

The Tides of Vatican Influence in Italian Reproductive Matters:

From Abortion to Assisted Reproduction

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Introduction

There is no place else in the world where an independent religious state exists within the boundaries of another country. The situation is not only geographically unique, but it also allows for an unusual power dynamic. The Vatican, capital of the Roman Catholic Church, is located within Rome, Italy and is an influential element in Italian politics.

The issue of the right to life is of utmost importance to the Church, and its officials preach accordingly. They call for universal respect for human lives, “still to be born or in their final stage.”¹ With such a strong doctrinal focus on protecting life, it is no wonder that the Pope² and the Roman Catholic Church have taken up the call of protecting the unborn.

Although the Church is influential throughout the world, its recommendations hold the most water in Italy. In particular, the “Holy See” has worked to gain political authority through the Christian Democrat Party.³ Aside from direct political activity, the Popes have also voiced the Church’s concerns to the people through their encyclicals, exhortations, speeches, and letters to political figures.⁴

The Church has taken a personal stance against the limited 1978 Italian abortion law, Law 194, even leading the failed reform attempt in 1981. Law 194 remains in effect today, but may have been seriously undermined by the 2004 law on assisted reproduction, known as “MARL.” MARL, while favorable to the church, severely limits alternative reproductive options and increases the rights given to an embryo.

¹ John Paul II, *Evangelium Vitae*, §4, Mar. 25, 1995, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995 [hereinafter John Paul II, *Evangelium Vitae*].

² The Pope is also referred to as the Holy See. For additional information on the Vatican, the Popes, and other Roman Catholic officials, visit <http://www.vatican.va> and choose the language in which you prefer to view the site.

³ In Italian, known as *La Democrazia Cristiana* or *La DC* (pronounced *Dee-Chee*).

⁴ While all of these will be considered to some extent, each topic will consider in-depth the text of just one papal document, but will also reference other relevant documents with corresponding or similar themes and messages.

This paper will consider the past and present Vatican influence over Italian reproductive laws, while discussing the future direction of Vatican action and Italian legislation. Part I looks historically at the relationship between Italy and the Vatican. Part II focuses on Italy's abortion law, Law 194. Part III explores Law 40/2004 limiting assisted reproduction in Italy. Finally, Part IV considers what these laws mean in terms of the Italy-Vatican relationship and whether there are similar issues plaguing the United States and other European countries. Though these laws point in different directions, it is clear that the Holy See is determined to continue its initiatives promoting respect for all human life. Although the laws have become progressively restrictive (or Catholic, as one may see it) on reproductive rights, there is still hope for a new direction.

PART I. HISTORY

A. The Interplay Between Italy and the Vatican

When one thinks of Italy, and Rome in particular, there is often an immediate mental connection to the Vatican and the Roman Catholic Church. The Church was headquartered in Rome even before Rome joined the Kingdom of Italy in 1870.⁵ As noted historian Paul Ginsborg states, "Rome, too, was the capital of the only truly global Italian organization, the Roman Catholic Church. The links between this, the greatest cultural force in the land, and the world of the politicians...have been intense throughout the history of the Republic."⁶ In fact, the Italian Constitution declared "the Catholic Apostolic Roman religion is the only State religion."⁷

⁵ Lateran Pacts of 1929, It.-Vatican, Feb. 11, 1929 [hereinafter Lateran Pacts], *available at* <http://www.aloha.net/~mikesch/treaty.htm>. It was, in fact, the annexation of Rome, which led to the "Roman Question" of how the Church should be treated, and eventually led to the Lateran Pact itself.

⁶ PAUL GINSBORG, ITALY AND ITS DISCONTENTS: FAMILY, CIVIL SOCIETY, STATE: 1980-2001 41 (Palgrave Macmillan 2003) [hereinafter GINSBORG, ITALY AND ITS DISCONTENTS].

⁷ Lateran Pacts, *supra* note 5, Art. I. This agreement was revoked in 1984 as explained, *infra* note 15.

Aside from the geographical location, the Roman Catholic Church quickly proved itself to be a unique entity, involving itself in the Italian political arena.⁸ This included forming an agreement with Italy that guaranteed the Holy See “absolute independence” and “exclusive and absolute dominion...over [the Vatican] City.”⁹ Although the terms of the Pact prohibit Italy from interfering with Vatican affairs, there is no reciprocal provision insulating the Italian government from Vatican interference. Furthermore, “[c]ompulsory religious education, as agreed in the Lateran Pact, gave the church all-important access to children in state schools.”¹⁰

The Roman Catholic Church also gained political strength in Italy through the Christian Democratic Party.¹¹ The relationship, much like that between the Holy See and the Kingdom of Italy (as established in the Lateran Pact), was reciprocally beneficial.¹² In fact, the affiliation was so successful that it catapulted the DC to powerful positions within the Italian government.¹³ The Church was in a position to keep its strong authority for quite some time.¹⁴

⁸ “What distinguished this organized Catholic world from the much larger and varied population of the faithful were its proclaimed confessional involvement in politics and the hierarchical mandate which connected it to the bishops and the Holy See.” SANDRO MAGISTER, *THE CHURCH AND THE END OF THE CATHOLIC PARTY, IN ITALIAN POLITICS: THE STALLED TRANSITION* 223, 224 (Mario Caciagli & David I. Kertzer eds., Westview Press 1996).

⁹ Lateran Pacts, *supra* note 5.

¹⁰ PAUL GINSBORG, *A HISTORY OF CONTEMPORARY ITALY: SOCIETY AND POLITICS 1943-1988* 170 (Penguin Books 1990) [hereinafter GINSBORG, *A HISTORY OF CONTEMPORARY ITALY*].

¹¹ Founded in Milan in September, 1942, the “Democrazia Cristiana” (DC) filled the political gap left with the fall of the Catholic “Partito Popolare” (Popular Party) in 1926. *Id.* at 48.

¹² For example, “[t]he early program[s] of the DC were founded on an appeal to those Christian values which alone could reconcile human conflict....” *Id.* The DC relied on principles of the Church to not only establish itself, but to also make itself easily identifiable (and likeable) to the heavily Catholic population. The principles and “support of the Vatican...transformed the DC from a talking-shop into a mass party.” *Id.* at 50. Without the Holy See, the DC would have been just another political party.

¹³ As Ginsborg describes, “[i]n a country where so much of popular culture and belief was indissolubly linked with the Catholic Church, the Vatican’s overt espousal of the Christian Democrat cause contributed enormously to De Gasperi’s eventual primacy in Italian politics.” *Id.* De Gasperi was a founder of the “Partito Popolare” and a perennial player in Italian politics. Ginsborg also indicates that “strong areas of traditionally Catholic culture...had always turned out en masse for the Christian Democrats.”

B. Changing Power Dynamics

With such dynamics between a nation, a religion, and a political party, the current seemed to be flowing in the Vatican's favor. And yet, as with all things, the tides changed. There were several factors that affected the amounts and types of influence the Roman Catholic Church still has in Italy. One of the most obvious is the loss of stature as the national religion of Italy in 1984.¹⁵

Prior to that, in the Post-World War II era, Italy was striving to become a modernized country.¹⁶ However, the Church was not prepared to make such forward strides, as Paul Ginsborg notes.¹⁷ With modernity came urbanization, and “[o]ne of the most significant consequences of rural exodus and urbanization [in the 1960s] was a dramatic decline in the influence of the church.”¹⁸

GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, at 176. Throughout the 1950s the DC relied on the “church’s profound permeation of Italian society, and on [its] explicit political support at election time.” GINSBORG, A HISTORY OF CONTEMPORARY ITALY, *supra* note 10, at 168.

¹⁴ “[A]s a result of its predominant cultural longevity and by means of the Christian Democrat hold upon the state, [the Church] was the very essence of institutional authority, both political and moral. The culture it preached vis-à-vis authority was fundamentally that of submission and docility....” GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, at 103.

¹⁵ As the document states, “the [Italian] State and the Catholic Church are each in their own way independent and sovereign.” Accord between the Holy See and the Italian Republic: Modifications to the Lateran Concord, at art. I (Dr. David Holohan trans.), It.-Vatican, Feb. 18, 1984, *available at* http://www.concordatwatch.eu/showtopic.php?org_id=878&kb_header_id=841. The change in status was attributed to the “process of political and social change that has occurred in Italy over the last decades.” *Id.* This can be viewed two ways: as the Church pulling away from Italy because it did not want to be associated with the changing Italian ideals; more likely as the State pulling away from the Church in order to modernize its image.

¹⁶ “Economic and social modernization had brutally diminished church attendance and decimated the Catholic subculture. However...it was not so much the *abandonment* of Catholic values as their *continuation* in another, more secular form....” GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, at 177 (emphasis in original).

¹⁷ “The Church, as always, had to distance itself from modernity, but by so doing it excluded itself from many of the crucial battles in Italian society at the end of the century.” *Id.* at 131-32.

¹⁸ GINSBORG, A HISTORY OF CONTEMPORARY ITALY, *supra* note 10, at 245. Urbanization, as a result of World War II, brought with it many outside influences, including the American lifestyle. As Ginsborg describes it, “[w]orst of all, the Catholic family was under dire attack. It was being undermined, but not by the ‘old enemy....’ Rather, it was the American model of consumer society that had revealed itself as the Trojan horse within the citadel of Catholic values.” *Id.* at 248. To the Church, American

The fall of the DC also played a major role in the Vatican's loss of influence. It had been the leading political party in Italy for more than 30 years.¹⁹ In trying to keep the party afloat, the Pope personally involved himself in the political arena.²⁰ His efforts were fruitless, however, and the DC collapsed in 1994. Its offspring, the new Partito Popolare Italiano (PPI), suffered the same fate in 1995.²¹

The papacy of John Paul II, while losing some of its struggles, was considered to be “the reaffirmation of the centrality of the Church’s hierarchy and its institutions.”²² Other church officials stood behind John Paul II and worked toward a solution that would gain back the Church’s political clout.²³

Part II. Abortion – an ebb in influence

A. Introduction

The decision to amend Italian law to permit abortions in any way was not an easy decision. Abortions were completely illegal in Italy in 1970.²⁴ In 1976,

values were the tidal wave that crashed into Italy and caused mass destruction (to the society the Church had worked so hard to infiltrate).

¹⁹ Although the reason is not completely clear, the fall of the DC was not an unusual occurrence. The 1980s and 1990s were a time when a decline in democracy was seen throughout Europe. GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, at 138.

²⁰ In 1993 and 1994, John Paul II publicly reinforced the importance of Christian Democratic Party as the cornerstone of the nation. His letter to Italian bishops on the “Responsibility of Catholics when Faced with the Challenge of the Present Historical Movement,” demonstrated full agreement between the Pope and his vicar, as did the solemn proclamation of a ‘great prayer’ for Italy. MAGISTER, *supra* note 8, at 226-27.

²¹ *Id.* at 223. The PPI was just the new name for the DC, which felt the change would accelerate its ability to reorganize. *Id.* at 228. The ultimate factors in the PPI’s demise were that (1) it did not try to join either of the two Catholic coalitions forming for the upcoming elections and (2) Silvio Berlusconi and his party, *Forza Italia*, became the heir to the DC and the face of political Catholicism. *Id.* at 228-29.

²² GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, at 129.

²³ When the DC fell apart, “Cardinal Ruini did not renounce the Church’s political posture; in fact, beginning in the spring of 1994, he intensified his interventions even further, altering them to fit the new political framework resulting from the elections.” MAGISTER, *supra* note 8, at 229.

²⁴ Performing or receiving an abortion was punishable by up to five years imprisonment. Tens of thousands of illegal abortions were carried out each year.” GINSBORG, A

the first of many reproduction-related referenda was considered. Knowing they did not want the referendum to reach the people, the political parties tried to reform the abortion laws.²⁵

Through the discussions, the Christian Democrats proposed a new version that still defined abortion as a crime.²⁶ After much debate and negotiation, a new proposal that revoked the criminalization of abortion was agreed upon.²⁷ The Holy See was not happy. The new law, as explained more fully below, gave medical staff the right of conscientious objection. And since the “majority of doctors [in Italy] were male and Catholic, women still found great difficulty in procuring abortions in some hospitals and in some parts of the country.”²⁸

B. Law 194

In 1978, the Italian Parliament codified Law No. 194 on the Social Protection of Motherhood and the Voluntary Termination of Pregnancy.²⁹ The law, focusing on “responsible and planned parenthood,” charges the State with the task of keeping abortion from becoming a means of birth control.³⁰

HISTORY OF CONTEMPORARY ITALY, *supra* note 10, at 369-70. Ginsborg also notes the astounding disparity between “on one hand, the official morality of church and state, and, on the other, social reality.” *Id.* at 370. Consider the parallel situation in America, where medical professionals sometimes performed illegal abortions. One can imagine the other methods used. American abortion law comes from the landmark U.S. Supreme Court case, *Roe v. Wade*, 410 U.S. 113 (1973), holding that a woman could receive an abortion up until the point the fetus becomes viable, or after if required to protect the woman’s health. States have the ability to regulate the availability of abortions after the first trimester. For the most recent Supreme Court decision on abortion, see *Gonzales v. Carhart*, 127 S. Ct. 1610 (2007).

²⁵ GINSBORG, A HISTORY OF CONTEMPORARY ITALY, *supra* note 10, at 373.

²⁶ *Id.*

²⁷ “The DC has agreed to withdraw any provisions which made voluntary abortion a crime. In so doing they incurred the wrath of much of the church hierarchy.” *Id.* at 394.

²⁸ *Id.* at 394. See, e.g., Lesley Caldwell, *Abortion in Italy*, FEMINIST REVIEW, no. 7, at 49-65 (Spring 1981).

²⁹ The law begins by stating that “[t]he State guarantees the right to responsible and planned parenthood, recognizes the social value of motherhood, and shall protect human life from its inception.” Law No. 194, Gazz. Uff. No. 140, May 22, 1978 available at <http://annualreview.law.harvard.edu/population/abortion/ITALY.abo.htm>.

³⁰ “The State, the regions, and local authorities, acting within their respective powers and areas of competence, shall promote and develop medicosocial services and shall take other measures necessary to prevent abortion from being used for purposes of birth

The restrictive terms under which a woman over the age of 18 may receive an abortion provide that she must be within the first 90 days of the pregnancy and that her reason for the abortion falls within one of the enumerated categories. They include physical or mental danger to the mother, and individual circumstances.³¹ However, once she has met the terms of the statute, the abortion is provided to her free of charge.³² Law 194 also allows medical personnel to avoid performing such procedures if they declare themselves to be “conscientious objectors,” typically due to their religious views.³³

While the law may appear to be reasonable and fair to both women and medical professionals, it has created a medical crisis. The conscientious objection provision of the law has allowed “[a]t least 70 percent of gynecologists [to make] that choice.”³⁴ This means that abortions are not only unfairly unavailable to women, but that young doctors with no alternatives are forced into the practice.³⁵

control.” *Id.* To that end, there is a seven day waiting period for non-urgent abortions, only after which a woman may end her pregnancy. *Id.* at ¶ 5.

³¹ Additional legally justified reasons for requesting an abortion include economic or social circumstances, the “circumstances in which conception occurred,” and the likelihood that there would be birth defects. *Id.* at ¶ 4. If a woman under the age of 18 wishes to have an abortion, parental consent is required within the first 90 days, but not thereafter. *Id.* at ¶ 12. The law requires counseling for women whose intent to terminate their pregnancy is motivated by the impact of economic, social, or family circumstances, in hopes that the situation can be resolved in favor of keeping the child. *Id.* at ¶ 5.

³² Clyde Haberman, *Abortion Law in Italy Draws Growing Fire*, N.Y. TIMES, Feb. 19, 1989, at §1.

³³ “Health personnel and allied health personnel shall not be required to assist in the procedures referred to in Sections 5 and 7 or in pregnancy terminations if they have a conscientious objection, declared in advance.” Law 194, *supra* note 29. When a medical official is religiously, morally, or ethically – although in Italy the three are relatively synonymous - opposed to abortion, he can choose to be exempted from performing abortions. The legal exception is, however, not unlimited. “Conscientious objection shall exempt health personnel and allied health personnel from carrying out procedures and activities specifically and necessarily designed to bring about the termination of pregnancy, *and shall not exempt them from providing care prior to and following the termination.*” *Id.* at ¶ 9 (emphasis added).

³⁴ Haberman, *supra* note 32. The statistics for other medical providers, such as hospital doctors and clinicians, are not provided, although one could expect them to be comparable. However, gynecologists, who specialize in matters of female reproduction, are typically the first place a woman would turn to terminate a pregnancy. In that regard, the statistic makes it glaringly clear that abortions, while free of charge, are not readily available to the women who request them.

³⁵ *Id.*

It seems that this provision has allowed Catholicism to take away some of the reproductive freedom purported to be guaranteed by Law 194.

C. Catholic teachings and opposition to the abortion law

The Catholic Church and the Pope have always held human life in the highest regard and have made clear the Vatican's stance on abortion. Immediately after the abortion law took effect, "well-publicized reminders emanated from the bishops of the Church (backed up by the Pope) that women who obtain abortions and clinicians who provide them can expect ex-communication."³⁶ This was the Church's most immediate way of refuting the law, by playing on the Catholic-ness of the Italian people. Even years after Law 194 survived the referendum, Pope John Paul II continued to remind Italians of their commitment to life – most directly in the encyclical *Evangelium Vitae*, which attacks everything from contraception to democracy and everyone from politicians and medical professionals to individuals who seek abortions and engage in sex for any reason other than procreation.

Evangelium Vitae begins by invoking the Second Vatican Council's view on life. "Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia...whatever violates the integrity of the human person....They poison human society, and they do more harm to those who practise them than to those who suffer the injury."³⁷ The Pope also reminds his readership that the 5th Commandment³⁸, "You shall not kill" applies most strongly and absolutely to the killing of an innocent person.³⁹ He contends that the rights – particularly the right

³⁶ *Despite Church Opposition, Italy Adopts New Law Providing Free Abortion for a Variety of Indications*, 10 Fam. Plann. Perspect. 4, A Special Issue on Teenage Pregnancy 241 (July 1978).

³⁷ John Paul II, *Evangelium Vitae*, *supra* note 1.

³⁸ *Exodus* 20:13, *cf. Deuteronomy* 5:17.

³⁹ John Paul II, *Evangelium Vitae*, *supra* note 1, at §57. It is also worth noting that the Roman Catholic Church's Commandments differ from other Christian denominations by using the word "kill" instead of "murder." *Exodus* 20:13, *supra* note 38. Murder tends to imply intent – especially in the legal context – and kill is a more general term with perhaps a broader application. However, even if the Roman Catholic Commandments did say "murder," the Pope and the Vatican would still interpret it to include abortion.

to life - of countless unborn children and weak and defenseless human beings are being trampled upon.⁴⁰

Politicians take part of the blame for abortion in *Evangelium Vitae*.⁴¹ The Pope writes that legalizing abortion undermines the foundations of democracy, which should safeguard the dignity of each and every person.⁴² His argument also focuses on the idea that laws should follow “actual morality,” and not just the majority’s viewpoint of morality.⁴³

Additionally, John Paul II feels that responsibility lies with the medical staff and administrators at facilities where abortions are performed.⁴⁴ He believes that medical professionals should be defending and caring for human life, but they have become more willing to carry out “these acts against the person.”⁴⁵ The pharmaceutical industry does not escape fault for death of a fetus. As the Pope explains, there are drugs which are widely used to “facilitate the spread of abortion.”⁴⁶ The problem he cites is that the drugs kill a fetus in the womb and there is no need to seek a medical professional who might advise or convince a woman not to have an abortion.⁴⁷

Contraception and abortion are, to the Pope, “fruits of the same tree,” despite their differing moral gravities.⁴⁸ The Vatican refers to both as “rooted in [the] hedonistic mentality” of individuals who refuse to take responsibility in matters of sexuality.⁴⁹ Although many would consider the use of contraception a responsible practice, the Pope considers sexuality to be a solely reproductive matter.⁵⁰ Additionally, “immoral” practices such as abortion, sterilization, and

⁴⁰ John Paul II, *Evangelium Vitae*, *supra* note 1, at §5.

⁴¹ *Id.* at §59.

⁴² *Id.* at §20. In his own words, “Really, what we have here is only the tragic caricature of legality; the democratic idea...is betrayed....” *Id.*

⁴³ *Id.* at §69.

⁴⁴ *Id.* at §59.

⁴⁵ *Id.* at §4.

⁴⁶ *Id.* at §13.

⁴⁷ *Id.* However, this is not to say that the blame would not still fall on the doctor who was unsuccessful in stopping the use of the drug or procurement of an abortion.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* John Paul II thinks that abortion and contraception “imply a self-centered concept of freedom, which regards procreation as an obstacle to personal fulfillment.” *Id.*

contraception often become a form of population control and result in a declining birthrate.⁵¹

In *Evangelium Vitae*, John Paul II also takes issue with the public presentation of abortion and the scientific data which substantiate its legality. The Pope complains that the terms used synonymously with “abortion” tend to be ambiguous and hide how truly heinous the practice is, thus reducing how seriously abortion is viewed publicly.⁵² He continues to argue that “no word has the power to change the reality of things: procured abortion is the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth.”⁵³ The Pope contests the scientific basis for abortion laws. In response to contentions that a fetus up to a certain age cannot yet be considered a person, he states, “It would never be made human if it were not human already.”⁵⁴

Most strongly, the Pope furthers the idea that the protection of all human life should be the ultimate goal of one’s existence.⁵⁵ The papacy, through the text of *Evangelium Vitae*, views the abortion problem as a “cultural and legislative situation.”⁵⁶ Such an understanding explains why the Vatican attacks legislation on abortion (and assisted reproduction) by reinforcing its views directly to the Italian people, by entering the political fray, and by seeking repeal of laws through the referendum.

⁵¹ *Id.* at §16. Pope John Paul II considers that, “It is not difficult to be tempted to use the same methods and attacks against life also where there is a situation of ‘demographic explosion.’” *Id.* In Italy, the fertility rate – number of children a woman will have in her lifetime - was 1.33 in 2004, down from 1.64 in 1980 (2.1 is considered the population replacement level). *EU25 population up by 0.5% in 2004*, Eurostat, Oct. 25, 2005 available at <http://epp.eurostat.ec.europa.eu>.

⁵² John Paul II, *Evangelium Vitae*, *supra* note 1, at §58.

⁵³ *Id.*

⁵⁴ *Id.* at §59. While what the Pope states is biologically true, most abortion laws rely on the premise of “viability,” which represents the point at which a fetus is capable of surviving outside of the womb.

⁵⁵ “The present Encyclical...is [] meant to be a precise and vigorous reaffirmation of the value of human life and its inviolability.... Only in this direction will you find justice, development, true freedom, peace and happiness!” *Id.* at §5.

⁵⁶ *Id.* at §4.

D. Attempt to Reform

In 1981, the Roman Catholic Church took the first political step in an attempt to repeal Law 194. In Italy, however, a valid referendum requires that at least 25% of registered voters actually turn out for the vote and that at least half of those voting do so in favor of the referendum.⁵⁷

The referendum campaign was promoted by the Vatican, but was supported only by the Christian Democrats and the neo-Fascists of the MSI.⁵⁸ Ultimately, the referendum failed when 67.5 percent of the public voted to keep Law 194 intact.⁵⁹

After Law 194 passed and the nullifying referendum failed, Pope John Paul II put forth his *Familiaris Consortio*, examining the Christian family in modern times.⁶⁰ Apprehensive of the new [anti-Catholic] law, he emphasized the “disturbing degradation of some fundamental values [including] the scourge of abortion.”⁶¹

This papal document defines the problem as one of the dignity of women which is “contradicted by that persistent mentality which considers the human being not as a person but as a thing, as an object of trade....”⁶² It condemns not

⁵⁷ Roland Erne, *Direct Democracy in Italy*, in *Direct Democracy in Europe: A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe* (Bruno Kaufman and M. Dane Waters eds., Carolina Academic Press, Oct. 2004). An “abrogative,” or legislative, referendum is presented with the intent of abolishing all or part of an existing law. *Id.*

⁵⁸ GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, at 143.

⁵⁹ *Id.*

⁶⁰ John Paul II, *Familiaris Consortio of Pope John Paul II to the Episcopate to the Clergy and the Faithful of the Whole Catholic Church on the Role of the Christian Family in the Modern World*, Apostolic Exhortation (Nov. 22, 1981) [hereinafter John Paul II, *Familiaris Consortio*].

⁶¹ *Id.* at ¶ 6. Perhaps the Pope thought that such a strong expression of disdain would discourage the public from seeking abortions. However, the “scourge” could just reflect that legalized abortions are documented and illegal ones prior to Law 194 were not.

⁶² *Id.* at ¶ 24. Although the indication is that the Church wants to uphold the dignity of women, it puts more weight on the unborn life and its humanity. It is somewhat unclear whether the language used in this phrase is intended to mock any and every view of human life that differs from that of the Pope and the Church. The use of the phrase, “as an object of trade,” almost seems to be aimed at those giving up a child for adoption. This is really about family, too, and keeping strong bonds between birth parents and their

only the individuals who request and receive abortions, but also the governments and authorities who allow abortions, while emphasizing the importance of giving families as much decision making freedom as possible.⁶³ Finally, John Paul II places responsibility on the church to “manifest anew to everyone, with clear and stronger conviction, [the Church’s] will to promote human life by every means and to defend it against all attacks, in whatever condition or state of development it is found.”⁶⁴

E. After the Failure of the Church to overcome Abortion Legislation

Since the law has been upheld, the Vatican has stayed away from the abortion issue, choosing to fight other battles it is more likely to win. The one way in which the church has fought and will continue to fight against Law 194 is to encourage practitioners to use the “conscientious objection” provision.⁶⁵

children. For discussion of this with respect to assisted reproduction, see *infra* note 114 and accompanying text.

⁶³ “Thus the Church condemns as a grave offense against human dignity and justice all those activities of governments or other public authorities which attempt to limit in any way the freedom of couples in deciding about their children.” John Paul II, *Familiaris Consortio*, *supra* note 58, at ¶ 30. This point should be noted when discussing 2004’s “MARL,” the law limiting assisted reproduction and the number of embryos, which can be implanted at one time, fully supported by the Roman Catholic Church. What happens to the Church’s condemnation of laws “which attempt to limit in any way the freedom of couples in deciding about their children?” *Id.* Although the Church’s position on both laws is understandable, the contradiction is clearly evident. The quote continues, “[c]onsequently, any violence applied by such authorities in favor of contraception or, still worse of sterilization and procured abortion, must be altogether condemned and forcefully rejected.” *Id.*

⁶⁴ *Id.* at ¶ 24. Charging itself with the responsibility of correcting the errors of government authorities and changing the mindset of every individual who considers a human life a “thing,” the Holy See makes clear that it will take any measure necessary to prevent abortion at the individual and government level. Although this exhortation is not specifically directed to Italy, the timing makes clear that the document was written as a rebuttal to the failed referendum.

⁶⁵ “If the Church call to massive conscientious objection is widely heeded, shortages of doctors and nurses will impede the provision of services.” *Despite Church Opposition, Italy Adopts New Law Providing Free Abortion for a Variety of Indications*, *supra* note 36, at 242. The Vatican seems to be trying to undermine the law by using its own provisions. There is no limitation on how many or what percentage of doctors can

The issue is still prevalent in Italy and among Catholic officials, but the religious and political currents have shifted. It has been almost 30 years since Law 194 was codified and maybe Italians – as well as Catholics – have become accustomed to it.⁶⁶ John Thavis of the Catholic News Service comments that Italian Catholics have backed off the abortion issue because “they consider it secondary.”⁶⁷

It is also relevant that the issue is dated; the public already knows and has a clear understanding of the Holy See’s vantage point.⁶⁸ The church may not have much of an impact on the subject anymore because Catholics already know what it has to say.

This is not to say that the Holy See has given up the abortion fight, but that its teachings no longer have the force they once did. “The pope, whose own Diocese of Rome has the highest abortion rate in the country, has strongly and consistently preached a pro-life message to Italians, but that has not been translated into political activism among leading Catholics. [In fact, a]bortion was a nonissue in the last major political elections in 2003.”⁶⁹ Carlo Casini, president of Italy’s Pro-Life Movement, has also failed to become a political influence,

conscientiously object. See *supra*, note 33 and accompanying text on how conscientious objection has already had an effect.

⁶⁶ Frank Bruni notes that, “[i]n Italy, a predominantly Catholic country where abortion has long been legal, several political experts said more lawmakers felt respectful of – but not confined by – church teaching.” Frank Bruni, *Vatican Cautions Faithful on Laws Against Doctrine*, N.Y. TIMES, Jan. 17, 2003, at A6. They find that Catholic teachings are good advice, but do not feel obligated to follow them. *Id.*

⁶⁷ He continues, “[i]t’s an issue that divides Catholics politically, so the feeling is that it’s better not to talk about it.” John Thavis, *Political Priorities: In Catholic Italy, Abortion is Not an Issue*, Catholic News Service, Oct. 15, 2004, available at <http://www.catholicnews.com/data/stories/cns/0405680.htm>.

⁶⁸ “Several Catholic experts and politicians expressed doubts that [the newly issued Vatican guidelines that underlined the church’s opposition to abortion] would have a significant influence on the debate, saying most Catholics are already well aware of church teaching.” Bruni, *supra* note 66.

⁶⁹ Thavis, *supra* note 67. The author also explains about the pope’s continued efforts to increase the Church’s control over the right to life. “When more than 1,000 of Italy’s most politically active Catholics met in early October, Pope John Paul II sent them a message urging greater church influence on such issues as the family....” *Id.*

even free of concerns over the church-state distinction raised by the Vatican's political efforts.⁷⁰

Part III. Assisted Reproduction – Flood of Vatican Influence

A. Introduction

While the abortion law seemed to be a turn away from the Catholic Church, the forward progress toward reproductive freedom recently came to a halt. Some might even consider it a backward movement in certain regards. It is hard to believe that just a few years ago, the Italian government enacted legislation that is considered one of the least scientifically progressive laws of the 21st century. In mid-February, 2004, the Italian Parliament narrowly voted to ban almost every form of assisted reproduction.⁷¹

B. Law 40/2004

The Medically Assisted Reproduction Law – known as MARL – passed with a strong majority in the Senate because “part of the opposition (mostly Catholics) sided with the centre right government.”⁷² The law, however, was strongly opposed by female politicians, regardless of their political affiliations. One journalist noted that the passing of MARL is the most recent public test of Vatican influence in the Italian political sphere.⁷³

⁷⁰ “Casini, whose movement often struggles to get local support for the annual pro-life celebration, said the Italian church hierarchy also has been hesitant to push the abortion question into the political arena.” *Id.*

⁷¹ Robin Marantz Henig, Essay; *On High-Tech Reproduction, Italy Will Practice Abstinence*, N.Y. TIMES, Mar. 2, 2004, at F5. The actual vote was 277 to 222. Marantz Henig was critical of the law saying, “in the same week that scientists in South Korea were announcing that they had successfully cloned a human embryo, politicians in Italy were voting to throw that country’s scientific efforts back into the dark ages.” *Id.*

⁷² Fabio Turone, *Italy to Pass New Law on Assisted Reproduction*, 9 BMJ 328 (2004).

⁷³ Sophie Arie, *In Europe, Italy Now a Guardian of Embryo Rights*, THE CHRISTIAN SCIENCE MONITOR, June 14, 2005, available at <http://csmonitor.com/2005/0614/p01s04-woeu.html>. Many politicians crossed party lines to follow their religious beliefs when

The law restricts many aspects of assisted reproduction and scientific research, including in vitro fertilization and embryonic stem cell research. Only infertile, stable, heterosexual couples are eligible for assisted reproduction techniques. No donor eggs or sperm may be used, nor can couples utilize a surrogate mother.⁷⁴ The law also says that “no more than three embryos can be created and all of them must be implanted in the womb at the same time.”⁷⁵ Further limitations include prohibition on embryo freezing and genetic analysis on early embryos before implantation.⁷⁶

By passing the Medically Assisted Reproduction Law, the Italian Parliament has chosen to isolate classes of people who it thinks should not be allowed to reproduce if they cannot do so naturally. The burden falls upon single mothers, homosexual couples – regardless of their stability or level of commitment – and women past child-rearing age.⁷⁷ And even couples who are allowed to undergo in vitro fertilization (IVF) are limited to three embryos, which is said to cut the success rate by about two thirds.⁷⁸ Finally, the law does not allow embryo screening before implantation, which could help detect genetic

they passed MARL, but female politicians specifically voted to preserve their personal, physical, and medical rights.

⁷⁴ *Italian Lawmakers Enact Rules That Limit Reproductive Rights*, N.Y. TIMES, Dec. 12, 2003, at A16.

⁷⁵ Alessandra Rizzo, *Official: Italy abortion law could change*, ASSOCIATED PRESS, June 14, 2005. The law states in Italian, “non devono creare un numero di embrioni superiore a quello strettamente necessario ad un unico e contemporaneo impianto, comunque non superiore a tre.” Law No. 40, Feb. 19, 2004, Gazz. Uff. No. 45, Feb. 24 2004, Art. 14 [hereinafter Law 40/2004].

⁷⁶ Henig, *supra* note 71.

⁷⁷ Among the law’s limiting provisions are “È vietato il ricorso a tecniche di procreazione medicalmente assistite di tipo eterologo,” applying the law only to heterosexuals; and non-specific limitations relating to age, health, and the risk involved in such procedures, “sui possibili effetti collaterali sanitari e psicologici conseguenti all'applicazione delle tecniche stesse, sulle probabilità di successo e sui rischi dalle stesse derivanti...” Law 40/2004, *supra* note 75. The age restrictions are in direct response to the work of Dr. Severino Antinori who used in vitro fertilization to impregnate a 62 year old woman, making her the oldest woman in the world to give birth to a healthy baby. Henig, *supra* note 71. The immediate effect of this law has been a sort of reproductive tourism industry, with Italians travelling elsewhere to have their needs met. See *infra* note 126 and accompanying text.

⁷⁸ Turone, *supra* note 72.

diseases that couples would not want to pass on to their children.⁷⁹ These limitations are also a loss for the scientific community, which can no longer create or destroy embryos for research purposes.⁸⁰

Proponents of the rule suggest that it is long overdue. “This law says ‘Enough!’ to the abuses and recognizes that an embryo is a person and as such must be protected from the point of conception,” said Elisabetta Alberti Casellati, a senator from Berlusconi’s party, Forza Italia.⁸¹ However, there is also concern the law has missed the mark. Aside from the obvious limitations it sets, MARL fails to modestly regulate science and modernize Italian reproduction.⁸²

The most serious concern about MARL is its position on the right to life, which would have serious ramifications for the underlying purpose of the abortion law, Law 194. Many think this law gives legal rights as a human being to an embryo, indicating that the abortion law must be revised.⁸³ However, the new fertility law does not specify when an embryo comes into existence, leaving the legal rights of embryos open to interpretation.⁸⁴ Italian Cabinet Minister Enrico La Loggia suggested that “the debate on abortion might in fact be re-opened,

⁷⁹ Dominic Standish, *Italy: Fertile Ground for Reform*, CONSCIENCE, May 22, 2005. The author writes, “This ban appears extremely unjust given that it is legal under Italian law to screen a fetus during pregnancy and abort it before it is 24 weeks old.” *Id.* Another concern over conflict between MARL and other laws is that it conflicts with the abortion law by giving embryos rights that are not afforded to fetuses. This is considered further in the following sections.

⁸⁰ There is, of course, a clear connection between the scientific and societal effects. Antonio Lanzone, head of the assisted reproduction center at Rome’s Catholic University said, “The principle of safeguarding the embryo from [fertilization], which I subscribe to, is the main goal of this law, which pays a price in terms of loss of efficiency and increase of risks.” Turone, *supra* note 72.

⁸¹ *Italian Lawmakers Enact Rules That Limit Reproductive Rights*, *supra* note 74.

⁸² Standish notes that even though MARL was “heavily influenced by campaigners for embryo rights, there were more practical concerns. Two of the aims behind the new legislation were to give Italy a more modern image regarding fertility treatment and to bring previous practices under greater control. But neither of these objectives has been achieved.” Standish, *supra* note 79.

⁸³ *Id.* “Therefore it should come as no surprise that the passage of the fertility law has led to calls for abortion regulations to be tightened.” *Id.*

⁸⁴ *Id.* This relates to the parallel concern in abortion laws over when a fetus is considered viable. See *supra* note 54, and *infra* note 124.

though not right away....”⁸⁵ Although the effects of MARL on the abortion law in Italy are uncertain, the effect of the Holy See over recent matters of reproduction is clear.

C. Catholic Teachings – John Paul II and Benedict XVI

The Catholic Church has been unwavering in its reverence for human life. This respect was extended to the fetus well before Law 194 allowed abortions in limited circumstances. Likewise, John Paul II was advocating protection of embryos and limitation of medically assisted reproduction years before Law 40/2004 was even proposed.⁸⁶

Pope John Paul II’s most direct attack on unnatural reproduction came in his 1995 encyclical, *Evangelium Vitae*. He devoted an entire section to the various techniques of artificial reproduction and their unexpected negative impacts.⁸⁷ His position, reflecting that of the entire Roman Catholic Church, is that assisted reproduction techniques are morally objectionable because they separate procreation from the “fully human context of the conjugal act....”⁸⁸ The encyclical also challenges their scientific value and, of course, the lack of respect for life. Pope John Paul II questions the success rates of implantation and

⁸⁵ Feminist Daily News Wire, *Italy: Referendum Vote Upholds Fertility Law, May Jeopardize Legal Abortion*, Feminist Majority Foundation, June 16, 2005, available at <http://feminist.org/news/newsbyte/uswirestory.asp?id=9101>.

⁸⁶ To the Vatican, in vitro fertilization and reproductive cloning are both “terrible aberrations to which value-free science is driven and is a sign of the profound malaise of our civilization, which looks to science, technology and the ‘quality of life’ as surrogates for the meaning of life and its salvation.” Pontificia Academia Pro Vita, *Reflections on Cloning* (1997), available at <http://www.academiavita.org/template.jsp?sez=Documenti&pag=testo/clonaz/clonazione>, quoted in Andrea Boggio, *Italy enacts new law on medically assisted reproduction*, 20 HUMAN REPRODUCTION 5 1153, 1156-1157 (2005).

⁸⁷ John Paul II, *Evangelium Vitae*, *supra* note 1, at §14. *Evangelium Vitae* is Latin for “The Gospel of Life,” a clear indicator of the Pope’s focus and the direction of thinking within the Catholic Church. The Pope and the Church believe that artificial reproduction “open[s] the door to new threats against life.” *Id.*

⁸⁸ *Id.* Family is central in Catholic teachings, especially the idea that sexual intercourse is an act between two people in a loving heterosexual relationship, done for the sole purpose of procreation. It is understandable that adding other individuals - such as sperm and egg donors, surrogates, and doctors – as well as machines and instruments, would take away from the “fully human context.”

development, the destruction of embryos, which are not implanted, the use of “spare” embryos for medical research, and embryonic screening as a precursor to abortion.⁸⁹

The Vatican has also made direct efforts to intervene in the law-making authority and decisions of politicians.⁹⁰ The 2003 Vatican Guidelines, entitled *Doctrinal Note on some questions regarding the participation of Catholics in political life*, considered that, “When political activity comes up against moral principles that do not admit of exception, compromise or derogation, the Catholic commitment becomes more evident and laden with responsibility.”⁹¹ In relation to the legal necessity of defending life from conception to natural death, the note also considers that there is a legally translatable “duty to respect and protect the rights of the *human embryo*.”⁹²

After MARL was passed, Vatican officials continued to urge the protection of embryos and the end of artificial reproduction. The Vatican Newspaper, “L’Osservatore Romano,” published an official announcement from the Vatican’s Pontifical Academy for Life calling the destruction of embryos in the in-vitro fertilization process “a true massacre of the innocents of [our] time: no war or catastrophe has ever caused so many victims.”⁹³

⁸⁹ More specifically, the encyclical states that, “under the pretext of scientific or medical progress, [embryonic research] reduces human life to the level of simple ‘biological material’ to be freely disposed of.” *Id.* In terms of prenatal diagnosis, the Pope comments that it “all too often becomes an opportunity for proposing and procuring an abortion.” *Id.* See also, *Id.* at §63.

⁹⁰ While there is no specific reference to Italian politicians, it is clear that a majority of them are Catholic and therefore the intended recipients of the Congregation’s message.

⁹¹ Congregation for the Doctrine of Faith, *Doctrinal Note on some questions regarding the participation of Catholics in political life*, Jan. 16, 2003, available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html#_ftnref12. Note that the document is aimed at politicians who have the power to create or overturn laws. In fact, the abstract on the Vatican website states, “This Note is directed to the Bishops of the Catholic Church and, in a particular way, to Catholic politicians and all lay members of the faithful called to participate in the political life of democratic societies.” *Id.*

⁹² *Id.* (emphasis in original)

⁹³ Standish, *supra* note 79. “L’Osservatore Romano,” meaning The Roman Observer, is the Vatican’s newspaper and is available at http://www.vatican.va/news_services/or/home_ita.html. The daily edition is published in Italian, with the weekly compilation published in five additional languages including

Even in the recent past, the Vatican has done its part to punish individuals responsible for the destruction of embryos. In an interview for “La Famiglia Cristiana,”⁹⁴ Cardinal Alfonso López Trujillo called for excommunication of all Catholics involved in the destruction of human embryos – including scientists developing stem cells for research.⁹⁵

D. Attempt to Reform

As it is with any law or regulation that concerns human rights, morality, religiosity, and individual beliefs, MARL too became a point of contention for the Italian people. Women’s rights groups joined with Italy’s Radical Party to gather four million signatures, which brought about the referendum vote.⁹⁶ Initially they had hoped to repeal the entire law, but the courts limited the referendum to only certain provisions of “MARL.”

As expected, the majority of the scientific community hoped that the referendum would pass and voted in its favor.⁹⁷ In the political sphere, however, political coalitions were divided. Politicians on the center left backed the referendum and those on the center right defended the law, but with some exceptions.”⁹⁸

No amount of scientific, feminist, or political backing of the referendum was enough to defeat the efforts of the Vatican. The Catholic Church took certain

English. The name of the paper and the initial language of publication are clear indicators of the paper’s intended audience.

⁹⁴ Interview with Alfonso López Trujillo, Cardinal in La Famiglia Cristiana (July 2, 2006). La Famiglia Cristiana is an Italian, weekly magazine distributed by a Roman Catholic publishing group.

⁹⁵ Jacopo Pasotti & Ned Stafford, *It’s Legal: Italian Researchers Defend Their Work with Embryonic Stem Cells*, NATURE, July 20, 2006. Cardinal Trujillo of Spain is the head of the Vatican’s Pontifical Council for the Family. His comments seem to be not only a response to “MARL,” but a push for other European countries to follow Italy’s lead. The article also examines how strongly embryonic stem cell researchers have reacted to the Cardinal’s comments.

⁹⁶ The women’s rights groups warned, “that the referendum’s failure could lead to restrictions on a woman’s legal right to abortion.” Feminist Daily News Wire, *supra* note 85.

⁹⁷ Turone, *supra* note 72.

⁹⁸ *Id.*

steps to prevent any weakening of “MARL.” Priests urged their “flocks” not to vote and to stay far away from polling places, hammering home the slogan: “Life cannot be put to a vote: don’t vote.”⁹⁹ Pope Benedict XVI even announced that he personally supported the Italian bishops’ campaign to prevent the vote reaching the necessary 50 percent majority.¹⁰⁰ This was probably the most direct instance of Vatican interference with Italian politics and drew much opposition from the Italian public.¹⁰¹ Professor Arne Sunde, President of the European Society for Human Reproduction and Embryology (ESHRE), saw it as active intervention in Italian politics by urging people not to vote.¹⁰² The referendum was seen by many as a test of the extent of the Catholic Church’s influence in Italy, a historically Catholic country.¹⁰³

On June 12 and 13, 2005, the Italian people rejected the referendum on “MARL.” It appeared as though a tidal wave of Catholicism surged across Italy. The referendum required a 50 percent voter turnout, but only 26 percent of Italy’s 50 million eligible voters actually went to the polls to vote.¹⁰⁴ Despite the low turnout, about three-quarters of those who did vote on the referendum favored repealing some or all of “MARL’s” restrictive measures.¹⁰⁵

The failure of Italians to vote on the referendum was largely attributed to the urging of the Pope and the overall appeal of the Vatican for a boycott, although they were not considered to be the only factors.¹⁰⁶ Voter apathy and the complexity of the law’s scientific constraints were cited alongside the Vatican’s efforts as explanations for the low voter turnout.¹⁰⁷ And even though the Vatican

⁹⁹ Arie, *supra* note 73. The phrase reiterates the Catholic Church’s respect for life from conception to natural death - the ideas that once life is created only God can choose when that life should end, and that man is powerless to God’s will.

¹⁰⁰ *Id.*

¹⁰¹ Arie comments, “There were howls of protest from the abortion-rights campaign, horrified that Pope Benedict XVI waded personally into the political arena in *so-called* secular Italy, putting pressure on the overwhelmingly Catholic nation to boycott the vote.” *Id.* (emphasis added).

¹⁰² Turone, *supra* note 72.

¹⁰³ Rizzo, *supra* note 75.

¹⁰⁴ Feminist Daily News Wire, *supra* note 85.

¹⁰⁵ *Id.*

¹⁰⁶ Rizzo, *supra* note 75.

¹⁰⁷ *Id.*

is charged with the failure of the MARL referendum, it is the Italian public at large who will have to deal with the effects, which are considered below.

E. On the Church's Success in Beating the Referendum and Keeping the Law Intact

The failure of the MARL referendum presents several interesting issues in a variety of aspects of Italian life. It affects science and scientists, but also all members of the Italian population seeking the now banned medical assistance. There are also political issues, separation of church and state concerns, as well as the role of the Catholic Church within purely Italian affairs. Finally, there is much speculation about the effects of MARL on Italy's abortion law.

The Health Minister of the Italian government, Girolamo Sirchia, has called the fertility law “a good starting point” for protecting embryos, since he feels that scientific research should be conducted on animals, and not on Christians.”¹⁰⁸ Such a perspective was part of what stem cell researchers considered at a conference in Rome to defend their work. Elena Cattaneo from the University of Milan fears that there will be additional restrictions – as well as funding cuts – for the already few Italian groups doing embryonic stem cell research.¹⁰⁹

Politically, MARL distorted party lines and united Catholic politicians into what is called a “transversal party.”¹¹⁰ The former commissioner of the European Union, Emma Bonino, felt that the result affected not only the secularism of Italy, but also the power of the people by way of the referendum.¹¹¹

¹⁰⁸ Standish, *supra* note 79. The Health Minister's point of view and MARL being upheld are the “result of assigning a higher value to protection of embryos than to the interests of infertile women and couples in achieving pregnancy without undue costs and burdens.” John A. Robertson, *Protecting Embryos and Burdening Women: Assisted Reproduction in Italy*, 19 *Human Reproduction* 8, 1693, June 30, 2004.

¹⁰⁹ Pasotti & Stafford, *supra* note 95. The conference was held in Rome on July 14, 2006.

¹¹⁰ Boggio, *supra* note 86. Boggio further explains, “The view of a ‘transversal party’ is generally supported by the consideration that many provisions are perfectly aligned with the view held by the Roman Catholic community and the Vatican in particular.” *Id.*

¹¹¹ She stated, “Today we have three victims [in Italy]: the secularism of the state, political authority, and the institution of the referendum.” Turone, *supra* note 72. The

The debate over MARL was considered “the most highly charged moral and ethical debate in Italy” since the passing of the abortion law in 1978.¹¹² Although the failed referendum was regarded as a major victory for the Vatican, it may have also been a loss of support from Catholics dealing with infertility, warned Arne Sunde of ESHRE.¹¹³ However, the Catholic Church’s rationale is clear – the strength of the family is crucial to society, bolstered by the usual justification of unlimited respect for life.¹¹⁴

Finally, there is the possibility that MARL could alter the face of Italian abortion legislation (Law 194). The contradiction between the two – particularly that a fetus can be killed and an embryo cannot - leaves both laws open to legal challenge.¹¹⁵ Some feel that the failed referendum on MARL has created an ideal condition for overturning Law 194.¹¹⁶ However, over the past few years, Catholic

referendum has long been a way for Italian voters to get what they want when they feel their politicians have not properly represented them. For more on Italian referendums in general, see <http://www.answers.com/topic/referendums-in-italy>. The Italian National Bioethics Committee considered the constitutional issue of separation of church and state in a letter. See, Levi Montalcini et al., *Appello Degli Scienziati Contro la Legge Sulla Procreazione Assistita*, LA REPUBBLICA, Dec. 9, 2003.

¹¹² Turone, *supra* note 72. In fact, shortly after the passing of “MARL,” Pope Benedict XVI reemphasized the church’s opposition to abortion and reminded Roman Catholic politicians that they were “especially obligated” to defend and defend the church’s beliefs in their official capacities. Ian Fisher, *Pope Reaffirms View Opposing Gay Marriage and Abortion*, N.Y. TIMES, Mar. 14, 2007.

¹¹³ Sunde warned, “the Vatican’s intervention sent a strong signal to infertile couples in Catholic countries everywhere,” not just in Italy. Turone, *supra* note 72.

¹¹⁴ Robertson questions the Italian resistance to sperm and oocyte donation to married or stable heterosexual couples which is otherwise permitted around the world? “One explanation no doubt is the strong opposition of the Vatican to gamete donation because of the fear that third party provision of oocyte or sperm will weaken family bonds and confuse the heritage of children.” Robertson, *supra* note 106 at 1694. See also, John Paul II, *Evangelium Vitae*, *supra* notes 1 & 62 and accompanying text; John Paul II, *Familiaris Consortio*, *supra* note 60.

¹¹⁵ “Italy must be the only country where you cannot destroy an embryo inside a test tube but you can destroy it once it’s inside a woman,” said Dr. Giovanni Monni, a leading fertility doctor in Sardinia. Arie, *supra* note 73.

¹¹⁶ Stefania Prestigiacomo, the equal opportunities minister from Alleanza Nazionale, who actively promoted the referendum, noted the enormous inconsistencies between the laws. She stated, “I expect in the short to medium term someone will take the initiative.” Turone, *supra* note 72.

officials have urged that they will not seek the repeal of Italy's Law 194 – at least not yet.¹¹⁷

Part IV. Making Sense of Italy's Reproductive Laws

A. Future Direction of Italian Legislation

Law 194 and MARL together make for an interesting political climate in Italy, especially when combined with the Vatican's influence.¹¹⁸ So the question becomes: What happens next?

There is no doubt that the Catholic Church will keep asserting itself into Italian politics. Italians are split in how they feel about the Church's intervention. Some support MARL and the church efforts to uphold it – others are disturbed by the Church's intrusion into politics.¹¹⁹ Ultimately, the main points of contention over the effects of Vatican interference are (1) whether Law 40/2004 is a stepping stone to the repeal and (2) how restrictive can and will Italian reproductive laws become.

1. Italian Reproductive Rights post-MARL

Prior to the attempted referendum on "MARL," the Italian pro-life community viewed the law as a major victory, which might help reopen the

¹¹⁷ After the failed referendum, the president of the Italian bishops, Cardinal Camillo Ruini, expressed satisfaction, but also insisted "the church would not push to modify the law legalizing abortion, as many backers of the referendum fear." *Id.* Prior to the referendum, another church official noted that, "The assisted procreation debate is more urgent. And the conditions for a change in the abortion law do not exist at the moment." Thavis, *supra* note 67.

¹¹⁸ One author went so far as to state, "The contradictions in government policy and the tensions between Catholic traditions and respecting women's rights make Italy feel like a country without a sense of direction." Standish, *supra* note 79.

¹¹⁹ Ian Fisher & Elisabetta Povoledo, *In Political Step, Pope Confronts Law on Fertility*, N.Y. TIMES, May 31, 2005.

debate on abortion.¹²⁰ However, Carlo Casini, President of Italy's Pro-Life Movement, noted that now that the law might be modified, church officials are trying not to speak about abortion, because it would likely be counterproductive.¹²¹

Within the past year, the abortion debate has been reignited, although Cardinal Ruini assured that the current "cultural condition" is not ripe for overturning the abortion law, but that perhaps it would in the future be altered to become more restrictive.¹²² The concerns were related to the practice of selective abortion¹²³ and new scientific data regarding the viability of a fetus.¹²⁴ If there were to be a change to either law, it would probably be in the form of new legislation, since the failure of the referendums related to abortion and assisted reproduction demonstrate the challenges of passing one.¹²⁵

Other effects of MARL have been to augment "reproductive tourism"¹²⁶ and to raise concerns over inequalities in access to health care, since Italy has public health coverage for all citizens.¹²⁷

2. Catholicism as the Italian National Religion

¹²⁰ Thavis, *supra* note 67.

¹²¹ *Id.*

¹²² The Associated Press, *Italian Church Spoiling for Another Fight Over Abortion After Botched Selective Abortion*, INTERNATIONAL HERALD TRIBUNE, Sept. 4, 2007 [hereinafter The Associated Press, *Italian church spoiling for another fight*].

¹²³ Intervening with full force, the Vatican newspaper, L'Osservatore Romano, confronted the Italian practice of aborting malformed fetuses after a healthy twin was aborted instead of the one with Downs Syndrome. Agence France-Presse, *Italy: Abortion Blunder Rekindles Debate*, N.Y. TIMES, Aug. 28, 2007.

¹²⁴ This was also addressed in La Famiglia Cristiana, which considered the scientific aspects of the law and changes in the understanding of the viability of a fetus. The Associated Press, *Italian church spoiling for another fight*, *supra* note 122.

¹²⁵ See *supra* note 111 (details on referendums in Italy).

¹²⁶ Since certain specific techniques have been outlawed in Italy, citizens must travel to other European Union countries – including France, Great Britain, Spain, Greece, and Belgium – for the procedures. The practice of "reproductive tourism" allows them to circumvent the prohibition in Italy.

¹²⁷ Boggio, *supra* note 86.

During his time as a cardinal and as the pope, Benedict XVI has often spoken about the church's position on the protection of life and about "the need for the church to take a more muscular stance against secularism."¹²⁸ However, it seems highly unlikely that there would be a third agreement between the Italian State and the Roman Catholic Church re-establishing Italy as a Catholic country. Furthermore, a national religion would not make much of a difference. The Church would just need to form – or affiliate with – a large and influential political party.¹²⁹

B. Italy v. the World

Many governments are becoming more involved in the reproductive sphere, imposing restrictions that could halt any scientific progress.¹³⁰ Although the relationship between the Vatican and Italy is different from that between the Vatican and other countries, the Church's efforts to wield power in these other countries has not gone unnoticed. Cardinal Alfonso López Trujillo, the first Vatican official to publicly support excommunication for stem cell researchers, hoped his view would also influence the debates over public funding for stem cell research in America and the European Union.¹³¹

1. United States

In our own country, the debate over reproductive issues – specifically abortion and stem cell research – has been heated for decades. The situation in the United States differs most dramatically in that it is not part of a longstanding church-state battle, and there has never been a national religion in America.

¹²⁸ Fisher & Povoledo, *supra* note 119.

¹²⁹ This was demonstrated by the Vatican's connection with the Democrazia Cristiana, *supra* note 11 and accompanying text.

¹³⁰ "If that is what we learn, after 30 years of successful high-tech baby making, many other countries will start following Italy back to the old days." Marantz Henig, *supra* note 71.

¹³¹ Pasotti & Stafford, *supra* note 95.

Specifically, the American abortion debate is “free of these historical antagonisms and cuts more across denominational lines.”¹³² However, the Vatican’s long existing role in Italian politics does have one major advantage: The church-state relations in Italy, particularly relating to abortion, are often less “bitter and absolute” than those in the United States.¹³³

The Catholic Church has also focused its efforts in the United States on the political process, instead of on the legislation. For example, during the 2004 elections, U.S. bishops said it would be “sinful” to vote for John Kerry because of his belief in legalized abortion.¹³⁴ In Italy, we have seen that some political parties are organized around religion. However, since in America there are only two main parties, it is logical for the Vatican to support the one whose views are most aligned with the Catholic Church’s positions.

2. European Union

The actions and efforts of the Church in the United Kingdom have taken on a different air – one that seems to be more specific and directed. In 1995, a British law was enacted which required the destruction of all embryos frozen and stored for more than five years.¹³⁵ Interestingly enough, over 100 *Italian* women – including two nuns – offered to act as surrogates for the embryos, carrying them to term before putting them up for adoption.¹³⁶

¹³² Thavis, *supra* note 67. Another major distinction is that the recent changes to abortion law have been made in the court system. Italian court decisions related to abortion and reproduction are not discussed here.

¹³³ Ian Fisher, *Letter From Europe; Italy’s Church and State: A Mostly Happy Union*, N.Y. TIMES, Dec. 1, 2004. One can easily understand that the Vatican’s influence in Italy has surely played a role in the morals and beliefs of most Italians, and that Italians would expect a certain level of Church involvement in issues of morality. Religious plurality, as well as several other factors, can explain, not only the varying ideals in the United States, but also how strongly the opposing sides support their views.

¹³⁴ The Italians find this to be an “interesting and somewhat curious political approach by the church; no one is suggesting it be exported to Italy.” Thavis, *supra* note 67.

¹³⁵ Henig, *supra* note 71.

¹³⁶ *Id.* Apparently Italians just have certain affection for embryos.

Recently, lobbyists have called upon Cardinal Cormac Murphy-O'Connor – the head of the Catholic Church in England and Wales – to implement a code of ethics for a private Catholic hospital there.¹³⁷ As an “arbiter of ethics,” the group has urged him to forbid all medical practices banned by the Vatican, including in vitro fertilization, referrals for abortion or contraceptives, and even giving advice on such issues.¹³⁸

Unlike Italy, the separation of Church and State has been an “unshakable pillar of the French Republic.” So there has been much outcry in response to the Roman Catholic Church’s objection to the Muscular Dystrophy Association’s annual telethon.¹³⁹ Cardinal Philippe Barbarin and other church officials feel the financing of embryonic stem cell research is immoral because the embryos are human beings.¹⁴⁰ The attack of the Catholic Church has been compared to a “declaration of war,” and scientists have accused the Church of “having mobilized its extreme troops to kindle the controversy and do the dirty work.”¹⁴¹

Finally, some feel that MARL sets a dangerous precedent for other European Catholic Countries – like Poland - who could be encouraged to add similarly restrictive legislation. Arne Sunde stated, “We are afraid it will become a model for conservative Catholic countries.”¹⁴² The Vatican is still a strong entity within the countries of the European Union and it has the power – and resources – to exercise certain types of control there. However, the efforts are

¹³⁷ Cahal Milmo, *Cardinal Under Pressure to Ban Abortion referrals at Hospital*, THE INDEPENDENT, Sept. 28, 2007, available at <http://www.independent.co.uk/life-style/health-and-wellbeing/health-news/cardinal-under-pressure-to-ban-abortion-referrals-at-hospital-402922.html>.

¹³⁸ *Id.*

¹³⁹ Elaine Sciolino, *Catholic Clergy Attack French Telethon Over Stem Cell Aid*, N.Y. TIMES, Dec. 8, 2006.

¹⁴⁰ *Id.* Bernard Barataud of the Généthon laboratory, which researches stem cells and receives proceeds from the telethon, was particularly critical of the Church waging such a war. *Id.*

¹⁴¹ *Id.* Government officials and the leaders of French medical establishments have made clear that “the church has no business interfering in matters of state, especially when they involve a practice that is legal.” Let us not forget that abortions are legal in Italy, and yet the Catholic Church threatens excommunication and encourages doctors to refrain from the practice.

¹⁴² Standish, *supra* note 79.

tailored to more specific situations, and not attempting to make general reforms, like in Italy.

C. Predictions

While it may appear that the tide of Vatican influence is swelling, it is unlikely that it will remain strong. The victory in the creation of “MARL,” and upholding it against the referendum, are misleading. They may seem to be Vatican “wins,” but the institution of the referendum has proven to be an ineffective means of overcoming unfavorable legislation.¹⁴³

Instead, the likelihood is that Italy will continue to modernize its image and step away from Vatican ideals. The Church has lost political clout since the fall of the Christian Democrats, especially in view of the fact that no recent Roman Catholic party has been able to advance politically.¹⁴⁴ The loss of status as Italy’s national religion also weighs against the Vatican’s power and influence in Italy.¹⁴⁵ The religiosity of Italians seems to have lost the “linear and homogeneous character established by the regular, well-defined outlines of the official Catholic model.”¹⁴⁶ Finally, Italy will follow the direction of other modern and influential countries, including the United States.¹⁴⁷

Despite the restrictive terms of “MARL,” Italians have found – and will continue to find – ways to control their own reproductive rights. In terms of reproduction, Italians are “among the most habitual users of contraception in Europe.”¹⁴⁸ Although MARL seems to give embryos rights that not even a fetus has, Law 194 on abortion will not be overturned or modified to create further restrictions on abortion. It was overwhelmingly upheld in the 1981 referendum

¹⁴³ See *supra* note 125 and accompanying text.

¹⁴⁴ GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 6, notes 19 & 23 and accompanying text; MAGISTER, *supra* note 21 and accompanying text.

¹⁴⁵ See *supra* note 15 and accompanying text.

¹⁴⁶ Roberto Marchisio & Maurizio Pisati, *Belonging without Believing: Catholic in Contemporary Italy*, 4 JOURNAL OF MODERN ITALIAN STUDIES 2, 236 (1999).

¹⁴⁷ As mentioned in *supra* note 18, the Vatican sees the United States as its direct opposition.

¹⁴⁸ Arie, *supra* note 73.

and has not been challenged since.¹⁴⁹ MARL seems to be out of step with Italy's increasingly modern image, however a resounding number of those who actually took part in the referendum voted to overturn Law 40/2004.¹⁵⁰

Part V. Conclusion

The Catholic Church has been and will continue to be a powerful player in Italian politics, if only due to its geographic location.¹⁵¹ However, as stated above, the social and political climates are not such that Roman Catholicism will return as the national religion of Italy; nor will any other religion take its place. The Vatican has extremely strong beliefs about the value of life¹⁵² and family¹⁵³ and will always inject those into Italian society and politics. Regardless of Vatican efforts, the reproductive rights of Italians – through both Law 194 and Law 40/2004 - are not likely to be further restricted. No matter how hard the Vatican tries, it will never overcome the want and the will of the Italian citizens who must live with the results of any reproductive legislation. The referendums on abortion and assisted reproduction demonstrate that the majority of Italians – albeit the small number who actually voted – want control over their reproductive decisions, and they will not be inhibited by the Vatican.

¹⁴⁹ GINSBORG, ITALY AND ITS DISCONTENTS, *supra* note 58.

¹⁵⁰ See Feminist Daily News Wire, *supra* note 105 and accompanying text. The Catholic Church would surely like to interpret - and advertise - the low voter turnout as a win, but inaction can hardly be considered support.

¹⁵¹ See discussion *supra* Introduction.

¹⁵² John Paul II, *Evangelium Vitae*, *supra* notes 1, 37, 40, 45, 55, and accompanying text.

¹⁵³ John Paul II, *Familiaris Consortio*, *supra* notes 60, 112, and accompanying text.