

Between the Law and Bioethics: Placing the Unborn in Contemporary Italy¹

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Abstract

Compared to the abortion act (194/1978), the law that regulates medically assisted procreation (40/2004) marked an important change in the status of the unborn under Italian law. Furthermore, the opinions and motions issued by the National Bioethics Committee on the status of the human embryo (1996), the fate of residual embryos resulting from medically assisted reproduction (2005) and the appropriate treatment of embryos that are unsuitable for transfer (2007) show an equally significant change in the field of ethics. By analyzing these laws and opinions from the point of view of cultural anthropology, my paper describes a shift in the symbolic construction of the unborn in contemporary Italy. The different positions in these documents, together with the proposals put forward but never realized, are witness to the tensions between opposing and competing morals and the ambiguities embedded in the very notion of the unborn.

1. Introduction

Anthropology has long stressed the historical and cultural specificity of the notion of “subject”, “individual” and “person” (Mauss 1938; Dumont 1966; 1983; Carrithers, Collins & Lukes 1985; Fortes 1987; Ortner 2005; Biehl, Good & Kleinman 2007; Moore 2007). Over time, ethnographic studies have described socially constructed requisites that define personhood and subjectivity in specific historical and cultural contexts (among others, see Dieterlein 1973; Battaglia 1990; Strathern & Lambek 1998). Confrontations and conflicts about who can be considered a real human being or a person are particularly marked during the transitional moments of life meaning gestation, birth and death (Bloch & Parry 1982; Conklin & Morgan 1996). Field work carried out in remote societies have often highlighted that life before birth in its incompleteness, ambiguity and processuality, goes beyond the very idea of personhood (Strathern 1988; La Fleur 1992). Conversely, studies carried out since the 90s in Europe and America have documented the rise of fetal personhood and fetal subjectivity (among others Duden 1993; Davis-Floyd & Dunnet 1998; Morgan & Michaels 1999; Boltanski 2004). Laws regulating abortion, medically assisted conception, experimentation on embryo stem cells, together with the debates that preceded and followed their approval, can be regarded as a useful source of data in order to grasp the evolution of these contested notions.

In this article I analyze 1) Italian laws regulating voluntary termination of pregnancy and medically assisted procreation and 2) the opinions issued by the National Bioethics Committee (NBC) on the status of human embryos and the treatment they may be subjected to from the point of view of cultural anthropology. Critical analysis of these documents highlights the transformations the unborn have undergone in contemporary Italy, and show conflicts and moral ambiguities related to the symbolic construction of embryos and fetuses. Even if they do not cover the entire spectrum of ideas about prenatal life and moral values surrounding the unborn, laws and bioethical opinions determine the legal and ethical framework governing what people feel, act and think about embryos and fetuses.

2. Law 194: Voluntary Termination of Pregnancy and the Protection of Life²

In Italy, Law 194 regulates the voluntary interruption of pregnancy. Prior to its approval in 1978, abortion was a crime,

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² http://www.salute.gov.it/portale/temi/p2_6.jsp?lingua=italiano&id=744&area=Salute%20donna&menu=interruzione

punishable by penalties ranging from one to three years in prison.³ During the '70s, as in other European countries, public opinion became increasingly opposed to the criminalization of abortion.⁴ Representatives from different political parties presented proposals for revising the existing law. Proposals ranged from a partial decriminalization of abortion with the introduction of a law regulating its practice, to the complete decriminalization not supported by a positive norm.⁵ Approved in 1978, Law 194 was the result of a compromise between the governing political parties.⁶ The Catholic Church expressed strong condemnation of the law and invited all believers to actively engage in the defense of life. In 1981 a referendum was held. The Radical Party, secular and pro-choice, proposed making access to abortion more liberal, while the pro-life movement proposed to make the law more restrictive. The electorate confirmed its support of the existing law, which has remained unchanged since then.

Law 194 states the "Norms for the social protection of motherhood and the voluntary termination of pregnancy". Article 1 specifies that the State "guarantees the right to conscientious and responsible procreation, recognizes the social value of motherhood and protects human life from its very beginning". The same article states that the voluntary interruption of pregnancy is not "a means of birth control." The protection of unborn life consists in a series of restrictive measures that allow abortion only in specific cases. The law provides that, within the first trimester, the woman for whom "the continuation of pregnancy, childbirth or maternity would result in a significant threat to her physical or mental health" can turn to a family planning clinic,⁷ a doctor she trusts, or any other clinic or hospital for a medical check up. She will be able to examine all of the "possible solutions to the problems she raises, to help her remove the causes leading to the termination of pregnancy". After receiving counseling, the woman is given a document certifying her pregnancy and her request for termination. She must then wait seven days, after which she can go to one of the authorized clinics or hospitals to perform medical tests and to fix a date for the abortion (Art. 5).

After the first trimester, the restrictions increase. Voluntary termination of pregnancy is allowed only when a) the pregnancy or childbirth poses serious danger to the woman's life and/or b) when major pathological processes afflicting the unborn are attested, and these constitute serious risk to the woman's physical or mental health (Art. 6). The danger needs to be assessed by a doctor who can eventually benefit from the advice of specialists. Article 7 states that if there is the "possibility of independent life of the fetus ... the doctor who performs the surgery must take all appropriate measures to safeguard the fetus' life."

As we have seen, Law 194 establishes the conditions under which legal abortion is permitted: there must be a serious (in the first trimester) or severe risk (after ninety days) to the woman's physical or mental health. Officially, therefore, the voluntary termination of pregnancy is only possible if the life of the unborn child creates a risk to woman's own life.⁸ Law 194 does not explicitly recognize the unborn as a subject with rights. Article 1 says that the State protects life from its very beginning. But life, here, is not considered as a uniform state. The text differentiates between the mother and the unborn, between embryos and fully developed fetuses. Thus, the mother's life is placed before that of the

³ The Rocco Code (1930) forbade abortion. Implemented during the Fascist era, this code placed abortion among "crimes against the integrity and health of the race" (Art. 545 and following), which also included procured impotence to procreation, incitement to use contraception and the spreading of syphilis and gonorrhoea.

⁴ The press began to report deaths caused by illegal abortions. Protests took place in support of physicians or nurses convicted for having performed abortions and the women who had abortions. The newly formed Women's liberation movement, together with the Radical Party, gathered signatures to call for a referendum to repeal the existing law. In 1973 the Radical Party and some feminist groups founded CISA (Italian Centre for Sterilization and Abortion) which practiced low-cost abortions in private centers as a form of civil disobedience. Regarding the history of Abortion Law in Italy, see Sciré (2008); Hanafin (2007).

⁵ This was the position of various feminist groups who intended to pursue more global transformations of gender relations, medicine and society rather than simply obtaining an Abortion Act. See Percovich (2005: 95-108).

⁶ The discussion of the law and the final vote at the Senate took place at the same time as the kidnapping of Aldo Moro by the Brigate Rosse. There was a rumor that the ruling Christian Democratic party granted the necessary votes for its approval in order to avoid a governmental crisis. See Sciré (2008: 169-174).

⁷ In Italy these are called "consultori familiari". They were established in 1975 in order to offer local support to families and motherhood. Ideally, in family planning clinics various professionals are available, according to specific local needs: health, social and educational workers, lawyers, etc.

⁸ Luc Boltanski (2004) pointed out that this principle, which is also the foundation of the French law, is based on the idea that only self-defense constitutes a valid justification for violence. The decision to terminate a pregnancy is up to the woman, because she is the only one able to judge the psychological risk that the pregnancy exposes her to.

unborn.⁹ The increase of restrictions between the first and second trimester of gestation suggests, on the other hand, the recognition of an additional threshold. According to the law, a 24-week-old fetus cannot be subject to the same treatment as a 10-week-old one. The interruption of pregnancy becomes much more problematic or even impossible¹⁰ during the more advanced stages of gestation. And if there is a possibility of autonomous life, the law compels the physician to terminate the pregnancy and save the fetus' life.

3. Law 40: Medically Assisted Procreation and the Protection of the Unborn¹¹

The law regulating medically assisted procreation was implemented in 2004 and it is a particularly restrictive law. It reflects the growing influence of the Catholic Church on Italian politics.¹² Despite considering any technical intervention on conception morally unacceptable, the Church maintains that practices authorized by Law 40 are "less harmful" than those that the law prohibits.¹³ Passed almost thirty years after the Abortion Act, this law is the expression of a change in the delicate balance between the Church and political parties that - in the words of Patrick Hanafin (2007: 5) - led to "a politics of entrapment in an imagined natural order", and produced a "vitalist national narrative" that is threatened by sexual and reproductive rights.¹⁴

Law 40 says the State "ensures the rights of all the parties involved [in medically assisted procreation], including the 'conceptito' (literally the 'conceptus')". For the first time in the Italian law, the unborn is explicitly considered and protected as a subject in the procreative process. Access to medically assisted procreation is restricted to infertile heterosexual couples (Art. 4 & 5). Only homologous fertilization is authorized (Art. 4).

Chapter IV is entitled "Measures for the protection of the embryo", Article 13 sets the limits for scientific research on human embryos. The law prohibits experimentation on human embryos. Research is allowed only for therapeutic and diagnostic purposes for the embryos' benefit. The production of human embryos for research or experimentation is prohibited, as well as any form of eugenic selection of embryos and gametes. Cloning and fertilization of human gametes with gametes of a different species is also prohibited. Article 14 limits the use of the existing techniques for medically assisted procreation. The law prohibits cryopreservation, the production of a "number of embryos exceeding those necessary for a single, simultaneous transfer, and in any case not more than three". It permits short-term cryopreservation only when the transfer is impossible due to major health reasons. Lastly, it prohibits embryo reduction in twin pregnancies.

Chapter III, "Provisions concerning the protection of the child to be" establishes the legal status of the new-born, as the legitimate or recognized child of the couple. In cases of heterologous fertilization (prior to the approval of Law 40¹⁵), it prohibits denying paternity and the anonymity of the mother which are guaranteed for natural pregnancies.¹⁶ In the case

⁹ This principle had already been sanctioned in 1975 in relation to medical abortion. A decision of the Constitutional Court (N. 27) had established that pregnancy could be terminated "when the gestation caused damage or posed serious risk for the mother's health, that could not be otherwise avoided." Sciré (2008:78).

¹⁰ In Italy, therapeutic abortion is only possible until the 24th week of gestation.

¹¹ <http://www.camera.it/parlam/leggi/04040l.htm>

¹² Some analysts have pointed out that the disappearance of major political parties (as the Christian Democratic Party and the Italian Socialist Party), as a result of the judicial "Mani Pulite" campaign opened a "post-political" era, where the absence of strong ideologies have made Catholicism a means for obtaining consent, leveraging on shared values such as the condemnation of abortion, euthanasia, prostitution, homosexuality, etc. See, among others, Damiano (2006).

¹³ The Catechism of the Catholic Church also condemns homologous artificial insemination and in vitro fertilization, because they dissociate procreation from the sexual act. "The act which brings the child into existence - the text says - is no longer an act by which two persons give themselves to one another, but an act which entrusts the life and identity of the embryo to the power of doctors and biologists, establishing the domination of technology over the origin and destiny of the human person." CCC 2377 (http://www.vatican.va/archive/catechism_it/p3s2c2a6_it.htm).

¹⁴ Regarding the history of Law 40, see Valentini (2004); Hanafin (2007).

¹⁵ Prior to the approval of Law 40, in Italy it was possible to undergo medically assisted procreation both in public hospitals and private clinics. In 1985, a Ministerial Circular forbade heterologous fertilization in public hospitals, where only married couples could access homologous fertilization. In private clinics, heterologous fertilization was also practiced; here also unmarried couples could receive medically assisted procreation.

¹⁶ According to the Civil Code (Art. 235), denying paternity of a child conceived during marriage can take place: 1) when the spouses have not cohabited during a period between 300 and 180 days before the birth and 2) when during this period the husband was suffering from impotence (even if only to generate) and 3) when during that period the wife committed adultery or concealed her pregnancy from

of heterologous fertilization, it is specified that the donor does not acquire any legally recognized parental relationship with the newborn (Art. 9).

So which are the rights that the law provides to the unborn? "Provisions concerning the protection of the child to be" defend his/her right to have a mother and a father (mutually bound by marriage and/or cohabitation). The law states that, in cases of heterologous fertilization, prior to its enforcement, the intention expressed by parents prevails over the biogenetic relationship between parents and children. The ban on heterologous fertilization, on the contrary, reinforces a biogenetic understanding of parental bonds: the mother and father of the child to be are those who, together with the intention expressed in the declaration of informed consent, provide the gametes used for vitro fertilization.¹⁷

The "Measures for the protection of the embryo", on the other hand, protect its negative rights: the right to integrity, to fairness of treatment (regardless of its genetic characteristics) and to life, "without prejudice to the provisions of the Law" (Art. 14). This article reveals a contradiction between Law 194 and Law 40. Whereas Italian law does not allow either pre-implantation diagnosis, or selection or elimination of frozen embryos, it allows for the disruption of an embryo or a fetus in the womb, conceived through natural or artificial insemination, in cases and according to procedures established by Law 194. Finally, strict restrictions on cryopreservation protect what might be called the embryo's right to a uterus as its "natural" place.

4. "One of Us"

As stated in the introduction, the ontological status of embryos and fetuses, as well as the forms of social recognition and treatment reserved for them, are at the center of cultural and political controversies. In the debates on medically assisted procreation and the experimentation on embryo stem cells, the use of the categories of "person", "individual" and "subject" in relation to embryos is a tool to advocate their right to life and the moral duty to protect their dignity. In the previous section I showed a shift stemming from the comparison of Law 194 and Law 40. While the Abortion Act generically states that the State defends life starting from conception, the law on medically assisted procreation protects the unborn as a subject of the procreative process. In order to understand the cultural shift that led to Law 40 and beyond, I now turn to the opinions and motions of the National Bioethics Committee (NBC), starting from a 1996 document entitled: "The identity and status of the human embryo".

Before analyzing this text, let us recall that the NBC was established in 1990 to advise the government and other official institutions by providing information about ethical issues raised by scientific research and by the application of technologies to life sciences and the health care system. Members of the NBC come from different disciplines and specialties and are officially charged with the delicate task of determining what the socially legitimate uses of the human body, its parts, its substances, etc are so that they do not become subject to violation or exploitation. NBC members are expected to mediate between conflicting social representations, stabilizing collective ambivalence on sensitive topics symbolically and practically (Memmi 1996).

The 1996 opinion sets the limits for scientific research on human embryos and the use of medically assisted procreation techniques. It also provides a definition of human embryo's identity. At the beginning of the text, the former NBC president¹⁸ makes a powerful statement: "The embryo is one of us", a phrase that has been recently taken up by the pro-life movement to denote a European campaign aiming to stop all funding of procedures that involve the destruction of human embryos.

"The Committee - the text states - has unanimously come to recognize the moral duty to treat the human embryo, from fertilization on, according to the criteria of respect and protection which must be adopted towards human individuals, the same which are commonly attributed personhood. This is irrespective of the fact that the embryo, from the very beginning, is attributed with all the characteristics of personhood in the technically philosophical sense, or that such

her husband. In these cases, the husband can prove that the child has genetic characteristics or a blood group incompatible with his own or he can cite any other fact to exclude paternity. Italian law allows anonymous childbirth. Women who do not wish to claim their baby can leave him or her at the hospital where she give birth. On birth certificate, the child figure as "born of a woman who does not want to be identified" (Decree of the President of the Republic 396/2000, Art. 30).

¹⁷ As noted by Amedeo Santosusso (2005), this idea is new to Italian law where, until recently, parental bonds (particularly with the father) were not primarily based on biology.

¹⁸ The former NBC president is a lawyer. Currently he is the honorary president of the Committee (formerly one of its founding members and president for two terms: 1995-1998, 2001-2006). He presides over the Italian Catholic Jurists Union and is a member of the Pontifical Academy for Life.

characteristics are deemed attributable only with a high degree of plausibility, or that it is preferred not to use the technical concept of personhood but only to refer to membership to the human species which cannot be challenged from the very beginning and is not altered during subsequent development".¹⁹

The document speaks of unanimity, but it also reports differences that emerged within the committee "on some thorny points". The opinion, in fact, not only stabilizes a specific representation of human embryos, but also provides guidance on what should be legal and illicit behavior towards them. All NBC members agree that exploitation of embryos for experimental, commercial or industrial purposes is morally illicit and they condemn cloning and the creation of hybrids or chimeras. Some members of the NBC also deem unacceptable: any form of suppression or the damaging through manipulation of embryos, pre-implantation diagnosis and the in-vitro production of embryos not immediately intended for transfer in the womb - setting, in fact, what would have been the limits imposed by Law 40 regarding the use of medically assisted procreation techniques. The document also reveals divergent opinions about: 1) the moral admissibility of the production of extra embryos and 2) the decision not to implant embryos that, during pre-implantation diagnosis, result as affected by severe malformations or genetic disorders; 3) the use of embryos that are biologically unsuitable for transfer for scientific research and/or therapeutic purposes; 4) the use of embryos in a state of neglect for experimental or therapeutic purposes. Two opinions issued after the approval of Law 40, as we shall see, directly address these last points.

5. Orphan Embryos, Adoption for Birth and the Fate of Embryos No Longer Suitable for Transfer

Law 40, as we have seen, prohibits pre-implant diagnosis, considering it as a form of malicious manipulation against embryos. However, the couple that requests it is granted the opportunity to be informed about the health of the embryos to be transferred in the uterus (Art. 13, § 5). The "Guidelines on medically assisted procreation"²⁰ issued to allow for the implementation of the law specify that investigations on embryos can only be observational and that, if there are "serious irreversible abnormalities in the development of the embryo", transfer to the uterus cannot be imposed on the couple. A severely and irreversibly abnormal embryo, in this case, will be maintained in culture "until its extinction".

Law 40 prohibits cryopreservation. Until its implementation, however, this technique was possible. An unknown number of cryopreserved embryos was stocked in medically assisted procreation centers scattered around the country. The problem of how to handle these embryos was explicitly addressed by the Guidelines. They introduced a distinction between "embryos waiting for future transfer" and "*embryos in a state of neglect*" (emphasis mine). The latter were defined by the "written waiver to future transfer of cryopreserved embryos by both parents or by a single woman (in the case of embryos produced with donor sperm and in the absence of a male partner, prior to current legislation)" or by documented inability to trace the couple or the woman related to the cryopreserved embryos.²¹ While, according to the Guidelines, embryos waiting for transfer should be stored in medically assisted procreation centers which should bear the costs of maintenance, embryos in a state of neglect should be "frozen and cryopreserved in a single specialized centre, at the expense of the State". A Decree issued by the Ministry of Health soon after the publication of the Guidelines²² entrusted the Higher Institute of Health with the task of defining the number and location of "abandoned embryos" and to identify a suitable center to transfer and store them. This biobank was entrusted with "the task of carrying out studies and research on the cryopreservation techniques of gametes and *orphan embryos* therein retained" (emphasis mine).

A little more than a year after the publication of the Guidelines, the NBC issued an opinion entitled: "Adoption for birth of cryopreserved residual embryos derived from medically assisted procreation"²³ (2005), which sought a solution to the paradox of embryos that, "having been given life intentionally" seemed destined to "die without ever being born". In order to ensure these embryos were given "a chance for life and development", the NBC suggested that they be "made available to any couple wishing to ensure their transfer and birth". This solution, in the text, is called "adoption for birth", a phrase that recalls "the values of solidarity, generosity, responsibility and irrevocability" of adoption. Adoption for birth, according to the NBC, would "solve the bioethical problem of residual embryos, permanently deprived of a parental project, at least to some extent". The opinion, in fact, focuses on the embryo's interest and its right to a womb as "the *only*

¹⁹ <http://www.governo.it/bioetica/testi/220696.html>

²⁰ Ministerial Decree of 21 July 2004, Official Gazette of 16/08/2004, N. 191.

²¹ The text specifies that attempts to track the couple who carried out medically assisted procreation should be repeated by the center for at least one year.

²² Decree of 4 August 2004 "Norms on medically assisted procreation", Official Gazette No. 200 of 26 August 2004

²³ www.governo.it/bioetica/testi/APN.pdf

*residence*²⁴ that provides a possibility to survive and be born" (emphasis mine). The text does not mention the parents' desire to have a biological child through gestation. Moreover, the linguistic assimilation with (legitimizing) adoption establishes a symbolic separation between the transfer of an embryo into the body of a woman²⁵ genetically unrelated to it and practices of heterologous fertilization and/or surrogacy forbidden by the law.²⁶ The opinion, on the other hand, recognizes the difference between the two cases of adoption,²⁷ and urges the establishment of a separate legal protocol, less strict than the one that applies to adoption.

Dissent from the NBC opinion figures in the footnotes below. On the one hand, they contain words of caution, seeking to limit the risk of a return from the window of heterologous fertilization; on the other, there is a call to recognize adoption for birth - here renamed "donation" - as a form of heterologous procreation, and to acknowledge all the parties involved: the providers of gametes, the donated embryos, and the receiving parental couple or parent. Assuming a more radical stance, one of the members of the NBC²⁸ stated that the document was unacceptable because "it stated in a dogmatic and definitive way that the embryo is a person, an individual, one of us, a concept that certainly can not be considered neither unique, nor shared".

Despite the favorable opinion of the NBC, the proposal to legalize the adoption for birth of abandoned embryos remained a dead end until now. The increase of stored embryos, due to a 2009 Constitutional Court ruling extending the possibility of cryopreservation²⁹ has recently reopened the debate over its benefits. At the same time, the transfer of "orphan embryos" to the biobank was never realized. The census and the very definition of embryos' state of neglect have raised more problems than those imagined by the Guideline makers. Embryos are still cryopreserved in the centers where they were created, which, at least for the time being, indefinitely take responsibility for their storage.

In 2007, the NBC prepared a new opinion concerning "The fate of embryos resulting from assisted reproduction and no longer suitable for transfer".³⁰ Embryos presenting severe and irreversible abnormalities are not implanted for gestation and birth. At the same time, they cannot be used for scientific research, since this would cause their "suppression". As we have seen, the Guidelines on medically assisted procreation provide that these embryos will be left in culture until death.³¹ In order to allow for the use of embryo stem cells for scientific research, the 2007 NBC opinion considers the possibility of identifying "a criterion for ascertaining the embryo's death when its vitality has not completely failed". If brain death allows for organ removal for donation, "organismic death", defined as loss of the ability to continue development "in an integrated and self-regulated manner, through progressive cell differentiation", could likewise allow for cell donation for scientific research purposes. The document points out that as in organ donation, cell donation would be a gesture of love.

The opinion mentions the sharp divisions that this topic raised within the NBC. Disagreements regarded the use of embryo cells for scientific research (desirable according to some and unacceptable according to others, because it violated their "inherent dignity" and their "right to life") as well as the very definition of the embryo's death (some were willing to entrust scientists to establish criteria to identify organismic death, others rejected the admissibility of such a notion, necessarily based on "probabilistic signs". "Embryos 'not suitable for transfer' - noticed some members of the committee in a footnote - albeit severe abnormalities, are *full-fledged human beings*, in the initial stage of their development, and therefore have absolute dignity that requires us to always respect and protect their life" (emphasis

²⁴ Barbara Duden (1993) provided a critical analysis of the cultural reduction of women to a "uterine environment" reproduced by this opinion.

²⁵ The opinion "does not exclude the possibility of a single parent adoption requested by a woman, when it is not possible to guarantee the presence of both parental figures". Also in this respect, adoption for birth differs from medically assisted procreation, which, as seen above, is not accessible to single women.

²⁶ Unlike couples undergoing heterologous fertilization, the text specifies that couples adopting an embryo for birth are not the origin of the procreative project; plus, unlike surrogacy, adoption for birth means the child grows in the womb of the woman who after birth will be his mother.

²⁷ The text specifies that the "risk of trauma" for the abandoned child is not commensurable to that suffered by the embryo. The adopted child lives "in his mother's love", while the embryo lives "in his mother's womb and love".

²⁸ Doctor, member of the Italian Society for Fertility and Sterility, honorary president of the UAAR (Rationalists, Atheists and Agnostics Union) and AIED (Italian Association for Demographic Education), author of several books on women's health and medically assisted procreation.

²⁹ Judgment no. 151/09 dated 1 April 2009 made it possible for the physician, with the consent of the patient, to decide the number of oocytes to be fertilized and extended derogation for cryopreservation imposed by Art. 14.

³⁰ www.governo.it/bioetica/pareri.../destino_embrioni_pma_26102007.pdf

³¹ At that point embryos are no longer suitable for research that requires living cells.

mine). In a footnote motivating her abstention, another member of the committee³² wrote: "the use of deeply meaningful words like *death* and the proposed assimilation between the *unborn* embryo and the *born and living* being is likely to delimit and tarnish the event of birth as coming to the world. ... We speaks of the life (and death) of the embryo, effectively reducing the indispensable mediation of the woman's body and mind in giving birth to living human beings to insignificance."

6. Conclusions

Thanks to the laws and the NBC opinions examined here, it is possible to point out some of the transformations that the notions of "concepito", "embryo" and "life" have undergone in recent Italian history. Laws and ethical opinions not only reflect the complex changes in the fields of medicine and technology, but also in those of politics, family relationships and gender. Protecting "life" from its beginning was the goal of the Italian government in the 70s, in the law authorizing abortion. Since then, the meaning of "life" and its protection has significantly changed (Rose 2007). The unborn is increasingly conceived of as a unique and distinct individual, with biogenetic subjectivity independent of social ties. Legal recognition according to Law 40 has brought about a number of consequences. First, it toppled one of the founding principles of Law 194, according to which woman's health came before the embryo or fetus's life. Furthermore, in the name of embryo protection, the law introduced prohibitions to safeguard the foundations of the traditional family. Thus the prohibition of heterologous fertilization ensuring the embryo a certain father and mother preserves the idea of shared biogenetic substance as the essence of the parent-child relationship. On the other hand, the denial of access to artificial insemination for single women prevents the formation of single parent or homosexual households. As pointed out by Patrick Hanafin (2007), with its entry into the sphere of law, the embryo's dignity has become a tool for imposing a "natural" moral order.³³

Laws and bioethics forbid, authorize, approve or condemn certain practices. Moreover, along with other discourses, they shape "life" through language. Oftentimes terms which lawyers and bioethicists use to describe life are figures of speech. This is the case, for example, with "orphan" or "abandoned" embryos or "prenatal adoption", which draws from kinship vocabulary and family law to define the state and the possible fate of cryopreserved embryos. The transposition of these expressions from the source to the target domain, however, is not neutral. It carries the idea of an embryo that has family ties which can be lost: as with an abandoned child, if the biological "parents" cease to take responsibility for their embryos, the task of protection switches (or could switch) to the State. Similarly, the concept of "organismic death" suggests an analogy between "terminal embryos" and subjects suffering from brain death. In front of the personification of the unborn that permeates law and language, cultural anthropology reminds us that "personhood" is not a property that individuals - [embryos] or fetuses - possess prior to their entrance into social life and relations, nor it is an attribute that can be discovered with the accumulation of greater scientific knowledge or the development of more advanced techniques ... Who or what is called a person is, among other things, a highly contingent historical formation ... always under construction as a self-evident fact of nature" (Hartouni 1999: 300).

Within the pluralism of values that characterizes contemporary Italy, law and bioethics often assume authoritarian tones and instead of being perceived as a reflection of common sense, often seeming imposed from above (Rodotà 2006).³⁴ The meanings and values upon which they are based are not shared - and the NBC documents show how insidious and difficult it is to mediate between conflicting and competing ideas. Contested as they are, the meanings and values conveyed by laws and ethics become part of people's lives and moral worlds, shaping actions, emotions, individual desires and collective passions.

³² *Psychologist and psychotherapist, she has been active in the feminist movement since the 70s. She is the author of several publications on gender and generation.*

³³ *For a critique of the idea of "nature" in relation to the family see Remotti (2008).*

³⁴ *Arthur Kleinman (1999) has criticized ethnocentricity, medicocentricity and psychology of bioethics and the tendency to prioritize often esoteric professional formulations, far removed from everyday life and common sense, where moral issues are mostly formulated in religious terms, tied to specific social situations, expressed through the body, etc.*

References

- Battaglia D., 1990, *On the Bones of the Serpent: Person, Memory, and Mortality* In Sabarl Island Society. Chicago: University of Chicago Press.
- Biehl J., Good B., Kleinman A. (eds.), 2007, *Subjectivity. Ethnographic investigations*. London, Berkeley & Los Angeles: University of California Press.
- Bloch M., Parry J. (eds.), 1982, *Death and the Regeneration of Life*. Cambridge: Cambridge University Press.
- Boltanski L. 2004, *La condition foetale : Une sociologie de l'avortement et de l'engendrement*. Paris: Gallimard.
- Carrithers M., Collins S., Lukes S. (eds.), 1985, *The Category of the Person: Anthropology, Philosophy, History*. Cambridge: Cambridge University Press.
- Conklin B., Morgan L. 1996, "Babies, Bodies, and the production of Personhood in North America and a Native Amazonian Society". *Ethos* 24: 657-694.
- Damiano M. 2006, *Il partito di Dio: La nuova galassia dei cattolici in Italia*. Torino: Einaudi.
- Davis-Floyd R., Dunnit J. (eds.), 1998, *Cyborg babies: From techno-sex to techno-tots*. New York & London: Routledge.
- Dieterlen G. (ed.), 1973, *La notion de personne en Afrique Noire*. Paris: CNRS-L'Harmattan.
- Duden B. 1993, *Disembodying women. Perspectives on pregnancy and the Unborn*. Cambridge, MA: Harvard University Press.
- Dumont L. 1966, *Homo Hierarchicus: Essai sur le système des castes*. Paris : Gallimard
- Dumont L. 1983, *Essais sur l'individualisme. Une perspective anthropologique sur l'idéologie moderne*. Paris : Seuil.
- Fortes M., 1987, *Religion, Morality and the Person: Essays on Tallensi Religion*. Cambridge : Cambridge University Press.
- Hanafin P. 2007, *Conceiving Life. Reproductive Politics and Law in Contemporary Italy*. Adershot-Burlington: Ashgate.
- Hartouni, V., 1999, "Reflections on Abortion Politics and the Practices called 'person'" in L. Morgan and M. Michaels (eds.), *Fetal Positions/ Feminist Practices*. Philadelphia: University of Pennsylvania Press, pp. 296-303.
- Kleinman A., 1999, "Moral Experience and Ethical Reflection: Can Ethnography Reconcile Them? A Quandary for 'The New Bioethics'". *Daedalus* 128 (4): 69-97.
- La Fleur W. 1992, *Liquid Life: Abortion: Abortion and Buddhism in Japan*. Princeton: Princeton University Press.
- Mauss M., 1938, "Une catégorie de l'esprit humain: la notion de personne celle de "moi"". *Journal of the Royal Anthropological Institute* 68: 263-281.
- Memmi D. 1996, *Les gardiens du corps. Dix ans de magistère bioéthique*. Paris: Ed de l'EHESS.
- Moore H. 2007, *The Subject of Anthropology. Gender, Symbolism and Psychoanalysis*. Cambridge: Polity Press.
- Morgan L., Michaels M. (eds.), 1999, *Fetal Subjects, Feminist Positions*. Philadelphia: Univ. Pennsylvania Press.
- Ortner S., 2005, "Subjectivity and cultural critique". *Anthropological Theory* 5 (1): 31-52.
- Percovich L. 2005, *La coscienza nel corpo. Donne, salute e medicina negli anni Settanta*. Milano: Fondazione Badaracco-Franco Angeli.
- Remotti F., 2008, *Contro natura. Una lettera al papa*. Roma-Bari: Laterza.
- Rodotà S., 2006, *La vita e le regole. Tra diritto e non diritto*. Milano: Feltrinelli.
- Rose N., 2007, *The Politics of Life Itself. Biomedicine, Power, and Subjectivity in the Twenty-First century*. Princeton: Princeton University Press.
- Santosusso, A., 2005 "Corpi e soggetti: l'invenzione di sé tra biotecnologie e categorie giuridico-politiche". *Storia delle donne* 1: 13-37.
- Sciré G., 2008, *L'aborto in Italia. Storia di una legge*. Milano: Bruno Mondadori.
- Strathern A., Lambeck M., (eds.), 1998, *Bodies and Persons. Comparative Perspectives from Africa and Melanesia*. New York: Cambridge University Press.
- Strathern M. 1988, *The Gender of the Gift. Problems with Women and Problems with Society in Melanesia*. Berkeley: University of California Press.
- Valentini C. 2004, *La fecondazione proibita*. Milano: Feltrinelli.