MALEPLICITY ITALIAN STYLE

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CONTENTS

I. INTRODUCTION: WHICH ITALIAN MASCULINITY? .......................... 585
II. THE NINETEENTH CENTURY RISORGIMENTO AND THE
STEREOTYPE OF THE “PATRIOT” ........................................ 587
III. THE FIRST ITALIAN CIVIL CODE AND THE CELEBRATION OF THE
Patriarchal Family .................................................. 590
IV. THE RESHAPING OF ITALIAN MASCULINITY DURING FASCISM ... 597
V. THE POSTWAR PERIOD AND THE NEW EQUILIBRIA DICTATED BY
THE NEW ITALIAN CONSTITUTION ............................... 604
VI. THE ROLE OF CASE LAW IN SHAPING AND RESHAPING ROLES
AND STEREOTYPES ........................................... 606
VII. THE LEGISLATIVE REFORMS OF THE 70s: TOWARD REAL
EQUALITY .......................................................... 610
   A. The Introduction of Divorce Law in 1971 ..................... 611
   B. The Family Law Reform of 1975 .............................. 611
   C. The Abolition of Honor Killings and the “Shotgun”
      Marriage ................................................... 612
   D. Abortion Law ................................................ 614
VIII. MASCULINITY ITALIAN STYLE ON THE MOVE ..................... 614
   A. Does Mr. Berlusconi Embody the New Italian Masculinity
      Model? ..................................................... 614
   B. Woman-Object, but also Man-Object: the World of Fashion
      Advertisement in Italy ..................................... 616
   C. The Father’s Rights Movement ............................... 617
IX. SOME PRELIMINARY CONCLUSIONS .................................. 618

I. INTRODUCTION: WHICH ITALIAN MASCULINITY?

Masculinity is a concept that underwent a profound evolution in the Italian society since the nineteenth century.1 In order to get an accurate idea of this

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** Please note, all translations from the Italian language into the English language are made by the author, unless otherwise noted.

1 For the historical evolution of this concept in the Italian context, see generally MASCOLINITÀ ALL’ITALIANA: COSTRUZIONI, NARRAZIONI, MUTAMENTI (Elena Dell’Agnese et al. eds., 2007); see also SANDRO BELLASSAI, LA MASCOLINITÀ CONTEMPORANEA (2004) [hereinafter BELLASSAI, LA MASCOLINITÀ CONTEMPORANEA]. From a more psychological point of view, see generally ALESSANDRO TAURINO, IDENTITÀ IN TRANSIZIONE: DALL’ANALISI CRITICA DELLE TEORIE DELLA DIFFERENZA AI MODELLI CULTURALI DELLA MASCOLINITÀ (2003).
evolution in the Italian context some clarifications are needed. First, from a linguistic point of view, the very concept that *mascolinità* receives in the Italian language various connotations that do not correspond to the English term “masculinity.”

In English, masculinity is used to identify the trait of behaving in ways considered typical for men, in social or symbolic terms in the different historical and cultural contexts. We need to point out that in Italian, we can use the terms *mascolinità* and *virilità* as synonyms, although, generally, this last term is translated into English as “manliness” or “manhood.” When we analyze legal documents and other texts in Italian, in order to understand the evolution of this concept, it is therefore useful to understand that a literal translation might be misleading.

Second, when we speak about Italian masculinity, it is also important to recall that Italy was first unified in 1861 and that the first National Civil Code was enacted only in 1865. Nonetheless, even before that date, it is possible to identify some common characteristics in the way masculinity was conceived in the Italian peninsula. After that date, some regional ways of understanding masculinity have remained characteristic of some specific areas that have been represented and stereotyped by cinema and literature. As we will see, although private law was unified after 1865, some differences remained in the concrete application of specific code provisions intimately connected to the way of understanding masculinity at the local level.

Finally, understanding Italian masculinity today might vary significantly depending upon the perspective and the kind and depth of the analysis adopted. Madonna suggested, some years ago, that “Italians do it better.” It is far from me to refute or confirm such a perspective, which might correspond to the personal beliefs of the great singer or to a stereotyped image that Italians are always very proud to feed.

Italian sociologists, psychologists, and historians have developed interesting analyses of the evolution of this concept of masculinity, which are very important for lawyers to achieve a better understanding of the cultural context.

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4 See infra Part III.

5 See, e.g., *Gender, Family and Sexuality: The Private Sphere in Italy 1860–1945* (Perry Willson, ed. 2004) (a collection of essays discussing Italian gender studies and gender relations from the country’s unification to WWII); see also infra text accompanying note 65.

6 See infra notes 76–77 and accompanying text.

7 Nicholas Farrell, *Do Italians Do it Better?*, TAKI’s MAG. (June 9, 2012), http://takimag.com/article/do_italians_do_it_better_nicholas_farrell/print#axzz2P9g9XAvV.

8 See, e.g., *Mascolinità all’Italiana: Costruzioni, Narrazioni, Mutamenti*, supra note 1.

9 See, e.g., Taurino, supra note 1.

10 See *Bellassai, La Mascolinità Contemporanea*, supra note 1.
in which legal norms have been embedded or on which the law has had an influence.

So, our perspective will be to identify the several ways by which masculinity has been conceived in the Italian context, taking into consideration the corresponding evolutions of the law that codified or changed the way by which relationships between genders were conceived, as well as the suggestions that we can receive from literature and cinema.

Beginning from the romantic hero of our Risorgimento11 which led to the unification of Italy, we will try to investigate the first Italian Codification of 1865, which reflects the main characteristics of the Italian patriarchal society.

Things rapidly changed under Fascism, with the struggling for a new “Ideal Italian,” who would have inherited all of the good qualities of the traditional Italian patriarch, but with added strength, efficiency, and charm.12 The clear predominance of men in public and private life with respect to their wives or partners was endorsed by legislation enacted in that period.13 The fall of the regime and the loss of World War II implied the need to revisit the understanding of masculinity. The enactment of the first Italian Republican Constitution in 194814 gave rise to profound modifications in the way of understanding relationships between different genders. It was not until the 1970s and 80s, nonetheless, that Italian law was capable of making the last steps towards real equality between men and women, reshaping the concept of masculinity again.15

II. THE NINETEENTH CENTURY RISORGIMENTO AND THE STEREOTYPE OF THE “PATRIOT”

The history of Italy in the nineteenth century is profoundly indebted to the revolutionary events that characterized the Risorgimento.16 The ideal of man and, consequently, the masculine stereotype that accompanied it, were modeled on the romantic hero, who fought for the independence from the “stranger”—

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13 See, e.g., Codice civile [C.c.] 1865 art. 131 (“Il marito è capo della famiglia; la moglie segue la condizione civile di lui, ne assume il cognome, ed è obbligata ad accompagnarlo dovunque egli creda opportuno di fissare la sua residenza.”).
15 See infra Part VII.
that is to say, from the Habsburgs dominating Northern Italy—and for the unification of the Fatherland, per la patria.\(^{17}\)

Giuseppe Mazzini\(^{18}\) and Giuseppe Garibaldi\(^{19}\) were men who became the heroes of everyday life, whether in exile or on the battlefield. Although profoundly different, Mazzini and Garibaldi shared a common masculinity stereotype, the one of the “patriot”—a mixture of noble qualities, sacrifice, moral strength, but also the capability of fighting for common ideals and for a common future of all Italian people—until then subdivided in many different political entities.\(^{20}\)

\(^{17}\) Even before the Risorgimento, the ideal of a common Italian Fatherland was pursued by the so-called Carbonari (literally: “charcoal burners”). The Carboneria was a secret society created in Italy at the beginning of the nineteenth century with the aim of removing the anti-liberal governments that characterized fragmented Italy during that period. See Carbonari, CHAMBERS DICTIONARY OF WORLD HISTORY (2005), available at http://www.credoreference.com.ezproxy.library.unlv.edu/entry/chambdictwh/carbonari. This period is characterized by the role of national heroes, like Silvio Pellico, who wrote Le mie Prigioni (My Prisons), in which the author tells about his imprisonment by the Austrians, first in Venice and then in the jail of Spielberg near Brün (now “Brno” in the Czech Republic, but once belonging to the Habsburg Monarchy). Pellico, Silvio 1789–1854, ENCYCLOPEDIA OF LIFE WRITING: AUTOBIOGRAPHICAL AND BIOGRAPHICAL FORMS (2001), available at http://www.credoreference.com.ezproxy.library.unlv.edu/entry/routlifewrite/pellico_silvio_1789_1854. On the role of Silvio Pellico in the Italian literature, see Vittorio Spinazzola, Il Motivo della Tentazione nell’Ope ra del Pellico, in LA LETTERATURA ITALIANA 39 (Emilio Cecchi & Natalino Sapegno eds., 2005). Another important figure was Ciro Menotti, who had fought against the predominance of the Austrians in Northern Italy and was subsequently condemned to death by Francis IV, Duke of Modena. Menotti has been subsequently considered a patriotic martyr by the fighters of the Risorgimento. See Luigi Carovale, THE MOST TRAGIC STRUGGLE OF THE CENTURIES 35–38 (1929); see also Ciro Menotti, IL RISORGIMENTO (Mar. 6, 2011), http://ilrisorgimento.myblog.it/archive/2011/03/06/la-penisola-dei-famosi-ciro-menotti-1798-1831.html#more. On the role of secret societies during the Risorgimento, see Giuseppe Parlato, Società Segrete e Moti del 1820–21 in Europa, in LA STORIA: I GRANDI PROBLEMI DELL’ÈTA CONTEMPORANEA 107, 107–32 (Nicola Tranfaglia & Massimo Firpo eds., 1993).

\(^{18}\) For the recent debate, see generally Nunzio Dell’Erba, GIUSEPPE MAZZINI: UNITÀ NAZIONALE E CRITICA STORICA (2010). For a more classical approach, see Giuseppe Mon sagrati et al., GIUSEPPE MAZZINI (1972); Franco Della Peruta, MAZZINI E I RIVOLUZIONARI ITALIANI, IL PARTITO D’AZIONE, 1830–1845 (1974). On the role of Giuseppe Mazzini in the Italian literature of that period, see Spinazzola, supra note 17, at 105.

\(^{19}\) See generally Carmelo Calci, GARIBALDI E I SUOI TEMPI: IMMAGINI DEI PROTAGONISTI (2008). On the “myth” of Garibaldi, see generally Mario Isnenghi, GARIBALDI FU FERITO: IL MITO, LE FAVOLE (2010).

\(^{20}\) After the 1815 Congress of Vienna, Italy was subdivided in the Kingdom of Sardinia (Regno di Sardegna, which incorporated also the Republic of Genova) under the Savoy Real Family and—in particular—under Vittorio Emanuele; the Kingdom of Lombardo Veneto, which included the previous territory of Venice, under the Emperor of Austria; the Duchy of Parma, Piacenza and Guastalla, under Marie Louise of Austria, daughter of the Austrian Emperor Francis I; the Duchy of Modena and Reggio, under Francis IV of Habsburg-Este; the Duchy of Massa and Carrara, given to Maria Beatrice D’Este; the Granduchy of Tuscany, under Ferdinand II of Lorraine, brother of the Austrian Emperor; the Duchy of Lucca, under Charles Ludwig Bourbons; the Church State, under Pius VII, the Republic of San Marino; the Kingdom of Naples (Kingdom of two Sicilies), under Ferdinand Bourbon; Trentino, Südtirol and Venezia Giulia were under direct dominion of the Austrian Empire. See Marco Merigg, GLI STATI ITALIANI PRIMA DELL’UNITÀ: UNA STORIA ISTITUZIONALE (2002); Guido Ratti, Egemonia Austriaca e Restaurazione Negli Stati Italiani, in LA STORIA: I GRANDI PROBLEMI DELL’ÈTA CONTEMPORANEA, supra note 17, at 85, 85–106; see also
The most relevant feature of this period was that the Risorgimento was a man’s issue, and that history was made by men. The centrality of the male role was also well portrayed in the literature of that period. Many writers of the first part of the nineteenth century were personal witnesses of the emblematic events that followed the independence movements against the Austrians and the attempts to rouse the people of Southern Italy. Giuseppe Cesare Abba, together with Amilcare Lauria, Anton Giulio Barrili, and Giuseppe Bandi were leading figures of the letteratura garibaldina, where a central role was played by Ippolito Nievo.

Recent research, mostly published on the occasion of the 150th anniversary of the Italian Unification in 2011, pointed out the important role of women during the Risorgimento.
during this period: most of them were invisible creatures, living and working in the shadow of great men.

Officially, only one woman participated in the Spedizione dei Mille (the “Expedition of the Thousand”), which organized a corps of Italian volunteers under Garibaldi in order to conquer Sicily and the rest of the South, still dominated by the Bourbons in 1860: Rosalie Montmasson, wife of Francesco Crispi, future member of the first Italian Parliament, and future prime minister of the unified Italian Kingdom. Rosalie was of humble origins and followed Crispi everywhere in his exile: to Malta, where they got married, then to Paris and London, where he joined Mazzini. Rosalie played an active role, helping the Italian patriot refugees in London to communicate among themselves. For these reasons, she was the only woman admitted to the Expedition by Garibaldi. Notwithstanding the important role that Rosalie played in the life of Crispi and of his comrades, Crispi eventually rejected her, contesting the validity of their marriage in order to marry the young and noble Lina Barbagallo, related to the prestigious Bourbon family, the same family that Garibaldi and Crispi wanted out of Italy.

III. THE FIRST ITALIAN CIVIL CODE AND THE CELEBRATION OF THE PATRIARCHAL FAMILY

After having reached the political unification of the Italian Kingdom, one of the first needs felt at the political level was to unify private law according to the model of the French Civil Code established under Napoleon.


31 See generally Donne del Risorgimento (Elena Doni et al. eds., 2011); Marina Cepeda Fuentes, Sorelle d’Italia: Le Donne che Hanno Fatto il Risorgimento (2011). More specifically on the contribution of individual women see, for example, the vast bibliography on Cristina Trivulzio di Belgioioso. See, e.g., “La prima Donna d’Italia” Cristina Trivulzio di Belgioioso tra Politica e Giornalismo (Mariachiara Fugazza & Karoline Rösig eds., 2010); Arrigo Petacco, La Principessa del Nord: La Misteriosa Vita della Dama del Risorgimento: Cristina di Belgioioso (2009).


36 See Mauro Cappelletti et al., The Italian Legal System 215–18 (1967). On the process of unification of Italian private law see generally Alberto Aquarone,
Italian Civil Code, enacted in 1865,37 was aimed at substituting the various civil codes existing at the local level in the various pre-unitary states. The Code of 1865 included a first book entitled Of Persons,38 which is interesting to analyze to understand the central role played by men in family and society at that time. Indeed, the role of the man as father and as master of the family had already been at the core of a long-lasting debate in Italy. Giulio Vismara, a famous Italian historian who dedicated much of his attention to the study of the evolution of family law in the Italian context, suggests that in order to have an idea of what family ties were in the nineteenth century, it is instructive to look at the description of family by Cesare Beccaria at the end of the eighteenth century.39 In his famous Treaty Of Crimes and Punishments, Beccaria wrote40:

> It is remarkable, that many fatal acts of injustice have been authorised and approved, even by the wisest and most experienced men, in the freest republics. This has been owing to their having considered the state rather as a society of families than of men. Let us suppose a nation composed of [a] hundred thousand men, divided into twenty thousand families of five persons each, including the head or master of the family, its representative. If it be an association of families, there will be twenty thousand men, and eighty thousand slaves; or if of men, there will be an hundred thousand citizens, and not one slave. In the first case we behold a republic, and twenty thousand little monarchies, of which the heads are the sovereigns: in the second the spirit of liberty will not only breath [sic] in every public place of the city, and in the assemblies of the nation, but in private houses, where men find the greatest part of their happiness or misery.41

As a famous leader of the Italian Enlightenment, Cesare Beccaria42 developed a harsh critique of the role and the powers of the master of the family, a patriarch with unlimited powers on the rest of the family.43 Notwithstanding these critiques, a century later, the first Italian Civil Code of 1865 still reflected this hegemonic situation of the pater familias (father of the family) through the...
institution of the *patria potestas*.\(^{44}\)\(^{45}\) This institution, which Italian Law inherited from ancient Roman law,\(^{46}\) gave to the master of the family wide powers over the wife and the children.

The subjugated role of the wife was clearly acknowledged by Article 131 of the Civil Code: “The husband is the head of the family; the wife follows his civil condition, assumes his family name, and is obliged to accompany him wherever he thinks appropriate to have his residence.”\(^{47}\) With the marriage, the married woman was limited in that she had to ask for special authorization from the husband in many cases.\(^{48}\) So, for example, the married woman could not sell or donate immovable goods, nor could she stay in court to defend related rights without the consent of the husband.\(^{49}\)

The role of the father/husband was also very influential on the will of children. Sons who had not reached twenty-five years and daughters who had not reached twenty-one years could not marry without the consent of both parents. But if parents disagreed, the final word was with the father.\(^{50}\)

Divorce was not possible, though Italian law recognized the possibility of personal separation.\(^{51}\) Both spouses could ask for separation but only for reasons specified by law.\(^{52}\) Adultery was among these reasons, but Article 150 expressly provided that “adultery of the husband was not considered sufficient reason for the wife to ask for separation, unless he was maintaining the mistress as a concubine at home, or notoriously in another place.”\(^{53}\)

Title VIII of Book II (Articles 220–39) was entirely dedicated to the institute of *patria potestà*, which had great influence on the relationships between

\(^{44}\) On the role of this institution in Italian law prior to the Reform of 1975, see ANGELO CARLO PELOSI, *LA PATRIA POTESTÀ* (1965).

\(^{45}\) This Essay uses the terms, patria potestas as well as patria potestà. “Patria potestas” is the Latin definition used everywhere in Europe. It makes reference to an institution that has Roman origin and was known in most European States. “Patria potestà” is, instead, the concept used in the Italian language (derived by Latin), that we were using in the Civil Code.


\(^{47}\) C.c. 1865 art. 131 (“Il marito è capo della famiglia: la moglie segue la condizione civile di lui, ne assume il cognome, ed è obbligata ad accompagnarlo dovunque egli creda opportuno di fissare la sua residenza.”).

\(^{48}\) This *autorità maritale* was actually initially intended to protect the married woman. See VISIMARA, supra note 39, at 73.

\(^{49}\) C.c. 1865 art. 134 (“La moglie non può donare, alienare beni immobili, sottoporli ad ipoteca, contrarre mutui, cedere o riscuotere capitali, costituire sicurtà, né transigere o stare in giudizio relativamente a tali atti, senza l’autorizzazione del marito.”).

\(^{50}\) C.c. 1865 art. 63 (“Il figlio che non ha compiuto gli anni venticinque, la figlia che non ha compiuto gli anni ventuno non possono contrarre matrimonio senza il consenso del padre e della madre. Se i genitori sono discordi, è sufficiente il consenso del padre.”).

\(^{51}\) See C.c. 1865 art. 148–50 (Capo X—Dello scioglimento del matrimonio e della separazione dei coniugi) (The dissolution of marriage and spousal separation).

\(^{52}\) C.c. 1865 art. 149.

\(^{53}\) C.c. 1865 art. 150 (“La separazione può essere domandata per causa di adulterio o di volontario abbandono, e per causa di eccessi, sevizie, minacce e ingiurie gravi. Non è ammessa l’azione di separazione per l’adulterio del marito, se non quando egli mantenga la concubina in casa o notoriamente in altro luogo, oppure concorrano circostanze tali che il fatto costituisca una ingiuria grave alla moglie.”).
parents and children, but also distributed power between spouses.\(^{54}\) The word *potestà* refers, in the Italian legal system, to the allocation of power to a person in order to protect the interests of others and to exercise a specific function.\(^{55}\) *Patria potestà* granted the father power to exercise all rights and duties for and on behalf of the minor children.\(^{56}\) In concrete terms, the exercise of this power included the right/duty to correct the bad habits of the children,\(^{57}\) to administer their rights and their goods,\(^{58}\) and to represent them in court.\(^{59}\) The children had to obey and could not leave the father’s house without permission.\(^{60}\)

The chapter dedicated to this institution, in the Civil Code of 1865, began establishing a general duty of the children “to honour and respect their parents,” independent of their age.\(^{61}\) But, in fact, all powers were delegated exclusively to the father, while the mother could only exercise the *patria potestà* if the father was physically or mentally absent.\(^{62}\) Even in the case where the father died, the mother had to follow the instructions for the education of the children that he might have left by testament.\(^{63}\) The economic predominance of the husband was also clear as far as the rights on the dowry were concerned, which only the husband could administer.\(^{64}\)

The family ideal model that the Italian legislation of 1865 represented was not peculiar to Italian society. More or less, all European legislation in force in that period reproduced the model of a patriarchal family.\(^{65}\) Legal historians have underlined the more liberal attitude of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch) of 1811, which was not followed in part because of patriotic reasons\(^{66}\) as the unification wars were fought against

\(^{54}\) C.C. 1865 art. 220–39.


\(^{57}\) The so-called *jus corrigendi* included, in extreme cases, the right of the father to remove the minor child from the family and obligate him to live within his own means, providing only strictly necessary alimony. See C.C. 1865 art. 222 (“Il padre che non riesca a frenare i traviamenti del figlio può allontanarlo dalla famiglia, assegnandogli secondo i propri mezzi gli alimneti strettamente necessari . . .”).

\(^{58}\) This power was very wide, encompassing the right of usufructus on the inherited goods by the children. See, e.g., C.C. 1865 art. 225.

\(^{59}\) C.C. 1865 art. 224.

\(^{60}\) C.C. 1865 art. 221.

\(^{61}\) See C.C. 1865 art. 220.

\(^{62}\) C.C. 1865 art. 220 (“Durante il matrimonio tale potestà è esercitata dal padre, e, se egli non possa esercitarla, dalla madre”).

\(^{63}\) C.C. 1865 art. 235 (“Il padre può per testamento o per atto autentico stabilire condizioni alla madre superstite per l’educazione dei figli e per l’amministrazione dei beni.”).

\(^{64}\) C.C. 1865 art. 1399 (“Il marito solo ha, durante il matrimonio, l’amministrazione della dote.”); see also 2 ALESSANDRO DOVERI, ISTITUZIONI DI DIRITTO ROMANO 267 (2d ed. 1866).

\(^{65}\) This situation was analyzed by Italian lawyers of the time. See e.g., CARLO FRANCESCO GABBA, DELLA CONDIZIONE GIURIDICA DELLE DONNE: STUDI E CONFRONTI (Nabu Press 2011) (1880).

\(^{66}\) See VISMARA, supra note 39, at 68.
the Austrians—in part because of the influences of the Catholic Church that tried to impose a more traditional view of family.67

Although there were certainly common patterns among existing legislation at that time, the very limited power of Italian women inside the family reflected two aspects of a more wide range of patterns characterizing Italian society. According to the available statistics, eighty-one percent of Italian women were still illiterate at the end of the nineteenth century. Only women of the upper classes had the possibility of receiving an education.68 It is no wonder the important issues had to remain in the hands of the man, the breadwinner, the one who received an education.69

The interventions of the first Italian feminists, like Anna Maria Mozzoni, who fought all her life for the rights of women in Italy,70 were the voices of a small elite that remained mostly unheard. Generally, however, the woman was conceived by certain scientific literature71 of those years as a childish human being,72 not completely developed in comparison with man.73 It should not come as a surprise that, consequently, according to the Civil Code of 1865,

67 See Mark Seymour, Keystone of the Patriarchal Family? Indissoluble Marriage, Masculinity and Divorce in Liberal Italy, 10 J. MOD. IT. STUD. 297, 298 (2005) (describing the modern influences the Catholic church has had on Italian politics); see also Frank A. Salamone, Italy, COUNTRIES AND THEIR CULTURES, http://www.everyculture.com/Ge-It/Italy.html (last visited Apr. 30, 2013) (noting that to this day, the Catholic Church serves as a “strong informal social control” in Italy).
68 See BEALES & BIAGINI, supra note 22, at 185.
69 On the education of women in Italy at the end of the nineteenth century, see the various articles collected in L’EDUCAZIONE DELLE DONNE: SCUOLE E MODELLI DI VITA FEMMINILE NELL’ITALIA DELL’OTTOCENTO (Simonetta Soldani ed., 1989). On the influence of Italian women on science, see Anna Barozzi & Vittoria Toschi, Presenze Femminili nella Cultura Tecnico-Scientifica tra la Fine dell’Ottocento e gli Inizi del Novecento, in ALMA MATER STUDIORUM: LA PRESENZA FEMMINILE DAL XVIII AL XX SECOLO 201, 201–14 (1988).
70 Anna Maria Mozzoni, the pioneer of Italian Feminism, was born in 1837 to a bourgeois family and received a good education. See Mozzoni, Anna Maria, ENCYCLOPEDIA WOMEN SOC. REFORMERS, http://www.credoreference.com/entry/abcwsr/mozzoni_anna_maria (last visited Apr. 30, 2012). She published two books where she claimed the equality of rights between men and women in the private law codification of 1865. See generally Anna Maria Mozzoni, La Donna i Suoi Rapporti Sociali (1864); Anna Maria Mozzoni, La Donna in Faccia al Progetto del Nuovo Codice Civile Italiano (1865). On a woman’s role in Italian society, see 2 GIOVANNI CARAVAGGI ET AL., LA DONNA E IL DIRITTO: DALL’INCAPACITÀ GIURIDICA AL NUOVO DIRITTO DI FAMIGLIA (1976). On the birth of Feminism in Italy, see also FRANCA PIERONI BORTOLOTTI, ALLE ORIGINI DEL MOVIMENTO FEMMINILE IN ITALIA, 1848–1892 (1963).
71 See, e.g., EMILIA SAROGNI, LA DONNA ITALIANA: IL LUNGO CAMMINO VERSO I DIRITTI, 1861–1994, at 23–25 (1995) (for the Italian context). But the Italians were not the only ones to think that the woman’s brain was typical of an underdeveloped human being. See, e.g., LOUANN BREZENDINE, THE FEMALE BRAIN 1 (2006) (for the general nineteenth century view on the female brain); LOUANN BREZENDINE, IL CERVELLO DELLA DONNA 15 (Lorena Lanza & Patrizia Vicentini trans., 2007).
72 For example, Paolo Mantegazza, a famous physiologist and future Senator of the unified Kingdom, attributed to women the same characteristics of children, who—by nature—are naïve, spontaneous, and sensitive. PAOLO MANTEGAZZA, IL SECOLO NEVROSICO (1887). See also BELLASSAI, LA MASCOLINITÀ CONTEMPORANEA, supra note 1, at 49.
73 See CESARE LOMBROSO & GUGLIELMO FERRERO, LA DONNA DELINUENTE, LA PROSTITUTA E LA DONNA NORMALE 172 (1893); BELLASSAI, LA MASCOLINITÀ CONTEMPORANEA, supra note 1, at 49.
women could not appear as witnesses in proceedings in front of public officials\footnote{74} nor in cases of a last will and testament.\footnote{75} This vision of the patriarchal family was very well portrayed in some famous novels, like \textit{I Malavoglia} by Giovanni Verga,\footnote{76} and \textit{Il Gattopardo} by Giuseppe Tomasi di Lampedusa.\footnote{77}

The wind began to change with the process of industrialization that characterized the \textit{fin de siècle},\footnote{78} with the new spirit of the \textit{belle époque},\footnote{79} World War I, and the rapid changes that happened to the geo-political scene in Europe.\footnote{80} This situation affected Italy in particular, where the towns of Trento and Trieste—the last to remain under the Austrian domination after unification—were finally annexed to the Unified Kingdom of Italy.

Some important reforms were introduced in this period that referred to the role of women in society. The first reform concerned the capacity of women to act as witnesses in court.\footnote{81} When the first proposal of a law allowing women to act as witnesses in court was...
act as witnesses in court was presented, the first and unanimous reaction by the Parliament was hilarity. Nonetheless, in eight months, Law n. 4167 of 1877, which allowed women to be witnesses in court as well as in front of public officials, was passed.

The rapid transformation of Italian economic structure and the entry of women into the workplaces, especially factories where women and children were most exploited, obliged the Italian government to reevaluate the situation from a legislative point of view.

With a special law passed in 1902, strongly supported by the Socialist Party and by Anna Kuliscioff, some specific provisions were introduced in order to guarantee working women the right to a maternity leave (at least one month), a limit to working hours, a weekly rest, and a limit on night-shifts. The various attempts proposed by progressive parliamentarians to introduce divorce in Italy, however, remained completely ignored.

A more ambitious reform took place in 1919 when a law was passed concerning the legal capacity of women, abrogating several articles of the Civil Code of 1865 related to the autorità maritale. That law, with a very important provision for the professional future of Italian women, permitted them to practice all professions.

Notwithstanding the indubitable impact that this reform had on the emancipation of women in Italy, the role of men remained predominant in all professional sectors and in public life. Women, for example, were not admitted to the judiciary until 1963, and all the movements in favor of extending the right to vote to women were unsuccessful until the end of World War II.

82 Caravaggi et al., supra note 70, at 11.
83 Legge 9 dicembre 1877, n. 4167, in G.U. 10 dicembre 1877, n. 287.
84 Legge 19 giugno 1902, n. 242, in G.U. 7 luglio 1902, n. 157 (“il lavoro delle donne e dei fanciulli” (on the work of women and children)).
85 Anna Kuliscioff was born in Russia in a Jewish family and was one of the first women graduated in medicine in Italy. Her role and her influence on Italian Socialism have been at the core of various initiatives. See, e.g., Maria Casalini, La Signora del Socialismo Italiano: Vita di Anna Kuliscioff (1987); Paolo Pillitteri, Anna Kuliscioff: Una Biografia Politica (1986); see also Naomi Shepherd, Anna Kuliscioff 1855–1925, Jewish Women’s Archive (2005), http://jwa.org/encyclopedia/article/kuliscioff-anna.
86 L. n. 242 art. 6/1902.
87 L. n. 242 art. 7/1902.
88 L. n. 242 art. 9/1902.
89 L. n. 242 art. 5/1902.
90 Seymour, supra note 67, at 298, 301–03.
91 Legge 17 luglio 1919, n. 1176, in G.U. 19 luglio 1919, n. 172 (“[N]orme circa la capacità giuridica della donna” (Norms concerning legal capacity of women)).
92 L. n. 1176 art. 1/1919 (articles 134, 135, 136, 137 of the Civil Code of 1865 were abrogated).
93 See C.c. 1865 art. 134.
94 L. n. 1176 art. 7/1919 (“Le donne sono ammesse a pari titolo degli uomini, ad esercitare tutte le professioni ed a coprire tutti gli impieghi pubblici . . .” (All women are admitted, on equal footing with men, to exercise all professions and to all public offices.)).
95 See Caravaggi et al., supra note 70, at 35; see also Francesca Marone & Valeria Napolitano, Cecilia Mangini and Alina Marazzi: An Italian Story, Cinemascopc: Indep. Film J., http://cinemiz.net/cifj/?p=188 (last visited Apr. 30, 2013).
Winter 2013] MASCULINITY ITALIAN STYLE 597

Some authors have pointed out that it is exactly in this period, when the foundations of patriarchal society have been challenged, that misogyny begins to expand as a social phenomenon: not as the remains of an archaic society, but much more as a reaction to the innovations that took place in modern society and to the “new Italian woman” (la donna nuova). 97

IV. The Reshaping of Italian Masculinity During Fascism

The partial erosion of the monopoly of men in all societal fields, that took place at the beginning of the twentieth century, had nonetheless to face a future enemy: the Fascist legislation that would characterize Italian society for twenty years.

On Benito Mussolini’s initiative, Italian fascism was founded in March 1919 in Milan. The movement was called the Fasci Italiani di Combattimento (Fighting Italian Fasces). “The Fascist movement came to power after the so-called ‘March to Rome’ on 28 October 1923 and very soon under the dictatorial government of the Duce took complete control of society.” 98 Much has been written on the historical reasons for this success, 99 and recent literature has focused its attention on the impact that Fascism has had on the concept of masculinity. 100 Fascism presented an idealized version of masculinity with a specific purpose: to envisage a “New” Italian citizen in a “New” Italy. 101 It is important to note that these ideals, though presented as new, found profound roots in the past of Italian history.

The value Fascism attributed to tradition, to patriarchal society, and to rural life, must indeed be recognized as part of Italian society, which had already existed in the nineteenth century. The very same idea of the need to create a new Italian can be traced back to a quote traditionally attributed to Massimo D’Azeglio, one of the most famous men of the Risorgimento: “We

97 SANDRO BELLAISAI, L’INVENZIONE DELLA VIRILITÀ: POLITICA E IMMAGINARIO MASCHILE NELL’ITALIA CONTEMPORANEA 44 (2011) [hereinafter BELLAISAI, L’INVENZIONE DELLA VIRILITÀ]; BELLAISAI, LA MASCOLINITÀ CONTEMPORANEA, supra note 1, at 51.


100 See, e.g., Ruth Ben-Ghiat, Unmaking the Fascist Man: Masculinity, Film and the Transition from Dictatorship, 10 J. MOD. IT. STUD. 336 (2005).

101 See discussion infra notes 106–14.
have founded Italy, now we still have to create the Italians” (Abbiamo fatto l’Italia ora dobbiamo fare gli italiani).\(^{102}\)

One of the leading features of Fascism was anti-modernism, strongly connected with a “normative representation[ ] of masculinity and femininity.”\(^{103}\) The way it presented itself as anti-modern was quite contradictory.\(^{104}\) On the one side, the modern urbanized society was described as a feminized society, one of the most important causes of Italian virility’s decay, celebrating the idyllic beauty of the country.\(^{105}\) On the other side, Fascism embraced the ideals of the Futurist movement,\(^{106}\) a movement that declared that the magnificence of


\(^{104}\) See id. (noting that the “Fascist regime never produced a coherent theory of antimodernism” in these terms). See also BELLASSAI, L’INVENZIONE DELLA VIRILITÀ, supra note 97, at 63 (pointing out that Fascism was an organic effort to modernize the country in an authoritative way).

\(^{105}\) See BELLASSAI, L’INVENZIONE DELLA VIRILITÀ, supra note 97, at 63 (pointing out that Fascism was an organic effort to modernize the country in an authoritative way). The way Fascism was presenting itself was contradictory. The Fascists promoted the beauty of the country to show that tradition is to country as urban is to modern.

\(^{106}\) On Futurism in general, see FILIPPO TOMMASO MARINETTI, TEORIA E INVENZIONE FUTURISTA (Luciano De Maria ed., 1990); GEORGE LACHMANN MOSSE ET AL., FUTURISMO, CULTURA E POLITICA (Renzo De Felice ed., 1988).

The Manifesto of Futurism was published in 1909 and states:

1. We want to sing the love of danger, the habit of energy and rashness.
2. The essential elements of our poetry will be courage, audacity and revolt.
3. Literature has up to now magnified pensive immobility, ecstasy and slumber. We want to exalt movements of aggression, feverish sleeplessness, the double march, the perilous leap, the slap and the blow with the fist.
4. We declare that the splendor of the world has been enriched by a new beauty: the beauty of speed. A racing automobile with its bonnet adorned with great tubes like serpents with explosive breath . . . a roaring motor car which seems to run on machine-gun fire, is more beautiful than the Victory of Samothrace.
5. We want to sing the man at the wheel, the ideal axis of which crosses the earth, itself hurled along its orbit.
6. The poet must spend himself with warmth, glamour and prodigality to increase the enthusiastic fervor of the primordial elements.
7. Beauty exists only in struggle. There is no masterpiece that has not an aggressive character. Poetry must be a violent assault on the forces of the unknown, to force them to bow before man.
8. We are on the extreme promontory of the centuries! What is the use of looking behind at the moment when we must open the mysterious shutters of the impossible? Time and Space died yesterday. We are already living in the absolute, since we have already created eternal, omnipresent speed.
9. We want to glorify war—the only cure for the world—militarism, patriotism, the destructive gesture of the anarchists, the beautiful ideas which kill, and contempt for woman.
10. We want to demolish museums and libraries, fight morality, feminism and all opportunist and utilitarian cowardice.
the “world has been enriched by a new beauty: the beauty of speed. A racing automobile [whose hood is] adorned with great tubes like serpents with explosive breath . . . a roaring motor car which seems to run on machine-gun fire, is more beautiful than the Victory of Samothrace.”

Notwithstanding the internal illogicality of his discourse (where the racing automobile, the splendor of rural life, tradition, and war were put together), the charismatic figure of Mussolini, acting as the new Italian Superman—with incessant propaganda—modeled a new stereotype of Italian virility. The “New Italian Man” emphasized the importance of sports, with sport being an antidote to the lazy life of the urbanized bourgeoisie.

According to Giovanni Papini, who published in 1915 a book with the title *Maschilità*, “the New Man was required to be brutal and barbarous, and abandon his romanticism.” In this respect, in the 1928 book, *Il Libro dello Sport* (The Book of Sport), Lando Ferretti presented sport as a new religion with the aim to serve the fatherland. The idea that Italy needed very well trained, strong men was supported by Futurism as well as by the Imperialistic policy of Mussolini.

On one side, Filippo Marinetti—the founding father of this movement—supported the pre-eminence of gymnastics over books, and a certain view of virility. “Marinetti wrote: ‘Male children must, according to us, be trained far differently from female children, because their early games are clearly masculine ones—that is without affective morbidity, womanish sensibility—but lively, bellicose, muscular and violently dynamic.’” The influence of Futurismo, and its idea of legitimized violence on Italian society of that period, is not to be undervalued. One important feature that has been recently highlighted is that Futurists offered the theoretical framework to Squadrismo—a movement organized to fight the Socialists that were opposing Fascists in Italy at that

11. We will sing of the great crowds agitated by work, pleasure and revolt; the multi-colored and polyphonic surf of revolutions in modern capitals: the nocturnal vibration of the arsenals and the workshops beneath their violent electric moons: the glutinous railway stations devouring smoking serpents; factories suspended from the clouds by the thread of their smoke; bridges with the leap of gymnasts flung across the diabolic cutlery of sunny rivers: adventurous steamers sniffing the horizon; great-breasted locomotives, puffing on the rails like enormous steel horses with long tubes for bridle, and the gliding flight of aeroplanes whose propeller sounds like the flapping of a flag and the applause of enthusiastic crowds.


107 MARINETTI, supra note 106, at pt. 4. See also Gori, supra note 98, at 30–35 (discussing Futurism movement’s influence on Fascism).

108 On the myth of Superman in Italy, see Gori, supra note 98, at 32–33.

109 See id. at 32–33, 39.

110 Id. at 32 (citing GIOVANNI PAPINI, MASCHILITÀ 41 (1915)).


112 See Grozio, supra note 111, at 185.

113 Gori, supra note 98, at 30, 41 (quoting MARINETTI, supra note 106).
time.\textsuperscript{114} Education of boys and men into the movement of masculinity was therefore considered “one of the most urgent and fundamental aims of the Regime.”\textsuperscript{115}

On the other side, the expansionistic aims of Mussolini needed a militarized nation, well trained and obedient, so that “the collective . . . training was accentuated in view of anticipated future wars.”\textsuperscript{116} Connected with these ideals was the “cult of the physical beauty of the body,”\textsuperscript{117} and the athleticism of the Duce himself\textsuperscript{118} was promoted in books and posters, medals, and poster stamps.\textsuperscript{119} These ideals of course could not avoid having deep impact on the relationships between genders as the “cult of the virile male answered the consolidated instincts of an Italian society that was deeply sexist and strongly patriarchal.”\textsuperscript{120}

The legislation enacted in this period endorsed this vision of society. On one side, with a series of statutes passed during the 1920s and 30s, Italian women saw their professional lives greatly limited; while, on the other side, the role of women as wives and mothers was strongly supported and emphasized.\textsuperscript{121}

A first reform, enacted in 1923 and called Riforma Gentile after the Minister of Education in charge,\textsuperscript{122} prohibited women from becoming directors of schools of higher education.\textsuperscript{123} With a further law, enacted in 1926,\textsuperscript{124} women were not allowed to teach philosophy, history, and economics in high

\begin{footnotesize}
\begin{enumerate}
\item[115] These are the ideas expressed by Lando Ferretti in his book, \textit{Il Libro dello Sport}. Gori, supra note 98, at 39 (quoting Ferretti, supra note 111, at 189).
\item[116] Id. at 40–41.
\item[117] Id. at 39; see also C. Bianchi, \textit{Il Nudo Eroico del Fascismo}, in \textit{Gli Occhi di Alessandro: Potere Sovrano e Sacralità del Corpo da Alessandro Magno a Ceausescu} 162, 162 (Sergio Bertelli & C. Grottanelli eds., 1990); Sergio Luzzatto, \textit{The Body of Il Duce: Mussolini's Corpse and the Fortunes of Italy} 16–17 (Frederika Randall trans., 2005).
\item[118] Gori, supra note 98, at 43.
\item[119] Id. at 47.
\item[120] Id.
\item[123] R.D. n. 1054 art. 12/1923.
\item[124] R.D. 9 dicembre 1926, n. 2480, in G.U. 29 marzo 1927, n. 73 (“Regolamento per i concorsi a cattedre nei Regi istituti medi d’istruzione e per le abilitazioni all’esercizio professionale dell’ insegnamento medio”).
\end{enumerate}
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schools. But, as a sort of compensation, only women could become maestra giardiniera, that is to say, “master gardener.” These initiatives tended to bring women away from the workplaces and to restore their economic dependence on men. Ousting women from teaching certain subjects in higher education perpetuated the idea that women were inferior and incapable human beings and, simultaneously, put them at a culturally inferior level.

A statute that gave some women rights conferred a limited right to vote on women in the elections at local administrative levels. However, law n. 2125, of November 22, 1925, did not allow all women to vote, but restricted and conditioned their participation on the ground of merits achieved during the First World War or by the fact that they were widows or mothers to men who died during the war. In order to participate in elections, moreover, women also had to prove that they were able to read and write.

Altogether, from the proceedings of the Italian Parliament it appears that the purpose of the Law of 1925 was not to gradually grant women the right to vote, but to compensate only those women who had contributed to the (men’s) war effort. In the words of Mussolini: “The woman must obey . . . [she is] analytic and not synthetic. . . . My view of the role of women in the state is opposed to feminism. Naturally, she does not have to be a slave; but if I gave her the right to vote, she would deride me. In our state she simply does not count.” Interestingly, the impact of such law was null anyway, given the fact that the right to participate in elections was ultimately abolished for every citizen in Italy.

Fascism also promoted a population growth campaign sustained by legislative initiatives in which married men with children were to receive the...
maximum support in the workplace. Mussolini launched his demographic campaign in a speech on the Ascension day in May 1927, and then re-elaborated it in a writing *Il numero come forza* (“The number as power”) that was published as a preface to the translation of the work by a German author, Richard Korherr, called *Regresso delle Nascite: Morte dei Popoli*.

The growth of the Italian population did not have to remain a slogan, but indeed needed to be promoted by effective legislative initiatives. By Law n. 1024 of June 6, 1929, the principle was introduced that in all selections of public employees, where there was equal merit, married men were to be preferred over non-married men, and married men with children had to be preferred over married men without children. Families with many children were also promoted by the Royal Decree of 1931, which prohibited any kind of family planning and, in particular, any act to

produce, import, buy, possess, export or anyway let circulate any drawings, pictures or any other object that divulges, even in an indirect or simulated way, with the pretext of therapeutical or scientific purposes, means aimed at preventing procreation, or procuring abortion, or that illustrate the employment of such means, or way by which these means can be achieved.

Thus, maternity had to be protected. In this perspective the most important initiative was the foundation of the *Opera Nazionale Maternità ed Infanzia* (ONMI) by a law passed in December of 1925. The ONMI was conceived...
primarily to prevent illness and enhance hygienic conditions, as well as to promote a specific social model.140

One of the most effective measures to keep women out of the workplace was a legislative initiative that took place in 1938 that limited women in public and private employment to ten percent of the total number of employees.141 Public employers could decrease such percentages in a discretionary way.142 It was further established that public and private enterprises with fewer than ten employees could choose not to hire any women.143

In this cultural and legislative context, the reform of the penal and civil codes took place.144 The new penal code, enacted in 1930 (called the Codice Rocco, after the name of the Fascist Minister who led the preparatory works145), was deeply influenced by Fascist ideologies.146 To cite but a few examples in the code, sexual violence was not considered a crime against the person but, instead, it was categorized as a crime against the “public moral.”147 Further, an individual could be convicted and imprisoned under the code for committing a crime “against the health and integrity” of a decent society by engaging in an act of abortion, procured impotence, or by knowingly spreading venereal diseases such as syphilis or gonorrhoea.148

The new Civil Code was enacted on April 21, 1942, the anniversary of the foundation of Rome,149 in order to symbolize the solemnity of the event and the ideal thread that connected ancient Roman law with Fascist legislation. Besides the various innovations introduced, it is important to underline that family law remained inspired by a patriarchal model150 and by the predominant role of the husband/father and the inferiority of the wife.151 For some authors,

140 Gori, supra note 98, at 39.
141 R.D. 5 settembre 1938, n. 1514, art. 1, in G.U. 5 ottobre 1938, n. 228 (“L’assunzione delle donne agli impieghi presso le Amministrazioni dello Stato e degli altri Enti od Istituti pubblici, ai quali esse sono ammesse in base alle disposizioni in vigore nonché agli impieghi privati, è limitata alla proporzione massima del dieci per cento del numero dei posti.”).
142 Id. (“E’ riservata alle pubbliche Amministrazioni la facoltà di stabilire una percentuale minore nei bandi di concorso per nomine ad impieghi.”).
143 Id. (“Le pubbliche Amministrazioni e le aziende private che abbiano meno di dieci impiegati, non possono assumere alcuna donna quale impiegata. E’ fatta eccezione nei riguardi nelle aziende private per le parenti od affini sino al quarto grado del titolare dell’azienda.”).
144 These two codes are still in force but with enormous changes. For the reforms, see supra Part VII.
147 Codice penale [C.p.] tit. IX.
150 See BESSONE, supra note 131, at 10.
“the 1942 codification appears to take a position toward wives and children that is even more conservative and discriminatory than that of its predecessor.”

The family’s social function was emphasized as a keystone in the Fascist social order more than an institution in the interest of the spouses and children. The husband remained the master of the household. The wife had a generic duty of obedience toward the husband, and—according to some interpreters—the husband maintained a jus corrigendi (a right to correct) the wife.

The provisions contained in the new Civil Code of 1942, which have been considered “reactionary antidemocratic” as far as family relationships are concerned, had to undergo a profound change in future years. With the collapse of Fascism and the Italian defeat in the War, the structure of family and society would have to face radical transformations. A new concept of masculinity would emerge out of the ashes.

V. THE POSTWAR PERIOD AND THE NEW EQUILIBRIA DICTATED BY THE NEW ITALIAN CONSTITUTION

Even before the end of World War II, a rapid succession of events brought the enactment of a law that finally introduced universal suffrage. By Legislative Decree n. 23 on February 2, 1945, all women were given the right to vote and they exercised—concretely—this right at the referendum concerning the choice between monarchy and republic that took place on June 2, 1946. On the same occasion, members of the Assemblea Costituente took aim to draw up a new republican constitution.

In 1948, the first republican Parliament was elected: forty-five women were elected to the Camera dei Deputati (7.1% of the Members of the Chamber), while only four were elected to the Senato della Repubblica (1.2% of the Members of the Senate).

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155 Pocar & Ronfani, *supra* note 152, at 608.


157 Pocar & Ronfani, *supra* note 152, at 609.

158 See Barbara Pozzo, *Italy*, in *ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW* 453, 455–56 (Jan M. Smits ed., 2d ed. 2012) (discussing the succession of events that led to the addition of women’s suffrage in Italy).

159 Decreto Legge [D.L.] 2 febbraio 1945, n. 23.


The new republican constitution redesigned the relationships between men and women, introducing the principle of equality in various contexts. Article 3 of the Italian Constitution, establishes a general principle of equality and non-discrimination: “All citizens have equal social dignity and are equal in front of the law, regardless of differences of sex, race, language, religion, or political opinions.”

In the same article, the principle of equality received a positive interpretation: “It is the duty of the Republic to eliminate economic and social obstacles, that limit the citizens’ freedom and equality, prevent the full development of the individual and the real participation of all workers to the political, economic and social organization of the country.”

The principle of equality was further specified in various dispositions of the Constitution. Equality was affirmed in Article 29 of the Constitution, which refers to the value of family in society: “Marriage is based on the moral and legal equality of the spouses within the limits laid down by law to guarantee the unity of the family.”

Article 37 specifically referred to working women, stating, “Working women are entitled to equal rights and, for comparable jobs, equal pay as men. Working conditions must allow women to fulfill their essential role in the family and ensure appropriate protection for the mother and child.”

Finally, as far as political rights and duties were concerned, Article 51 established that “[a]ny citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law.”

Notwithstanding these very vast and general provisions, Italian society in 1947 was hardly characterized by equality between men and women. It would take more than thirty years to see the principle of equality have any impact on family law and social life. Many authors, in fact, commented on the role of such constitutional principles as mere “programmatic” rules, with no direct impact on private law.

Between 1942, when the Civil Code was enacted, and the 1970s, when Parliament accomplished the reforms, an important role was played by case law (especially by the Court of Cassation) and, in particular, by the Constitutional Court. It is important to note that even in a civil law country, like...
Italy, judges have an enormous influence in shaping social life and feeding stereotypes.

VI. THE ROLE OF CASE LAW IN SHAPING AND RESHAPING ROLES AND STEREOTYPES

Sociologists and historians have pointed out that after the Italian defeat in the war, the humiliations suffered in the prison camps, and the fall of the myth of the Superman, the Italian concept of masculinity underwent a profound crisis.\textsuperscript{171} Movies\textsuperscript{172} and literature\textsuperscript{173} offer a wide field of analysis in this perspective.

The radical changes in Italian society that followed the so-called “economic boom,” with a strong urbanization, the mass migration from the poorer South to the industrialized North, and the marginalization of the peasant culture undoubtedly brought the abandonment of traditional shared values.\textsuperscript{174} From the legal viewpoint, however, it took a long time to rid society of many stereotypes.

One of the most obvious examples concerned the long debate on the evolution of a specific tort called the “seduction under the promise of marriage.”\textsuperscript{175} Article 526 of the 1930 Penal Code provided for a special crime...
called “seduction under promise of marriage committed by a married person,” stating: “Anyone who, with a promise of marriage, seduces a woman under age, inducing in her a mistake concerning his marital status shall be punished with imprisonment from three months to two years. There is seduction when there has been sexual intercourse.”176 In these cases the victim could also ask for damages. But from a private law point of view where there was no specific provision on this matter, Italian case law developed a particular tort for those cases in which the victim was not underage and the man was not married.

It is worth emphasizing that the Italian legal system does not provide for a series of typical torts as in the common law countries. But, as in France,177 the Civil Code of 1865 and of 1942,178 provided a general clause for civil liability. For example, the 1942 code stated, “Any fact, committed either with negligence or fraud, which causes unjust damage to others, obliges the one who committed it to pay damages.”179

Out of this very general provision, Italian judges developed the possibility for unmarried women, who had been induced to have sexual intercourse under the promise of marriage, to recover damages for their lost virginity and, therefore, for the decreased chance to get married.180 The damages were founded either on economic grounds, that is to say in the diminished possibility of contracting a good marriage, or on moral grounds—for example the social devaluation that the girl would encounter after having had sexual intercourse without getting married.181

In order to ascertain the existence of negligence or fraud, required by Article 2043 of the Civil Code in order to claim damages, it was sufficient to show that the man had committed a “negligent evaluation of the circumstances that would have allowed or prevented the implementation of the promise.”182

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178 Pozzo, *supra* note 158, at 457 (“The main sources of inspiration for the Italian Civil Codes changed during the period from 1865 to 1942. The first Italian Civil Code (1865) corresponded to a transplant of French legal sources, while the second (1942) was strongly influenced by a shift towards German Pandectistic patterns as regards legal discourse and methodology.”).
179 C.c. art. 2043.
180 Case law is quite vast and dates back prior to the 1942 Code’s enactment. See, e.g., Torino, 23 giugno 1899, 15 Il Filangieri 770.
181 See Pozzo, *supra* note 175, at 1109.
Finally, the injustice of the damage, also required by Article 2043, could be found in the “violation of woman’s sexual freedom” or in the “violation of woman’s sexual self-determination.”

On the tort for seduction under the promise of marriage, it is important to highlight at least the following aspects: First, one important aspect is the rhetoric used by judges in these cases. It is often possible, in fact, to find expressions, especially in Latin, that make specific reference to the delivery that women make of their body (traditio corporis) in the hands of men, as if it were a precious object that they need to preserve in view of the future marriage. Judges highlight that in the case of a tort the so-called traditio corporis ante nuptias (literally: the delivery of the body before the celebration of the wedding) has to be committed in reliance of a future wedding. In these decisions, women are characterized as childish human beings, who need to be protected from more sophisticated Italian men. Another possible interpretation could be the one of dividing women into two groups: virtuous on the one hand and morally corrupted on the other. This, of course, is not a desirable interpretation of these decisions.

Second, it is important to highlight the chronological aspect. The criminal provision was abolished only in 1996, while the last tort law case was decided by the Court of Cassation in 1993. The persistence of these stereotypes is unfortunate.

Third, the decisions regarding the tort for seduction under the promise of marriage revealed a strong geographical diversity. So, for example, a decision of the Tribunal of Milan, delivered in 1950, stated that “nowadays it is impossible to say anymore that, merely for the reason of having had sexual intercourse before marriage, the economic future of the woman is compromised; because the idea that she could not find a husband in modern society is beyond reality.” Most of the courts of first instance in northern Italy had followed that trend. On the contrary, in Sicily, damages for seduction under the promise of marriage under Article 2043 of the Civil Code were awarded until the mid 1980s. This vision of a retrograde South has also often been emphasized in movies that elaborated a harsh critique against the old fashioned customs of

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183 This was the holding in Cass., 14 novembre 1975, n. 3831. See also Paolo Cendon & L. Gaudino, La Seduzione con Promessa di Matrimonio, in LA RESPONSABILITÀ CIVILE: SAGGI CRITICI E RASSEGNE DI GIURISPRUDENZA 323 (Mario Bussani & Paolo Cendron eds., 1988).
185 See, e.g., sources cited supra note 184.
186 Feola, supra note 175, at 951–57 & n.6.
188 Cass., sez. tre, 8 luglio 1993, n. 7493.
191 E.g., Trib. di Messina, 9 marzo 1980, appealed but confirmed before the Court of Appeal of Messina, 22 febbraio 1982, appealed and confirmed by the Court of Cassation, 27 novembre 1986, n. 6994. See also Cendon & Gaudino, supra note 183, at 323.
Sicilian people, like *Sedotta e Abbandonata* by Pietro Germi\(^{192}\) or Mario Monicelli’s *La Ragazza con la Pistola*.\(^{193}\)

Fourth, it is necessary to highlight the role of judges of the Court of Cassation with regard to this geographical lack of homogeneity. One of the roles attributed by law to the Court of Cassation is to guarantee the uniform application of national law.\(^{194}\) Given this task, theoretically, it would still be possible to share the vision laid down by the Court of Cassation even in recent cases: that it is necessary to evaluate damages suffered by the victim in concrete terms and especially, as far as it concerns the social devaluation that the woman may suffer, taking into account the local circumstances. Practically, it became very difficult to do it in those cases that were decided in the 80s, where the local first-instance court and the local appellate court had denied the possibility of awarding damages, given the evolution of social customs. So, in conclusion, instead of guaranteeing the uniform application of the law, the Court of Cassation remained anchored to old schemes that corresponded with the popular representation of Italian men as great seducers. It is worth noting that this trait of Italian masculinity—reflected historically in some classic icons like *Casanova* or *Rodolfo Valentino*—appears also to be geographically bound: for Italians, the classical seducer is in fact much more connected to the sensuality of southern Italy than to the qualities of men of the North.\(^{195}\)

Finally, the evolution of this tort reflected the evolution of sexual education in Italy. Until 1959, the State administered brothels, the so-called *Case chiuse* (“closed houses” or “shuttered houses”).\(^{196}\) These closed houses had remained, for years, the emblem of the difference existing in sexual education and initiation between men and women: men had a sexual initiation before the marriage in brothels, while women had to arrive at the altar a virgin. It was only on the initiative of Lina Merlin, a socialist member of the Italian Parliament, that Law n. 75 of 1958 (called the Legge Merlin) was passed, abrogating the old system.\(^{197}\) Even here, it is difficult to eradicate prejudices, even among the most cultivated men.

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\(^{192}\) The movie was released in 1964. The title can be literally translated as “Seduced and Abandoned.” It describes—in Pietro Germi’s typical sarcastic and tragicomic way—the story of Agnese who is seduced by her sister’s fiancé and—especially—the ensuing reaction by the father of the two girls. *See Sedotta e Abbandonata* (Lux Films 1964).

\(^{193}\) *La ragazza con la pistola* (literally: “The girl with the gun”) tells the story of Assunta Patané, who is kidnapped and seduced by a boy from her small village in Sicily. As there are no men left in her family, in order to save her honor and the honor of her sisters, she travels to Great Britain with a gun in order to kill her seducer—who had escaped before marrying her. The movie is a hilarious comedy that compares Sicilian customs of the 1960s with the much more modern British attitudes of the 1960s. *See La Ragazza con la Pistola* (Documento Film 1968).

\(^{194}\) *Ordinamento giudiziario* (The Law on the Judiciary), promulgated with Regio Decreto [R.D.], 30 gennaio 1941, n. 12. Art. 65, provides in particular that the “duties of the Supreme Court of Cassation” are “to ensure the exact observance and uniform interpretation of the law and the unity of national substantive law.” R.D. 30 gennaio 1941, n. 12, Art. 65.

\(^{195}\) Dell’Agnese, *supra* note 2, at 22.

\(^{196}\) *See Pasquale Romeo, Maschio Addio* 93 (2010).

\(^{197}\) Legge 20 febbraio 1958, n. 75 (“Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui.”).
Another field where Italian judges elaborated solutions that had an important impact on redesigning the roles of men and women in family and society is adultery law. According to the Italian Penal Code, adultery was a crime but only if committed by the wife. Article 559 of the Italian Penal Code stated that “[t]he adulterous wife shall be punished with imprisonment up to one year . . . .”198 As far as the husband was concerned, Article 560 of the Italian Penal Code introduced the crime of concubinage, establishing that “[t]he husband who takes a concubine in the marital home, or known to be elsewhere, shall be punished with imprisonment of up to two years.”199

Various cases challenged the constitutionality of these provisions, asking for a more coherent application of Article 3 and Article 29 of the Constitution.200 Initially, the Constitutional Court rejected these claims, pointing to the more serious consequences of adultery by the wife as opposed to adultery by the husband.201

It was not until 1968–1969 that the Italian Constitutional Court, with a series of decisions,202 established that Article 559 and Article 560 of the Italian Penal Code opposed the principle of equality contained in Article 3 and Article 29 of the Constitution, finally stating that “the discrimination that these norms were establishing, far from being useful, is—to the contrary—against the concord and the unity of the family.”203

VII. THE LEGISLATIVE REFORMS OF THE 70S: TOWARD REAL EQUALITY

In order to see a real change in equality, the subsequent reforms arrived only in the 1970s on the initiative of the Italian Parliament.

198 C.p. art. 559.
199 C.p. art. 560.
200 See supra notes 162 & 164 and accompanying text (defining Arts. 3 and 29).
201 Corte Cost. 23 novembre 1961, n. 64 (where the judges were stating that the principle of fidelity was the same for both spouses, but the gravity of the adultery of wives was related to the consequences that arise out of social life and of common experience). This rendered the different treatment by the legislator legitimate:

Indubbiamente, secondo una pura valutazione morale, alla quale, a parte le leggi, è auspicabile che idealmente si ispiri la vita della famiglia, il principio della fedeltà coniugale è unico, e non soffre discriminazioni di carattere quantitativo. Tuttavia, l’ordinamento giuridico positivo non può del tutto prescindere, e di fatto non prescinde, dalle valutazioni che si affermano, spesso imperiosamente, nella vita sociale. Ora, che la moglie conceda i suoi amplessi ad un estraneo è apparsò al legislatore, in base, come si è detto, alla prevalente opinione, offesa più grave che non quella derivante dalla isolata infedeltà del marito. Al di fuori di ogni apprezzamento, che non spetta alla Corte di compiere, trattasi della constatazione di un fatto della vita sociale, di un dato della esperienza comune, cui il legislatore ha ritenuto di non poter derogare. Da solo esso è idoneo a costituire quella diversità di situazione che esclude ogni carattere arbitrario e illegittimo nella diversità di trattamento.

203 Corte Cost., 16 dicembre 1968, n. 126. See also Bessone, supra note 131, at 22.
A. The Introduction of Divorce Law in 1971

It was only with the action taken by two deputies of very different political affiliations, the Socialist Fortuna and the Liberal Baslini, that approval of the law on divorce took place.\textsuperscript{204} Although the initiative was immediately supported by public opinion, in Parliament, the Christian Democrat, the Monarchist, and the Neo-Fascist parties opposed it.\textsuperscript{205} It was only by a vote of 325 to 283 in the Chamber and 164 to 150 in the Senate that Law n. 898 of December 1, 1970 was approved.\textsuperscript{206}

The system of Law n. 898 of 1970 provided that dissolution of marriage was permitted only for objective causes, like a long sentence of imprisonment, imprisonment for defined offenses against the spouse or the children, or—finally—separation for a period of five or seven years, depending on the circumstances.\textsuperscript{207} Termination of marriage by mutual consent was therefore possible—but conditioned—by a long separation.

The law of 1970 was subsequently revised by two laws passed in 1978 and 1987, aimed at, inter alia, shortening the periods to get divorced.\textsuperscript{208}

B. The Family Law Reform of 1975

A comprehensive reform of family law was introduced by Law n. 151 of 1976.\textsuperscript{209} In practice, the reform law has rewritten a large part of Books I and II of the Italian Civil Code, finally giving effectiveness to the provision of Article 29 of the Constitution.

The main characteristic of this reform was “the abolition of every residual trace of the husband’s marital authority.”\textsuperscript{210} Article 143, which provided that the husband is the head of the family, was completely rewritten in the following terms: “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 at home, to contribute to the needs of the family.”\textsuperscript{211}

The patria potestà is further substituted with the autorità genitoriale, that is with a reference to both parents.\textsuperscript{212} Other provisions of the reform provided that economic rights of the spouses follow the same principle.

\textsuperscript{204} Pocar & Ronfani, supra note 152, at 618.

\textsuperscript{205} Id. at 618–19.

\textsuperscript{206} Just after the promulgation of the law on divorce, it was challenged by an abrogative referendum supported by the Catholics. The referendum was defeated on May 12, 1974, and since then the Law has remained in force. Alberto Marradi, Italy’s Referendum on Divorce: Survey and Ecological Evidence Analyzed, 4 EUR. J. POL. RES. 115, 115–17 (1976).

\textsuperscript{207} Pocar & Ronfani, supra note 152, at 619.

\textsuperscript{208} Legge 1 agosto 1978, n. 436; Legge 6 marzo 1987 n. 74.

\textsuperscript{209} On the Reform, see generally Alfio Finocchiaro & Mario Finocchiaro, Riforma del Diritto di Famiglia (1975); Bessone, supra note 131, at 28; Caravaggi et al., supra note 70, at 77; Il Nuovo Diritto di Famiglia (Claudio Delitala & Giulia Minoli eds., 1976).

\textsuperscript{210} Pocar & Ronfani, supra note 152, at 631.

\textsuperscript{211} For a comment on the new Art. 143, see generally Finocchiaro & Finocchiaro, supra note 209.

\textsuperscript{212} S. Rodotà, La Riforma del Diritto di Famiglia alla Prova: Principi Ispiratori e Ipotesi Sistematiche, in Il Nuovo Diritto di Famiglia, supra note 209, at 3.
The regime of separate property, which was in force before the reform, was substituted by a regime of common property. Under the previous regime, assets acquired during marriage were the property of the spouse who had concretely acquired them; so, basically, they belonged to the husband. After the reform of 1975, goods acquired after marriage were property of both spouses, who have the same rights over them. The regime of separate property became the exception: it required an explicit expression of intention by the spouses at the time of marriage.213

Another important new disposition was the one connected with the family name. Until the reform, the married woman changed her own family name to the family name of her husband. With the new Article 143-bis introduced by the Reform of 1975, the wife simply added the family name of her husband to her own family name.214

C. The Abolition of Honor Killings and the “Shotgun” Marriage

The last legislative initiative taken by the Italian Parliament to redesign the relationship between genders and to render positive law in line with the Constitutional principles and the changed social perception of the role of women in society was to abrogate the provisions still in force on honor killings and “shotgun” marriages.

Article 544 of the 1930 Italian Penal Code established that in the case of kidnapping and rape, if the perpetrator married the victim, the marriage would have been considered sufficient grounds to extinguish the offense. Even when the perpetrator had already been condemned, the marriage would have cancelled all the effects of the sentence.215 Article 587 of the same Code established that

anyone who causes the death of his spouse, daughter, or sister, when he discovers an unlawful carnal connection and he is in a state of anger caused by the offence made to his honor or the one of his family, is punished with imprisonment from three to seven years. The same penalty is applicable to the murderer when he causes the death of the person who is in the unlawful carnal relationship with the spouse, the daughter or the sister.216

213 Pocar & Ronfani, supra note 152, at 632.
214 On the reform of family names, see Rodotà, supra note 212; Finocchiaro & Finocchiaro, supra note 209, at 261.
215 The old version of Art. 544 of the Codice penale stated: “[I]l matrimonio, che l’autore del reato contragga con la persona offesa, estingue il reato, anche riguardo a coloro che sono concorsi nel reato medesimo; e, se vi è stata condanna, ne cessano l’esecuzione e gli effetti penali.” C.p. art. 544 (1930).
216 The old version Art. 587 of the Codice penale established:

Omicidio e lesione personale a causa di onore. . . .
Chiumque cagiona la morte del coniuge, della figlia o della sorella, nell’atto in cui ne scopre la illegittima relazione carnale e nello stato d’ira determinato dall’offesa recata all’onor suo o della famiglia, è punito con la reclusione da tre a sette anni. Alla stessa pena soggiace chi, nelle dette circostanze, cagiona la morte della persona, che sia in illegittima relazione carnale col coniuge, con la figlia o con la sorella. Se il colpevole cagiona, nelle stesse circostanze, alle dette persone, una lesione personale, le pene stabilite negli articoli 582 e 583 sono ridotte a un terzo; se dalla lesione personale deriva la morte, la pena è della reclusione da due a cinque anni. Non è punibile chi, nelle stesse circostanze, commette contro le dette persone il fatto preveduto dall’articolo [581].
Both norms had been applied, especially in the South, and had been at the center of harsh critiques over the course of time. In particular, the application of Article 544 was challenged in 1965 by the refusal of a young Sicilian girl, Franca Viola, to marry her kidnapper and by his subsequent jail sentence. Franca Viola became the symbol of a new social conscience of the South: her story was told in a 1970 hit movie *La Sposa più Bella* by Damiano Damiani.

The perverse effects of the application of Article 587 have inspired Italian film-makers: *Divorzio all’italiana* (*Divorce Italian Style*), a 1961 movie directed by Pietro Germi, reached international fame when the movie won the Academy Award for Best Writing, Story and Screenplay. The movie unveils the hypocrisy of Southern people, when Ferdinando Cefalu (interpreted by a fabulous Marcello Mastroianni) plans to make his wife have an affair so he can catch her with her lover, murder her, and receive the light sentence allowed by Article 587 of the Penal Code. In a situation characterized by the absence of the divorce, this was the only way to get rid of the boring wife and to marry the young and beautiful cousin Angela (played by a fourteen-year-old Stefania Sandrelli): a *Divorce Italian Style* indeed!

Finally, by Law n. 442 of August 5, 1981, these articles were abrogated. It is interesting to read the report that accompanied the approval of this law at the Senate. On the one side, it was underlined that such a reform “accompanies an evolution of social conscience, although not yet in a homogeneous way in all parts of the country.” On the other side, it was pointed out that during the last twenty years, the Parliament had discussed numerous proposals of abrogation of these norms, and that honor killing seemed but “a historic wreck.” The Senate finally declared that “[t]hirty years after the enactment of the republican constitution, which enshrines equal rights for all citizens, Article 587 must be considered a foreign body that should be removed as soon as possible.”

C.p. art. 587 (1930).


218 *Divorce Italian Style* (Lux Film 1961).

219 *Id.*


222 *Id.* (“È un provvedimento di una importanza notevole, in quanto nell’ordinamento si recepisce uno svolgimento della coscienza sociale che ormai è maturata, anche se non ancora in maniera omogenea nell’articolata varietà nazionale, nel nostro paese.”).

223 *Id.* at 6967.

224 *Id.* at 6968.
D. Abortion Law

Deserving of a separate discussion is the introduction of the Abortion Act, by Law n. 194 of May 22, 1978.\footnote{Legge 22 maggio 1978, n. 194, in G.U. 22 maggio 1978, n. 140. (“Norme per la tutela sociale della maternità e sull’interruzione volontaria della gravidanza.”).} Although the law on abortion often has been presented as a victory for Italian feminism, it must also be remembered that this law was enacted after a particular catastrophic event.\footnote{See generally GIAMBATTISTA SCIRÉ, L’ABORTO IN ITALIA: STORIA DI UNA LEGGE (2008); see also CARLO CASINI & FRANCESCO CIERI, LA NUOVA DISCIPLINA DELL’ABORTO (1978).} On the one side, it is true that important leaders of the Italian feminist movement, like Adele Faccio and Adelaide Aglietta, fought a long battle in order to achieve the legalization of abortion in Italy.\footnote{See SCIRÉ, supra note 226, at 68–69; see also Barbara La Rosa, Maria Adelaide Aglietta, EMPATIA DONNE, http://www.empatiadonne.it/index.php?option=com_content&view=article&id=130:maria-adelaide-aglietta&catid=105:politiche&Itemid=176 (last visited May 1, 2013).}

But the context in which the law on abortion saw the light was strongly influenced by events that took place in Northern Italy and in the town of Seveso in particular. There, on July 10, 1976, the reactor of a Swiss factory (ICMES\text{\textaela}) exploded and released a toxic cloud of dioxin. Dioxin is a highly teratogenic substance capable of creating serious malformations in fetuses. As a consequence, although abortion was still illegal in Seveso in 1976, the women of the town who were pregnant at the time of the accident were allowed to abort. The emotional wave that followed this event was considered grounds to speed up the approval of the bill on abortion that was pending in Parliament for a long while.\footnote{See LAURA CENTEMERI, RITORNO A SEVESO: IL DANNO AMBIENTALE, IL SUO RICONOSCIMENTO, LA SUA RIPARAZIONE 66 (2006).} The rapid process of approval of the law should therefore be understood in this perspective.

All these reforms were able to put the equality principle into action and the positions of men and women in society have been at least partially rebalanced in the last decades.

VIII. Masculinity Italian Style on the Move

It is nevertheless only very recently that a serious debate on the meaning of masculinity in current Italian society has emerged. It is possible to identify various perspectives of analysis.

A. Does Mr. Berlusconi Embody the New Italian Masculinity Model?

One is certainly focused on the role that former Prime Minister Berlusconi has developed in this regard, representing at the national and international level a perverse kind of old-fashioned Italian concept of masculinity. It is indeed difficult to avoid the subject for a variety of reasons. The first reason is that he presented himself as a model of masculinity, or better, as “the only virile boss,” explaining that this is the anagram of his own name (SILVIO BERLUS-
The second reason is that it is very difficult to get away from a model of masculinity (and by contrast also of femininity) proposed by the president of the government, owner of multiple TV networks, various newspapers and magazines, department stores, and so on, who is therefore able to have an influence on public opinion that few others can.

The communicative strategies developed by Berlusconi often have been analyzed, especially with regard to the style used when speaking of women, or to women. In particular, a group of scholars have studied the semantic register used in his speeches prepared for the parliamentary elections of 1999 and aimed at an audience consisting entirely of women, the so-called Azzurre, supporters of his movement.

In this analysis it is possible to note that when he speaks to women, he deliberately uses a simplified register, similar to the one used in teaching, in particular, to highlight the logical connections of the speech and keep the attention of the public, thus revealing the assumption by the speaker that the listener has limited mental capacity. When he doesn’t talk to women, but of the women who support his movement, it is also interesting to note that he always emphasizes their role as wives, mothers, and daughters, and never as distinct individuals.

In the words of Berlusconi himself, this is what he expects from women: “From you, from the women’s world, Forza Italia (his party) has received, receives, and will receive that sensitivity that is yours alone, the sensitivity of those who understand the issues before making a rational study, by instinct, your ability to sacrifice yourself, to dedication, to love, to give to others.”

The contribution of women then should materialize in the spirit of sacrifice, the capacity to love, and the generosity toward others, juxtaposing rationality—typically male prerogative in accordance with Berlusconi—the feminine sensibility, conceived almost as an alternative to the reasoning and the ability to make a contribution in terms of ideas.

In Berlusconi’s rhetoric, women are the object of appreciation in regards to their physical appearance, praised more than their intellectual gifts. Even the most casual observer will immediately see that the lexicon of Berlusconi proposes overwhelmingly old (and outdated) stereotypes of women, whose role is

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232 Id. at 123.

233 Id. at 128.

234 Id. at 129.
relegated to the “eye candy.” The image of the “seducer” reappears in the lexicon of Berlusconi on several occasions, as highlighted in international news.

Another example of the way by which Berlusconi handles women occurred years ago when Finland and Italy both tried to get the seat for the EU Agency for Food Safety. On that occasion, Berlusconi reported to all newspapers that in order to get the seat, he had to put into practice his “playboy charms” against Tarja Halonen, the female president of Finland. Can you imagine?

In the language of Berlusconi, he insists upon the image of women as objects of sexual desire of the Italian male. Federica Rossi Gasparrini, president of the Italian housewives association Federcasalinghe, recalls that when she asked Berlusconi if the government really cared about housewives and their needs, Berlusconi replied, laughing: “Of course we are interested in housewives, provided they are younger than twenty-five and wear a double-D.”

B. Woman-Object, but also Man-Object: The World of Fashion Advertisement in Italy

The age of Berlusconi has once again proposed an old-fashioned way to understand masculinity and relationships between men and women, where the men are the hunters and the women the object of the hunt. These stereotypes have been particularly emphasized by Berlusconi’s television network and have been at the core of harsh critiques.

It is also necessary to emphasize that, more recently, men’s bodies have been objectified. This is particularly true when we look at the world of fashion advertisement in Italy. Without pretending to examine the issue here, which would require the analysis of semioticians more than lawyers, it seems important to point out that fashion has always had an influential impact on Italian society and that advertisements, especially of products of the fashion industry, play an important role in defining models of masculinity and femininity. If we look to Armani’s effeminate male models or to the last advertisement of Marc Jacobs Bang Perfume, it appears clear that something is changing: men’s bodies are now treated as objects as well.

235 This is the point of view of a Swedish journalist Kristina Kappelin in her article Berlusconi och Kvinnorna (“Berlusconi and the women”). Kristina Kappelin, Berlusconi och Kvinnorna, DAGENS NYHETERS (Nov. 14, 2010, 8:43 AM), http://www.dn.se/kultur-noje/berlusconi-och-kvinnorna.


237 “Playboy” Berlusconi Irks Finland, BBC NEWS (June 23, 2005, 10:00 AM), http://news.bbc.co.uk/go/pr/fr/-2/hi/europe/4122596.stm.

238 Kappelin, supra note 235 (this is a rough translation, the Italian version reads: “Certo che ci interessano le casalinghe . . . A patto che abbiano meno di 25 anni e portino la quarta.”).

239 See, e.g., Lorella Zanardo, Il Corpo delle Donne (2010).

240 See Emanuela Mora, La Moda Italiana e l’uomo Integrato, in MASCOLINITÀ ALL’ITALIANA: COSTRUZIONI, NARRAZIONI, MUTAMENTI, supra note 1, at 103; see also Rosita Levi Pizetzky, Il Costume e la Moda Nella Società Italiana (1978).
C. The Father’s Rights Movement

Another very different, but important aspect of the evolution of the concept of masculinity that has brought important legislative changes is the father’s rights movement, which arose out of diverse pressure groups, like *Pari diritti per gli uomini* (Equal Opportunities for Men), *Associazione padri separati* (Divorced Fathers Association), and *Papà separati* (Divorced Fathers).241

The link between masculinity and paternity has certainly changed in Italy in recent years, although recent analysis emphasizes that Italian women, though working full time, spend most of their free time taking care of children and doing housework.243 Nonetheless, the recent legislative changes highlight that more and more fathers are ready and willing to participate in the education of children in a more meaningful way. One of the most important reforms introduced in this regard concerns the shared custody regime that has been adopted by Law n. 54 in 2006,244 which introduced some relevant developments as far as fathers’ rights over children during the phase of separation, breaking from the pre-existing culture of mono-parenting.

After the promulgation of the Law on Divorce in 1971, the mother was practically always named the custodian of children. The new legislation, instead, has completely modified Article 155 of the Civil Code, introducing joint custody as a general rule, while sole custody has remained an exception—granted by the judge only in cases where it guarantees the welfare of the child.245

In concrete terms, under a shared custody regime, both parents share physical placement of the children. It allows the children to live with each parent fifty percent of the time during the year. In this case, parenting plans are established to determine when each parent has the children living with them.246

Another recent development that acknowledges the new role of men in Italy, and a new concept of masculinity, is the reform concerning paternity leave. According to Italian law, mothers were granted five months of compulsory maternity leave (fully paid), and up to three years of unpaid leave, main-

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241 The father’s rights movement is embodied by an interesting novel by Gianni Biondillo. This novel appears emblematic of the problems connected with the father’s rights movement. See GIANNI BIONDILLO, *NEL NOME DEL PADRE* (2009).


244 Legge 8 febbraio 2006, n. 54, in G.U. 1 marzo 2006, n. 50 (“Disposizioni in materia di separazione dei genitori e affidamento condiviso dei figli”).

245 Id.

246 Id.
taining the right to return to their job. According to a new law passed in 2003, these rights have been extended to fathers.247

IX. SOME PRELIMINARY CONCLUSIONS

It is always interesting, when we observe a phenomenon, to also look at it from an outsider’s perspective.

If we look at the titles that prestigious British newspapers, including The Times, have dedicated to Italian men in the last ten years, we can find all the traditional stereotypes on the matter: they hate their mother-in-law,248 they are peacocks,249 they are passionate,250 they are male chauvinists,251 they are mummy’s boys,252 and they don’t want to do housework.253 Considering all this, Churchill’s famous description representing Italians as “Latin-lovers, spaghetti-eaters, and mandolin-players,” will die hard.254

Things are changing, anyway. Not rapidly, but they are changing. And, in any case, hope is the last to die . . . we are the country of the women’s foil dream team after all!255

250 See, e.g., Colin Adamson, Italian Passion Leads to Drama in Mid-Air, EVENING STANDARD (London), Feb. 4, 2002.
251 Sarah Vine, Berlusconi’s Italy Shows a Strange Type of Feminism, TIMES (London) (June 23, 2009, 12:00 AM), http://www.thetimes.co.uk/tto/life/article1750491.ece.
253 See Martin Penner, Italian Men Are Warming to Housework, ITALY (Sept. 15, 2006), http://www.italymag.co.uk/italy/italian-men-are-warming-housework (noting that for years Italian men have been “accused of shunning household chores”).
255 This reference is made to the fact that in the 2012 Olympics, the gold, silver, and bronze medal for foil fencing were won by Italian women. The gold medal was also awarded to the Italian team. Women’s Individual Foil, LONDON 2012, http://www.london2012.com/fencing/event/women-foil/index.html (last visited May 1, 2013).