insofar as there has been a unification of different usages in the family field.

However, any such change has been fairly limited. In the field of family relationships, more than any other, the efficacy of legal provisions is uniquely related to their degree of internalization rather than to the existence of a formal sanction, which is unlikely to be imposed given the private nature of the underlying relationships, the emotional inhibitions on their invocation, and the obstacles to recourse to court or to any other juridical institution. Therefore, though we acknowledge that empirical research (Pocar, 1974) has shown that law has a modest capacity to change opinions and behavior even in the field of family relationships, especially when it legitimates existing practices (e.g., permitting legal recognition of natural children) or inverts certain automatic legal presumptions (e.g., substituting community for separate property), there is no doubt, broadly speaking, that affirmations of principle and the use of law to promote new family models are unlikely to be implemented. Thus, the decision to harmonize with prevailing usage rather than to change it may be seen as bowing to the inevitable at a time when there are no proposals to modify other influences upon public opinion or to internalize different norms of family behavior.

Furthermore, contemporary social change is not only producing a "quantitative nuclearization," well expressed in the famous "law of reduction," but also "a process of qualitative reduction of family functions," which leads the family to become an exclusive community of mutual support or indeed "a

residual category of the social organization of the industrial state" (Resta, 1977:143).

The limited enforceability of formal regulations in the field of family relationships and the evolution of the role of the family in modern society inevitably restrict such reforms to merely declaring existing practice (although in a way that may influence nonconforming behavior) unless there are structural reforms, especially of the employment market and the distribution of employment, the educational system, and the social welfare system, as well as the creation of proper structures for support and motivation. But the legislature typically approaches these latter proposals with extreme caution or generates provisions wholly at odds with the desired objectives. For such reforms would impose very high costs upon the dominant groups and classes, less in economic than in social and political terms, effecting a radical transformation of social and political relationships within Italian society.

The reform of family legislation, unaccompanied by radical change in economic and social structures, has simultaneously satisfied progressives by proclaiming certain principles and conservatives by leaving the implementation of those principles to the pressure of social and economic evolution. In this sense, the new legislation not only performs the manifest function of reforming the juridical system in this area but also the latent functions of giving legitimacy to principles already adopted by an important part of Italian society and of achieving a compromise solution to an otherwise irreconcilable political conflict.

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