5 Ending a Marriage in Two Catholic Countries

Summary 5.1 Introduction. – 5.2 When is Marriage No Longer a Marriage?. – 5.3 Divorce Italian and Polish style. – 5.4 Continuity and Change. – 5.5 Annulments in Name, Divorces in Intent. – 5.6 Living Apart, But Forever Linked. – 5.7 Struggling for Change, in Parliament and on the Street. – 5.8 Conclusions.

5.1 Introduction

Talking about the battle over divorce in Italy and Poland brings to mind two apparently opposite scenarios. In the Italian context, the battle was about the recognition of the right to divorce. In Poland, the battle was against the introduction of divorce, together with secular marriage. In Poland, the battle was led by the Church against a State controlled by the Communist party; in Italy it was led by secular parties (the Communist party most importantly among them) against the 'holy' alliance of State and Church.

In many ways, Italy's long and tortuous road to divorce, which saw a law passed only in 1970, can be seen as the struggle of a weak liberal culture to assert individual rights in a context dominated by a strong Catholic culture. In Poland, the swift introduction of divorce in 1945 could be read as part of the successful assertion of the State's authority over the institution of marriage, and more broadly over the family, against the influence historically exercised by the Catholic Church. This different chronology is reflected in the structure of this chapter. Polish law was hardly modified after the early fifties, which is at the time when the first proposals for divorce were advanced in Italy.

Despite these different scenarios, the issues raised in the two countries by divorce were similar and went to the core of the rela-

DOI 10.30687/978-88-6969-394-6/005

tionship between citizens, State and religious institutions. From the perspective of the Church – as for many priests and even practicing Catholics – fighting against divorce represented a battle for civilisation, and not just an effort to retain a strong voice in marriage and family issues. The Catholic struggle against divorce took different forms, depending on local circumstances. The concerns that motivated the Church, however, were universal. In many ways, divorce measured the Church's ability to defend its prerogatives in the regulation of family life as well as its enduring (or dwindling) social influence. From the point of view of the State, divorce measured the extent to which family and marriage were considered a collective issue: are family matters to be decided by the State, or by individuals? From the point of view of the individual, divorce was about liberty and the right to assert one's desires vis-à-vis the State.

In some senses, therefore, divorce was the key battleground where collective and individual rights clashed. It was the frontline between different visions of a society: a secular and a Catholic one. It was the arena where the balance between the rights of the State and the rights of the individuals were to be decided. The Polish and Italian dynamics highlight this very well.

The Italian slow road to divorce has often been linked to the supposedly peculiar importance attributed to the family in national discourse and in the country's political culture.[1] As we have seen, however, the family was not less central to the Polish discourse. Cultural patterns alone cannot explain the very different attitudes towards divorce that emerged in the two countries in the post-war years. In Italy, the idea that Italians 'were not ready' to accept divorce influenced even those political forces more committed (at least in theory) to a secular view of family life, starting with the Communists. In Poland, such uncertainties and political anxieties were cut short by the State's determination to modernise the family from above. These different outcomes depended not on cultural differences, but on the different power dynamics that existed, first of all, between the Church and the State.

In the immediate post-war years, the inability of the Italian state to assert norms on marriage and family life independent of the prescriptions of the Catholic Church showed where the balance of power rested. In the same period, the introduction of civil marriage and divorce in Poland marked the affirmation of a political power not only independent of, but clearly hostile to the Church. Whilst in Poland the reform of 1945 seemed to solve the question of divorce in a swift and incontestable way, in Italy the question became of national concern only in the late sixties, when growing pressure exercised by new

1 Caldwell, *Italian Family Matters*.

social movements forced political parties to take over an agenda for social reform they had long tried to ignore.

So far, the story could seem rather simple. Whilst in Poland a powerful and undemocratic government decided to confront head-on the influence traditionally exerted by the Church, in Italy, weak political institutions and the search for a fragile political consensus helped the Church to maintain its primacy over matters of family and marriage. As we will see, however, things were more complicated in reality.

Far from declaring the triumph of a secular notion of marriage, the introduction of divorce in Poland became part of an enduring struggle between state authorities and the Church – not so much on different conceptions of individual rights, but on their respective ability to govern marriage and its role in society. The Socialist state and the Church competed over different conceptions of marriage durability and over the reasons that could end a marriage before the death of one of the spouses. The outcome of this competition shaped the scope of the influence both these actors were able to exercise on ordinary Poles.

In 1945, the introduction of divorce was part of a raft of reforms intended to transform Poland in a secular country, free of the 'obscurantist' influence of the Church. However, by the end of the fifties, the limits of the secularisation project were already painfully clear. As it quickly emerged, the legal possibility of divorcing had not made divorce socially or culturally acceptable.

By the seventies, Catholicism and the symbolic investment in traditional notions of family life (including in the unbreakability of marriage) had become for many a sign of political resistance.

The rallying of Poles behind the banners of the Church stood in sharp contrast to the increasing disaffection manifested by Italian Catholics with the prescriptions of the Church, which was perceived as oppressive and out of touch with daily reality.

5.2 When is Marriage No Longer a Marriage?

Divorce was introduced in Poland in 1945 by decree, as part of a general reorganisation of family and marriage legislation. It was a decision imposed from above, with little space left for discussion. The opposition that had been mounted by the Church in the months preceding the passing of the decree had been defeated, at least at the level of the law. With the passing of this decree in October 1945, the regulation of marital affairs assumed a legal coherence and simplicity that it never had in the past. From this point onwards, only one form of marriage existed for Poles, irrespective of their religious affiliation. Marriage could be ended in accordance with the law, on the basis of grounds of which the sole arbiter was the State. We will come back to this later in the chapter.

The situation was much messier in Italy. Three forms of marriage existed in post-war Italy. People could choose an exclusively religious marriage (regulated by canon law), a purely civil marriage (regulated by the law of the State), or a so-called 'concordatarian marriage', which was a religious marriage having civil effects, in accordance with the norms agreed in the Concordate stipulated on May 27, 1929 (art. 847). The main common feature of these three forms of marriage was the near unbreakability of the marriage tie.

The denial of the right to divorce for all married couples was introduced in the Italian civil code in 1865, together with universal civil marriage, as an unspoken concession to the Catholic Church.[2] The moment when the State took over the responsibility for marriage, proclaiming itself unfit to judge or intervene in matters of faith, also marked the inclusion in the Italian civil code of a norm that had been at the core of Catholic doctrine. It was a contradiction that influenced all successive developments. The effect of the introduction of concordatarian marriage in 1928 was further strengthened by the Rocco code of 1942, whose article 149 proclaimed that marriage could only be "dissolved on the death of one of the spouses".

The situation did not change with the advent of the Republic. Tellingly, the issue of divorce entered the Constituent Assembly only indirectly. The big debate was around the question of marriage indissolubility, a discussion that put secular parties on the defensive and rendered largely inaudible the voices of those who upheld a secular notion of marriage.[3]

As we have seen, moreover, even the PCI was reluctant to support a law that threatened to weaken the stability of family life. "Having dropped our guns we will reconstruct our families", proclaimed the Communist magazine *Noi Donne* in 1945, capturing the widespread desire to return to domestic normality felt by a population exhausted by years of war and occupation.

A genuine preoccupation with preserving family life, together with Togliatti's conviction of the importance of not alienating Italy's Catholic masses, undermined the possibility of asserting a secular notion of the State. As the liberal Catholic Arturo Carlo Jemolo observed, the inability of the State to assert its role and responsibilities in the face of the Church produced an array of legal inconsistencies of which the regulation of marriage was one of the best examples.

In 1954, the jurist Mario Berutti described the political climate of post-war Italy as "apparently democratic, but authoritarian and paternalistic" in nature. In this climate it was "not simple for those

2 Acquarone, *L'unificazione civile*; Ungari, *Storia del diritto di famiglia*; Torelli, *Lezioni di storia del diritto*, 105.

3 See among others Saresella, "The Battle for Divorce", 401-18.

who failed to adapt to a sort of prudent and systematic conformity to speak, or write serenely and objectively about divorce".[4]

This description well captured the context in which the socialist MP Renato Sansone first put forward a proposal for a law that would allow divorce to take place in a limited number of situations. The cases contemplated by Sansone included attempted murder by one of the partners, long-term imprisonment, and de facto separation of over fifteen years. Sansone himself termed his proposal "piccolo divorzio", explicitly distancing this project from divorce understood as the possibility of ending a marriage on the basis of individual desires alone.

Sansone, a lawyer first elected as deputy in 1948, and then again in 1953, insisted that his interest in divorce derived from a concern for the actual effects that the impossibility of ending a marriage had on ordinary people, rather than from a political or ideological stance. In October 1954, Sansone described those caught in marriages that existed only in the law as *fuorilegge del matrimonio* (matrimonial outlaws), a definition that would embed itself in the Italian public discourse. The *fuorilegge* were the same people whom Maria Maddalena Rossi had powerfully evoked in her speech at the Constituent Assembly: people whose first marriages had broken down and who were now living in situations considered illegitimate and beyond the pale. Sansone stressed that the core cause of this situation was a law out of sync with most European legislation, including that of other Catholic countries such as France, Belgium, and Poland, and unable to cope with the changed social reality. Sansone's estimate that at least 4 million Italians, both adults and children, lived in illegitimate families, and that 40,000 marriages broke down every year, relied on scant evidence and might very well be exaggerated. He was certainly right, however, in stressing the damage caused by backward and punitive legislation that deprived people of the possibility of changing the course of their marriages and family lives.[5]

Sansone's proposal has been dismissed by most authors as little more than a manifestation of the 'familistic' climate of the period. Mark Seymour suggested that the expression "piccolo divorzio" en-

4 Berutti, *Il divorzio in Italia*, became a point of reference in the debate.

5 Statistics on personal separations suggested that, although a significant increase had taken place in the aftermath of the war, jumping from 4,523 in 1933 to 8,152 in 1952, the numbers of those who were officially separated remained modest. The question of how many people lived in long-term separations, however, remained controversial. See, for instance, the speech by the Christian Democrat Mattarella on the 10th of October, 1969, *Atti Parlamentari*, Camera dei deputati, V Legislatura, Discussioni, Seduta del 10 Ottobre, 1969, 10878. Mattarella lamented both the lack of reliable data on the number of separated couples and the absence of an in-depth analysis of the "conditions that led to separations".

dured because "it was both ironic and accurate". Accurate because of its extreme conservatism; ironic because of the "impossibility of having degrees of divorce".[6] The idea that Sansone's proposal was just a reflection of Italy's familistic culture, however, overlooks the logic that underpinned the effort of specifying the conditions under which divorce could be considered acceptable.

At the core of the idea that only specific situations could justify ending a marriage was a notion of divorce not as an individualistic act or as the result of individual desires, but as a means of asserting what constituted acceptable family and married life. It was a normative statement, in which the State, through the courts, became the ultimate arbiter of marriage.

Although Sansone was criticised for being too cautious and too acquiescent to Christian democratic pressure, his logic was in fact similar to that adopted in Communist Poland in 1945. In both cases, divorce was linked not to the will of the individuals involved, but to objective and measurable grounds, which the State considered incompatible with marriage. Both in the Polish law of 1945 and in Sansone's proposal, grounds for divorce included long prison sentences, the attempted murder of the spouse, the presence of an incurable mental illness, and lengthy abandonment or consensual separation (15 or more years in Sansone's proposal, only 3 in Polish law).

According to Polish law, which was certainly much broader and more comprehensive than Sansone's proposal, divorce could also be granted for adultery (unless condoned or committed more than three years before the petition was filed), an attempt on the life of the petitioner's child, the refusal to provide for the maintenance of the family, desertion, felony, debauchery, dishonourable occupation, drunkenness or drug addiction, venereal disease, and impotence, or other inability to consummate the marriage (if the spouse was under 50 years of age). In a reflection of the strongly nationalist stance that characterised Polish Socialism, divorce could also be granted if one of the spouses had made a declaration of allegiance to Germany during the war.

From the point of view of the Socialist state, as well as from the point of view of the socialist Sansone, divorce was first of all a means of ending those marriages that had ceased to perform their social function and had in fact became a liability, not only for the individuals involved, but for society at large. In this light, allowing marriages to end for reasons other than the death of one of the spouses did not undermine the value of marriages' durability, nor did it mean that the State accepted divorce as a way of answering individual expectations and desires. Divorce was an inevitable evil, necessary to

6 Seymour, *Debating Divorce in Italy*, 169.

protect society from even greater threats. More than an issue of individual freedom, the question concerned who should be the arbiter of married life and its social role.

In 1952, with the aim of simplifying court proceedings, the 11 grounds for divorce introduced in Poland in 1945 were substituted with the general principle of "complete and permanent disruption" of marriage.[7] On paper, this reform could appear as a step towards a more comprehensive approach to divorce. In making the grounds upon which a divorce could be sought less specific, however, the move had also the effect of expanding the discretionary powers of the Courts, acting in the name of the Socialist state.[8]

The results were a series of interventions by the Polish Supreme Court, in which the country's highest legal authority offered restrictive interpretations of what constituted marriage disintegration and urged caution, particularly when divorce was sought by the guilty party. In several of its pronouncements, the Supreme Court emphasised the social importance of marriage, stressing that divorce should never be read as an acceptance of an individualistic notion of marriage in which individual desires sufficed to end the marital bond. For the State, no less than for the Church, marriages should last; if the State accepted divorce it was only to end "the social evil of marriages that [had] already ceased to exist". In the eyes of the State, the durability of marriage should be achieved not through the "formal indissolubility propounded by the command of religious dogma", but through "the social conscience of the husband and wife", which itself should result "from a mature and responsible attitude towards family duties".[9] In this optic, divorce should be seen as little more than a certification of a situation that already existed and could not be reversed. As it was the right of the State to determine when this was the case, courts could and should refuse granting a divorce when individual wishes seemed to prevail over the common good.

There was a stark convergence between the Catholic and Socialist preoccupation with ensuring that individual wishes and desires should remain subordinated to a higher good, whether this was Christendom or the Socialist nation made only a marginal difference to ordinary people. This apparent paradox was well illustrated by the story of E.B., reported by Lasok as a typical example of the sort of considerations that dictated Polish Courts' rulings in matters of divorce.

7 *Dziennik Ustaw*, nr. 48, 1945, 270.

8 The provision was modelled on a decision of the Presidium of the Supreme Council of the USSR of 8 July 8 1944, which left to the courts the responsibility to decide whether the circumstances presented by the parties justified a decree of divorce. See Szułdrzynski, *The Family*, 48; see also Mazgaj, *Church and State*, 108.

9 Directive issued on the 26 April, 1952, in Lasok, "A Legal Concept", 75.

In 1955, 'Ewa' tried to put an end to her marriage with 'Adam'. The fact that Ewa's husband had continued his "association with another woman" after the marriage, and the resentment that she and her family felt for the lack of a religious ceremony – which had been opposed by the husband – had caused a disruption of the marriage that could not be resolved. While the Court of first instance agreed to the divorce, the judgment was reversed by the Provincial Court, appealed to by the husband, on the grounds that the "parties were not treating the institution of civil marriage seriously". This verdict was confirmed by the Supreme Court, which found "no serious causes" of disruption, but blamed the parties for showing "contempt for the institution of civil marriage". Only when Ewa entered into a new relationship and gave birth to a child whose parentage was disputed by her husband was the divorce granted – this time in answer to Adam's petition.[10]

While the husband's infidelity had been read as the sign that the spouses had not taken marriage seriously, the wife's betrayal and the birth of a child of uncertain paternity made divorce acceptable. For a State that had proclaimed the absolute equality of men and women as one its core principles, the double standard employed by the courts appeared blatant. Communist Poland had pursued a systematic reshaping of women's identities in favour of work and productivity; the way in which sexual behaviour was judged, however, remained hopelessly gendered.[11]

While the introduction of a divorce law like the one operating in Poland would have certainly have been saluted as a huge advancement in Italy, here too the possibility of ending a marriage remained subordinate to the State's determination to stamp its authority on marriage, subject to prescribed norms rather than to the beliefs and desires of the spouses.

5.3 Divorce Italian and Polish Style

Sansone's moderate proposal never reached the stage of parliamentary debate in Italy, and another attempt made by Sansone and Giuliana Nenni in 1958 proved equally unsuccessful. Sansone, however, succeeded in embedding the issue in Italian public discourse, particularly thanks to his collection of first-hand accounts of marriage breakdown. The publication of a selection of the many letters he had received from men and women whose marriages had ended

10 Supreme Court, decision of December 12, 1955, No. CR.1889/54, Lasok, "A Legal Concept", 76.

11 Cf. Klik-Kluczewska, *Rodzina, tabu i komunizm*. For a useful East German comparison, see Harsh, *Revenge of the Domestic*, and Betts, *Within the Walls*.

in all senses, except for the law, provided a snapshot of matrimonial illegality and its unwanted consequences. Particular emphasis was put by Sansone on the dramatic consequences of "war marriages". These were unions decided hastily with little-known soldiers, many of whom disappeared as soon as the war ended, sometimes to return to faraway countries, leaving behind women who could not marry again and children whose legitimate fathers existed only on paper. Such situations, argued Sansone, made a mockery of the notion of indissoluble marriage as basis of family life, as many of those abandoned women had gone on to reconstitute successful family lives that did not exist in the law.

The painful stories collected by Sansone had no reason to exist in Poland, where the reform of 1945 allowed similar situations to be solved relatively promptly. Unsurprisingly, the number of divorces grew steadily in Poland, particularly in the first years of the reform before beginning to decline. Numbers, however, remained modest (11,133 divorces were recorded in 1949, 13,936 in 1956). The reform did not render divorce a fully acceptable path, nor one that Poles resorted to easily.

In fact, Poland contradicted the assumption dear to Italian catholics that "divorce call for divorce", and that allowing marriages to end would inevitably open to way to a spiralling increase of matrimonial dissolutions.

Diaries and memoirs portray lengthy separations that never resulted in divorce, as well as long years of marital unhappiness, not rarely accompanied by abusive behaviour.

Testimonies from below suggest that divorce was more acceptable among highly educated couples; here too, however, women's tolerance towards marital neglect and absence appeared remarkable. 'MTM', a teacher married to an engineer, described in harrowing detail the breakdown of her marriage, following the birth of the couple's second child. MTM's narrative was constructed around her husband's physical and emotional absence, his betrayals and his obvious unwillingness to act responsibly towards his family. Whether faced by economic troubles or by the children's precarious health, MTM faced it alone. Hers was a tale of ever growing loneliness and depression, worsened by the decision of giving up work to dedicate herself entirely to the family. In the event, it was the husband who petitioned for divorce, which wasagreed in 1969, after sixteen years of loveless cohabitation. Reflecting back, MTM concluded that, divorce had been "the only real achievement" of the marriage. Divorcing had been wholly beneficial for MTM, who had returned to work, and enjoyed the regular payment of an alimony by her ex husband. It was, however, a decision that she could not bring herself to take, and the reasons why the marriage had failed continued to trouble her throughout her life. Had the main cause been the birth of the second child,

to which the husband "had never got used"? Or the material difficulties of the early years of marriage? MTM blamed in particular the difficulties that had been caused by the inadequacy of their first apartment, too small and unfit for a young couple to live happily in. If the Socialist state wished to support young marriages, explained MTM, the single most important investment should be to guarantee anyone with a marriage certificate access to a three-room apartment.[12]

Popular culture, starting with cinema, confirmed the social stigma that continued to be attached to divorce.

The representations of the emancipated 'new woman' put forward by socialist propaganda throughout the fifties fell short of presenting divorce as a fully acceptable alternative to marital unhappiness. Even movies more obviously designed to convey the image of the newly emancipated woman failed to acknowledge that escaping traditional positions could mean not only taking up typically male jobs, but also deciding to opt out of unhappy marriages.

Movies such as *Przygoda na Mariensztat* (An adventure at Mariensztat), directed by Leonard Buczkowski in 1954, Jan Rybkowski's *Autobus odjeżdża 6.20* (The Autubus leaves at 6.20), *Niedaleko Warszawy*, directed by Maria Kaniewska in 1954 and *Irena, do domu*, directed by Jan Fethke in 1955 portrayed 'new women', able to react to social and personal difficulties. Moreover, they did not refrain from showing the betrayals and lies that could beset marriage and family life; they refrained, however, from indicating divorce as a solution. The almost inevitable outcome of the sometimes harrowing stories presented by the Socialist Realist movies was the recovery of married life, usually thanks to the good influence that women were able to exercise on their husbands, educating them on the virtues of proper companionship. Even when bringing in salaries, socialist women remained the one primarily responsible for family life. The duty of making marriage work fell upon them. The inability to do so carried with it the stigma of failure.

Somewhat paradoxically, it was an Italian and not a Polish movie that made the issue of divorce the subject of popular debates.

Divorzio all'italiana (or *Divorce Italian Style*), directed by Pietro Germi in 1961, depicted the agonies of the nobleman Fefé Cefalù, who, in the fictional Sicilian town of Agramonte, dreamt of ending his 12-year marriage to be free to pursue his new love for a beautiful cousin, the sixteen-year-old Angela. Faced with the impossibility of divorcing, Fefé, played by the Italian cinema star Marcello Mastroianni, found in 'honour killing' the only way to free himself from matrimonial boredom.

12 "Rozwód jest jedynym naszym osiągnięciem" [Divorce is Our Only Achievement]. *Moje Małżeństo i rodzina*, 41-2.

Already present in the pre-fascist Zanardelli code, honour killing had been reinforced and extended in Italy during the fascist years in accordance with the patriarchal norms that governed the regime's legislation. The norm passed unchanged into post-war legislation. Article 587 of the penal code established that the killing of a spouse, daughter or sister committed upon discovering "her illegitimate carnal relation" and in a "state of anger" provoked by "the offence caused to the honour" of the murderer themselves or of their family, carried with it a reduced sentence, of 3 to 7 years. The same applied to the killing of the person with whom the "illegitimate" relation had been established. While the killing of a husband could also fall into the category of "honour killing", the reduction of the sentence was much less sensible if the culprit was a woman. The institution of "matrimonio riparatore", regulated by art. 544, completed an approach to family and marriage governed by patriarchal norms, which reduced women to male property. According to art. 544, marriage extinguished the penal consequence of rape, itself understood as a crime against morality and as an offence to the honour of the family, rather than as crime against the person.[13]

In *Divorzio all'italiana*, Fefé managed to achieve his goal after a series of mishaps, used by Germi to highlight the many levels at which the patriarchal norms that governed family life and its regulation could operate. Germi's movie was loosely based on the novel *Un delitto d'onore*, published by Giovanni Arpino in 1960. Arpino's novel was a dark tale of possessive love, jealousy and violence, condoned by the law under the rubric of honour. Set in the twenties, the novel linked sexual backwardness and immorality to the emerging fascist power. Germi's re-reading of the story showed how the approach to sexuality and marriage seen in Arpino's story as something of the past remained at the core of post-war Italy's legal culture. The great success of the movie among Italian audiences, as well as its critical acclaim, proved that Germi had touched a raw nerve.

In many ways, Germi's movie marked the beginning of *commedia all'italiana* as a particular genre, in which dark humour and farce were used to highlight some of the most serious plights of Italian society. In *Divorzio*, Germi ridiculed both an outdated legislation and the perverse outcomes of a model of masculinity at once violent and ineffective, obsessed with sexual desire and unable to free itself from social conventions. Mastroianni's magisterial interpretation of Fefé provided a memorable portrait of male misery. Both Fefé's murderous plans, and his determination to use marriage to assert his con-

13 See for instance, Sandrelli, *Il delitto d'omicidio a causa d'onore* and *Abrogazione della rilevanza penale della causa d'onore*; see also Garofalo Geymonat, "La lunga storia del diritto d'onore", 135-43.

trol over the young Angelica, appeared as the outcomes of a familistic and repressive culture that seemed destined to perpetuate itself.

5.4 Continuity and Change

While the socialist revolution had supposedly transformed Poland into a nation of equals, in traditional southern Italy class and gender hierarchies, underpinned by the rigid prescriptions of the Catholic Church, were still dominant. Italian law, administered in perfect continuity with the fascist past, condoned and supported a notion of marriage and family life built upon inequality of power and access.

By the early sixties, however, all this was becoming increasingly untenable.[14]

The processes of industrialisation and urbanisation that engulfed the country in the fifties and sixties had produced new needs and expectations, particularly among women and younger people and challenged the norms that had long governed gender and generational relations. The papacy of John XXIII, started in 1961, indicated a possible different role for the Catholic Church in Italy, at once less prone to open political intervention and less fearful of social change. After the morally intransigent and politically hyperactive reign of Pius XII, the new Pope put forward the image of a more compassionate church and advocated dialogue in the place of uncompromising ideological confrontation.[15] Even the political sphere showed that the dynamics of the early Cold War were open to redefinition. The experience of the centre-left coalition, started in 1962 and based on the alliance between the DC and the Socialist Party, was hardly a model of fruitful progressive politics. Nonetheless, it suggested that new dynamics were at play across Italian politics and society and that new instances were emerging, which would prove difficult to contain.

The surge in interest for family and marriage matters that emerged in the early sixties was unsurprising and confirmed that something significant was happening also in the domestic sphere.

For many Catholics, this meant new preoccupations.

The anxiety for the "increasingly popular" idea that "absence of love could allow ending a marriage" was palpable in Catholic circles and in the Christian Democratic party. In 1963, the Christian democrat MP Franca Falcucci urged Italian Catholics to react against

14 On the debate of the early sixties, see Siré, *Il divorzio in Italia*, 21-6.

15 The 1961 encyclical letter *Mater et Magistra* (Mother and Teacher) and the 1963 *Pacem in terris* (Peace of Hearth) marked a crucial discontinuity with the teaching of Pius XII both in terms of social doctrine and in terms of the international role of the Church. See Gorresio, *La nuova missione*.

such ideas, guilty of lowering the status of marriage as an institution, of making birth control acceptable, and of reducing the responsibility of parents towards their children. Freedom, true love and sacrifice, insisted Falcucci, belonged together and could not be separated without undermining the very fibre of Italian society, whose future depended on the preservation of "the values embodied by the family".[16]

Against the unflinching opposition to divorce maintained by the DC, a growing number of experts argued in favour of a reform of the law in accordance to changing sensitivities. In *Il Divorzio in Italia*, Mario Berutti, jurist and president of the National Association of Magistrates, presented the impossibility of ending a marriage as an "anachronistic" and anti-historical position, whose only result was to force decent citizens to break the law or to live outside its protection. If Sansone had emphasised the dramatic situation of marriage outlaws, Berutti highlighted the many legal inconsistencies and paradoxical results produced by a legislative setup unable to free itself from the influence of the Catholic Church.[17]

Even the communist magazine *Noi Donne* finally picked up the issue in the summer of 1965 with a series of articles based on interviews with ordinary women. Contrary to Togliatti's stance in the aftermath of the Second World War, namely that the issue of divorce was not felt by the majority of the Italian people, *Noi Donne* became convinced that the question could no longer be ignored.

The issue eventually found a political voice thanks to the socialist MP Loris Fortuna, author of a law proposal presented to Parliament on 1 October 1965 and aimed to regulate the *Casi di scioglimento del matrimonio*. Fortuna's proposal followed in the footsteps of Sansone's, although relaxing the grounds upon which a divorce could be sought. Still, specific grounds were once again spelled out, including a prison sentence, mental illness, abandonment of the conjugal home for more than 5 years, a de facto separation for the same period of time, or the obtainment of divorce outside of Italy by one of the spouses.[18] Fortuna was able to mobilise broad sectors of civil society, and gained the unflinching support of the small but defiant Radical Party. The main secular parties, however, remained unmoved.[19] Since the Radical party had failed to bring any MPs to Parliament in

16 "The family and the Transformations of Italian Society", symposium organised by the Women's Movement (*Movimento Femminile*) of the Christian Democrat Party, Rome, 1963.

17 Berutti, *Il divorzio in Italia*.

18 "Il progetto di legge sul divorzio illustrato dal socialista Fortuna". *Corriere della sera*, 18 April 1966.

19 On PCI's position, Tiso, *I comunisti e la questione femminile*, 97-108.

the 1963 elections, the political battle for divorce was fought much more outside Parliament than inside it.[20]

The Catholic Church responded to the growing campaign for divorce with a weapon that would become customary in later years, which is through the official intervention of the Italian Episcopal Conference (CEI, Conferenza Episcopale Italiana), which through its documents reminded the faithful that marriage indissolubility represented a non-negotiable truth, and called all Catholics to mobilise in the defence of family and marriage.

In the long and tortuous *iter* of the law through Parliament, both the constitutional soundness and the social consequences of divorce were explored and discussed at length. In the broad discussion of whether the proposed law went against the Constitution, few stones were left unturned by Catholic MPs. As well as referring to the constraints brought to the Italian legislative freedom by art. 7, Christian Democrats argued that the very definition of family as "a natural society founded upon marriage" was rooted in Catholic doctrine and precluded the possibility of ending a marriage through divorce. Although ultimately unsuccessful, such arguments showed the extent to which Catholic deputies saw the Italian basic law as an instrument through which to protect the values and interests of the Church.[21]

The issue of divorce brought once again to the fore the question of the relationship between the Italian state and the Church, a question that had remained more or less dormant since the works of the Constituent Assembly. The numerous public interventions made by the Italian Episcopal Conference proved the bishops' determination to retain their full influence on the Italian political process. The arguments used by Christian Democratic MPs showed beyond doubt their resolve to assert the position of the Church in the law of the State. At the core of their position was the idea that the principle of "marriage indissolubility" pertained not only "to Catholic morality", but represented an "achievement of human reason, of *humanitas* […] a patrimony of universal conscience, and of each human conscience able to think of itself and of those dearest" as well as "of the future of the fatherland, which is not an empty word".[22]

Not all Catholics agreed. In a country traversed by fast and far-reaching social and cultural transformations, and with the Catholic

20 The Radical Party managed to act as a vocal advocate of divorce within society, also through the Italian Divorce League (Lega Italiana per il Divorzio-LID), founded by the party in early April 1966.

21 See among others Azzariti, "Brecce al muro della indissolubilità del matrimonio", 852-6 and Spadolini, *La questione del Concordato*, 402-22.

22 Mattarella, *Atti Parlamentari*, on the 10th of October, 1969, 10883. On the political and cultural debates that developed aroung the Fortuna's proposal, Sciré, *Il divorzio in Italia*, 27-37.

world engaged in the discussion of what should be its mission and role, thanks to the stimuli coming from the Second Vatican Council, the Church no longer appeared as a centralised source of unquestionable authority. Critical voices on the issue of divorce included both liberal catholics, such as the jurist Arturo Carlo Jemolo, and critical theologians such as Adriana Zarri.

For critical Catholics, an intransigent position on divorce did not protect the Church, but risked undermining it, by putting into question the fundamental principle of freedom of conscience. In opposing divorce, argued Zarri, the Catholic Church showed little respect for those religious minorities present in Italy for whom divorce was allowed and risked encouraging a new wave of anti-clericalism, which would fatally wound the cohesion of Italian society. Zarri reminded Catholics that they had no reason to look at divorce as a threat, since their marriages were regulated by Canon law and their decisions should be dictated by a sincere religiosity and not by authoritarian prescriptions. Far from representing the needs of the faithful, keeping an intransigent position on divorce alienated those ordinary Catholics who sought the comfort of an open and compassionate Church and not the wrath of an uncompromising institution.[23]

5.5 Annulments in Name, Divorces in Intent

As the debate on divorce grew in intensity, one of the new stars of Italian cinema, Vittorio Gassman, ended his marriage to the actress Nora Ricci, thanks to an annulment. The *Sacra Rota* [i.e. ecclesiastical tribunal] decreed the marriage null on the basis that, at the time of marrying Ricci, Gassman had not sincerely believed in the dogma of marriage's indissolubility. The event, duly reported by popular and high-brow press, seemed to many a typical manifestation of the hypocrisy that reigned in Italy and in the Church, a perfect example of an 'annulment in name, divorce in intent'. While ordinary people were condemned to either stay in unhappy marriages or become 'outlaws', those with the means necessary to afford expensive annulment processes could be reasonably certain to see the end of their marriages.

Ten years before the Gassman-Ricci annulment took place, the Catholic jurist Giovanni Perico had opposed Sansone's small divorce proposal on the basis that the only grounds for ending a marriage should be those "exceptional" circumstances "defined and subscribed by God, who, having created the law of marriage indissolubility, had also the

23 Zarri, "Perché i cattolici", 57-88 and *Il divorzio fonte di divisione*.

power to suspend such law in some specific cases".[24] What made divorce unacceptable was the fact that, unlike annulments, the grounds on which it rested derived not from the will of God, but from "purely human" considerations, mostly likely "of a sentimental nature".

From a secular perspective, however, annulments could easily appear as a way out of marriage, at least for those rich enough to go through the costly process set up by the ecclesiastical tribunal. A retrospective declaration regarding their beliefs or State of mind at the moment of pronouncing their vows, it appeared, was enough to end a marriage. The same outcome was precluded to people of less means and, paradoxically, also to those who, not believing in any Catholic dogmas, had celebrated a civil marriage. The very version of marriage that should depend solely on the will of the contracting parties was the one most difficult to break.

The issue of annulment, and the criticism it attracted, underlined the gulf that was opening between Catholic hierarchies and a growing number of Catholics increasingly disenchanted with the prescriptions of the Church. The issue also put into sharp focus the fact that, contrary to much propaganda, the question of indissolubility was far from straightforward in terms of doctrine. Historically, the hardening of the Church's position on the issue of marriage indissolubility went hand in hand with its growing claim to jurisdiction over matrimonial matters, the definition of the marriage prerogatives, and the proclamation of the sacramentality of marriage. The introduction of marriage indissolubility in Canon Law, at the Council of Trent of 1560, was largely a response to attacks by protestant reformers.

The possibility of ending a marriage and of remarrying, however, had been contemplated since Christians started to busy themselves with family matters. The so-called "Pauline privilege" (described in Paul's first letter to the Corinthians) allowed remarriage to take place for Christians who had been deserted by their non-Christian spouses, and marriages to be dissolved "in favour of the faith" – which is to say if one of the spouses wished to enter into a religious order, as well as when they had not been "sexually consummated."

Despite the Church's insistence that a crucial difference existed between divorce and annulment, by the mid-sixties the distinction appeared less than obvious and more and more difficult to justify, particularly from a secular perspective.

To make things even more confusing, the State had its own version of annulment, whose administration was not necessarily less rigid than in Canon law.[25]

24 Perico, *Il Divorzio*, 7-8; see also Perico, "Il matrimonio, comunità d'amore fecondo e responsabile". *Aggiornamenti sociali*, 1 gennaio, 1967, 1-16.

25 For a critical appraisal, Berutti, *Il matrimonio concordatario*.

The Italian civil code contemplated six grounds that rendered marriage void. Proving that such grounds existed, however, was an almost impossible task; so much so, that only 59 civil marriages were annulled in 1954, 72 in 1962. As the anti-divorce lawyer Oreste Gregorio noticed, "Canon law was much more generous" than the Civil code, both in the individuation of the grounds upon which a marriage could be declared void and in the way in which the actual existence of such grounds was ascertained. Gregorio recognised that the lenient approach followed by the Church almost inevitably favoured those who did not hesitate to lie in order to end their marriages. Strangely, however, this did not seem particularly problematic to the author, who urged the State to follow the model of the Church, relaxing the grounds upon which marriages could be annulled as an alternative to the introduction of divorce.[26]

The situation was similar in Poland.

Under Polish law, impediments included the existence of a previous marriage, direct kinship between the spouses, treacherous behaviour against the existing spouse of the person once wished to marry, as well as sexually transmitted diseases, tuberculosis, and mental illness.[27] A married couple able to prove that any of these conditions had existed when the marriage had been contracted could have it annulled. Since 1945 the publication of banns in the Church had been substituted in Poland by the submission of documents certifying that no impediment existed to the marriage. Issues such as impotence and inability or wilful refusal to consummate, on the other hand, did not provide grounds for annulment. They could, however, be considered as factors contributing to or determining the disruption of marital life, and as such constituting grounds for divorce. The law also established that either spouse could initiate proceeding to have the marriage declared void, but only within 3 years from its celebration, and before a pregnancy occurred.[28]

The grounds envisaged by the Polish state in 1945 were therefore markedly stricter than those identified by the Church, which includ-

26 Gregorio, "Come si possono risolvere i casi più dolorosi", 158-9.

27 Art. 9 § 1, Code of Family Law, 1950. A similar provision could be found in the Russian Code of 1926, which prohibited the registration of marriage if one of the parties was found to be of unsound mind, or suffering from mental deficiency; both in Poland and in Russia, courts had the power to lift the ban. Similarly to Polish law, Italian law also considered insanity as an impediment to marriage rather than as a factor affecting capacity, as for instance in English law.

28 Szer, *Prawo Rodzinne*; Lasok, "A Legal Concept", 59. The grounds for impediment were reduced in successive systematisations to insanity, an already existing valid marriage, blood relationship, affinity and adoption. According to Szer, the simplification was introduced to "preserve marriage as long as it did not contradict the substance and purpose of marriage in the Polish People's Republic" (Szer, quoted in Lasok, "A Legal Concept", 59).

ed among its impediments not only consanguinity and affinity, prior to matrimonial engagements, and existing marriage, but also lack of consent, whether parties had taken religious vows, impotence, and the lack of belief in marriage as defined by the Church – even when declared *post factum*.

Commenting the paradoxical situation created in Italy by the Concordat, which rendered marriages governed by Canon Law easier to end than those governed solely by the law of the State, the Catholic jurist Giovanni Brunelli observed that such a paradox was difficult to solve, since the State had also an interest in keeping families together, although for different reasons than the Church. Brunelli suggested that a way out of the conundrum would be the adoption by the State of the same approach that the Church used as basis for annulments; this would make sense, added Brunelli, given the Catholic Church's greater experience in and ability to deal with marriages, including how to end them. The Polish situation, in which divorce had been introduced by decree and presented as a crucial step in the democratisation of family life, offered some support to Brunelli's warning that in fact much was shared in the way in which State and Church looked at marriage and its role.[29]

5.6 Living Apart, But Forever Linked

Across the Catholic world, separations were heralded by the Church as the best way to regulate relations between spouses who were no longer able to live together. The institution of separation, regulated by Canon Law, did not destroy the marriage bond and as such did not allow remarrying. It allowed, however, spouses to live separately, and freed them from the obligation of having sexual intercourse.

While the institute of legal separation did not exist in Poland, the Italian Civil Code allowed married couples to officialise their separation, either as a consensual act or on the basis of the request of one of the spouses. In both countries, however, the vast majority of separations remained informal. Official data for Poland indicated that until the late sixties, between 4,000 and 5,000 separation were granted by courts each year, a number largely overshadowed by informal separations, whose numbers, albeit difficult to estimate with absolute accuracy, were estimated in tens of thousands.

Many of those who opposed divorce upheld separation as a viable and less damaging alternative. While divorce degraded the status of marriage and encouraged both "irresponsible marriages" and their equally "irresponsible breaking down", therefore resulting in

29 Brunelli, *Divorzio e nullità*.

the unstoppable dissolution of family life, separation reminded people of their responsibilities and did not risk rewarding irresponsible behaviour nor condoning the acts of the culprits of matrimonial breakdown.[30] Unlike divorce, separation would encourage a careful approach to marriage, discourage hasty decisions, and sustain the parents' interest and involvement in the life of their children.[31]

Only the most committed Catholics could grasp the supposedly positive sides of a situation that condemned people to a life of abstinence, kept them legally connected to an estranged spouse, and effectively prevented any possibility of living a full family life. To a growing number of people, legal separation appeared as a cruel and messy way to manage the end of a marriage.[32]

The limitations and punitive aspects of separation, however, was exactly what appealed to the opponents of divorce. According to Pittau, while divorce campaigners went out of their way to emphasise the damages produced by the impossibility of ending a marriage, hardly anybody spoke about the danger of remarrying. This, however, was the very essence of divorce. Allowing people to remarry encouraged irresponsible behaviour and made the State liable for the cost of such failures.[33] Second marriages seemed to Pittau particularly damaging for the children of first marriages, who would be exposed to the "grave scandal" of seeing one or both parents "with other people and having other children". This, according to Pittau, could only "produce grave damage in a delicate period of physical and psychological development".[34] For all these reasons, separations seemed to Pittau far preferable to divorce.

The Christian Democrat MP Bernardo Mattarella followed a similar logic in the long and articulated speech against divorce delivered to the Lower Chamber on 10 October 1969. By its very essence, argued Mattarella, divorce "undermine[d] the duty and the need to endure, to be tolerant, to comprehend and to sacrifice, on which any society, and principally the conjugal one, must rest". On the contrary, divorce encouraged selfish and hasty decisions and transformed momentary difficulties in unstoppable processes. The legislator had the duty to predict and prevent the consequences of marriage disso-

30 For Brunelli, for instance, a clear advantage of separation was that it prevented the guilty parties from remarrying, and therefore from inflicting further humiliation on the abandoned spouse, Brunelli, *Divorzio e nullità*.

31 Pittau, *Il divorzio*.

32 Canon Law admitted separations, ratified by the Ecclesiastical tribunal in very specific cases, such as the decision of one of the two to enter a religious order, or in the case of non-consensual separations requested of the non-guilty party, in case of serious fault of the partner, spiritual or physical danger, or adultery.

33 Pittau, *Il divorzio*, 8.

34 Pittau *Il divorzio*, 24-7.

lution, not on the basis of religious convictions, but because of their human and civil implications.[35]

Both critics and supporters of separation in Italy agreed on one point: they both saw the alternative between separation and divorce as a social matter and the result of political decisions, taken from the top.

However, as the Polish case highlights, separations could also be a decision taken from below, by couples whose marriage had broken down but who remained unwilling to divorce.

Throughout the fifties and sixties, Poles continued to divorce at a much lower rates than in any other socialist country, with only 5.0 per 10,000 population in 1960 (compared for instance with 20.1 per thousand in Rumania). This did not necessarily mean that marriages were happier or more durable than elsewhere, but rather than many marriage breakdowns continued to be dealt with through separation, even when one of the spouses had children and a family life with a new partner.[36]

For the Church, divorce inevitably produced bigamy, given that the sacramental tie of marriage could not be broken. For the pro-divorce campaigners, by contrast, bigamy was the dramatic outcome of the impossibility to put a legal end to marriages that had broken down.

As we have seen, however, for many Poles 'bigamy' was a choice. Why did many Poles refrain from divorcing, although being able to do so? Did they do so on religious grounds? Out of social stigma? Or simply because they found separation a good enough solution? Ordinary people's stories reveal that individual behaviour is more complicated than legislators may predict, and that divorce is not the only way to manage the end of a marriage.

The life stories left behind by Polish women confirmed a widespread reluctance to recur to divorce, even in case of irrecoverable marriage breakdown. Stories of early marriages ended in separations, such as the one narrated by Renata Kowalska, were common. When her marriage broke down, Kowalska resumed her work as electrician and set up a new household with her only child. Despite the complete disappearance of the father-husband from the picture, however, divorcing did not enter into her plans. It was eventual her husband who, after three years of separation, petitioned for divorce, in order to remarry. His decision had positive implications for Kowalska, who was finally able to receive some alimony. The decision, however, had not been hers. In fact, the dominant note in her memory of being a divorcee was a "great sense of loneliness, of missing the presence of a 'dad' in the home", an anxiety that was finally resolved only when Kowalska married again. No longer young and naive, she choose someone who

35 Mattarella, *Atti Parlamentari*, 10 ottobre 1969, 10886.

36 Rossett, "Dezintegracja małżeństw a rozwody", 71-94.

was "not only a good man, but a dear friend, who cares for my child".[37]

Long separations appeared as a common occurrence in many biographical narratives, usually brought to an end only by the decision of either spouse to marry again. Much less often, it appeared, people decided to divorce just to severe unwanted legal ties. The 'shocking effect' that divorce often had on local communities and within the larger family acted as a powerful deterrent particularly for women. In this sense, choosing to divorce could be seen by some women as a measure of their own independence, not only in economic terms, but also from a social and psychological point of view. Kristina Malinowska remained married to her first husband for many years, although having no contact with him. When her second marriage failed because of the alcoholism of her husband, however, she had no doubt that a swift and amicable divorce was the right thing to do. Much older and confident, she managed to end her marriage in an atmosphere of "mutual respect", which allowed her and her husband to remain in a friendly and affectionate relationship afterwards. It was her new confidence that allowed her to ignore the social stigma attached to a "two-time divorcee", determinate to rise her two children alone, in an "unconventional but supportive environment".[38]

5.7 Struggling for Change, in Parliament and on the Street

Throughout the debates that had accompanied the Fortuna's law proposal throughout its long parliamentary journey, Christian Democratic MPs had missed no opportunity to stress that the real question was not how to allow marriages to end, but to understand what determined their undoing and how this could be avoided. Catholic MPs found one of the main culprit in the "dehumanising aspects of modernity" and in the dangerous and widespread idea that individual interests and desires should always prevail. Occasionally, they also acknowledged that the State had so far done little to support family life in its changing needs.[39] While refusing the accusation of upholding a clerical position, moreover, Christian Democrats had nonetheless insisted that a divorce law would conflict with the principles established in the Concordate, and risked undermining the "religious peace of the Italian people".[40]

37 Kowalska, "Szczęście we własnym domu", 155-7.

38 Malinowska, *Pamietniki Kobiet*, 23.

39 See for instance the speech by Gerardo Bianchi, *Atti Parlamentari*, Camera dei deputati, V Legislatura, Discussioni, Seduta del 10 Ottobre, 1969, 10860-2.

40 Matterella, *Atti Parlamentari*, Camera dei deputati, V Legislatura, Discussioni, Seduta del 10 Ottobre, 1969, 10876. See also Greggi, *Atti Parlamentari*, Camera dei depu-

On 28 November, the Fortuna law proposal was finally approved by the Lower chamber, thanks to a majority of 42 votes. The parliamentary debate over divorce took place in a very special period of Italian post-war history. While the Deputies debated whether Italians should be allowed to divorce, students and workers were occupying universities and factories in an uneasy alliance that put into question the nature of post-war democracy and sought a revolutionary way to transform it. The protests and occupations of the autumn of 1969 showed the gulf that had opened between the model of social and economic development pursued by the post-war ruling classes, and the expectations of an ever growing number of people.

While Catholic MPs were busy arguing for the immutable character of the Italian family, "which in popular sentiment has always been linked to the concept of marriage indissolubility", women and young people were taking to the streets in search of voice and representation. They mobilised not only against existing political structures, but also against marriage and family hierarchies and outdated notions of authority within and outside the home.[41]

Many Catholics also took part in this popular mobilisation. In the footsteps of the Vatican II, so-called 'dissenting Catholics' sought a new approach to liturgy, faith and society, able to bring down the barriers that still separated the Church from the lay people. Their call for a Church animated by a spirit of compassion and informed by a true sense of community, rather than by rigid adherence to dogmatic truths, also extended to marriage and family life.[42] Against the intransigent position of the Catholic hierarchies upheld in the political sphere by the DC, a growing number of priests and lay Catholics openly manifested their support for divorce as a measure necessary to improve family life.

On 2 December 1969, Fortuna's proposal finally reached the Senate. Ten days later a bomb went off in Milan killing 17 people, and wounding many more. This was the first act of what would become known as the "years of lead", a long period of political terror that would stretch into the eightiesâ.

tati, V Legislatura, Discussioni, Seduta del Antimeridiana del 15 ottobre 1969, 11022. In a long speech to the Lower Chamber, Greggi argued for the opportunity to proceed not by approving the law, but by calling a referendum, and proposed that no decision on divorce could be made in the absence of a clearer analysis of the condition of family life in Italy. For this reason, he proposed the creation of a Commissione Parlamentare d'Inchiesta sulla famiglia.

41 The existence of a natural link between the Italian family and indissoluble marriage was postulated by Ferdinando Storchi, in the discussion of Lower Chamber on 14 october 1969. See *Atti Parlamentari*, Camera dei deputati, V Legislatura, Discussioni, Seduta del 14 ottobre, 1969, 10947.

42 On Catholic dissent, see Giovagnoli, *1968: fra utopia e Vangelo*; Burgalassi, "Dissenso cattolico"; Guasco, *Chiesa e cattolicesimo in Italia*; Martina, *La Chiesa in Italia*; Saresella, *Dal Concilio alla contestazione*.

There was a deep contradiction between the radical contestation of the country's political and social order that was taking place in the street, and the discussions taking place within Italian main political institutions.

Civil unrest and political stalemate showed the growing fragility of the settlement that had emerged after the Second World War. The struggle over divorce that now engulfed the Senate, and the effort of the Italian Church to assert its authority in the debate, moreover, showed the inability of the political class to understand the extent to which the country had changed. More than any other political crisis since the 1948 elections, divorce mobilised parties, associations and the Church in what was labelled as a 'battle for civilisation'. Never before, however, had the battle appeared to many so anachronistic.

On 1 December 1970, the law was finally approved by an exhausted Senate, after six days of uninterrupted sessions. The Law 898/70 envisaged the possibility of ending a marriage once a judge had verified the irrecoverable breakdown of the "spiritual and material communion of the spouses". The conditions that allowed a single spouse to seek a divorce included well-known grounds, such as a long prison sentence, the attempted murder of the spouse or of one's child, a conviction of any length for specific crimes (such as those connected to prostitution), and the non-consummation of the marriage. A legal separation of at least 5 years (7 in the case in which the 'fault' of divorce rested exclusively with the petitioner) was required for the marriage to be dissolved.

On the same day in which the law was passed, Gabrio Lombardi, professor of Roman Law at the University of Milan, and a long-standing supporter of marriage indissolubility, founded the National Committee for a Referendum on divorce.[43] By June of the same year he had collected nearly three times the number of signatures required for a referendum to be called. Far from ending, the confrontation over divorce was entering a new and very tricky phase.

In the complex social and political situation of the early seventies, the referendum that the DC had imposed on its political allies quickly became a new source of tension and preoccupation, even for the Catholic party. The DC governed in coalition with secular and even left wing parties, in a complicated alliance that its position on divorce threatened to undermine. The fact that the only party that shared the DC's anti-divorce stance was the neo-fascist Movimento Sociale Italiano (MSI) offered little consolation. For the DC, which continued to profess its antifascist values and aimed to represent a variety of inter-class interests, being associated with an extreme-right force was a risky business.

43 Lombardi, "Sul divorzio", 295 ff.; Lener, *Idee chiare sul divorzio*.

The idea of having to campaign over divorce caused no less concern for the PCI. Faced by mounting social tensions, the party was engaged in pursuing a dialogue with the Catholic world, which made the prospect of an ideological confrontation over divorce very unwelcome. In strong continuity with the prudent attitude that had characterised its actions in relation to marriage since the early post-war years, the PCI tried once again to find a compromise with its Christian democratic counterpart. In December 1972, a new law proposal signed by a Communist senator, Tullia Carrettoni, sought to further restrict the grounds of divorce by eliminating non-consummation and extending the separation period to 7 years for those who requested a divorce a second time. The proposal failed to attract support in Parliament. It took another five years of brinkmanship for the referendum to finally be called in the spring of 1974.

The ensuing campaign showed that few of the political concerns that had dominated the approach of both the Catholics and Communist parties mattered much to Italians.

Most striking was the position taken by Catholic groups and associations, which openly challenged the position of the Church by declaring themselves either neutral on the issue, or openly in favour of divorce. The public declaration of the Association of Christian Italian Workers (ACLI) and the formation of a Catholic pro-divorce committee showed the gap between the Church's hierarchies and growing sectors of the faithful. As Mark Seymour noticed, the years between the passing of the law and the referendum "gave the law time to prove itself and to take its place in the mental landscape of Italians".[44] More crucially, the moderate number of those who sought a divorce proved that the new provision was hardly a menace to the cohesion of Italian families.

On 12 and 13 May 1974, Italians finally had their say on the matter. Fifty-four percent of Italians voted in favour of divorce. In 1970, Loris Fortuna had feared the DC's call for a referendum. He saw it as an instrument easily manipulated by Catholic circles and feared that the majority of Catholic voters would constrain the rights of a minority seeking divorce. In actuality, the referendum gave divorce the popular legitimacy that its tortuous parliamentary route had failed to convey.

5.8 Conclusions

Examining divorce offers a good insight into changing notions of what is considered acceptable or unacceptable within marriage. As Roderick Phillips observed in relation to the nineteenth century, divorce

44 Seymour, *Debating Divorce*, 216.

is more about reinforcing conventional norms of family life than it is about changing them.

Considering adultery as grounds for divorce reinforced the norm of sexual fidelity; detailing the conditions under which a divorce could be sought was a way of restating social values, rather than of giving individuals the possibility of freely deciding about their status. In post-war Poland, the declaration of German allegiance made by a spouse during the war was considered grounds for divorce not in virtue of what it meant for the marital relationship, but because it constituted a betrayal of the fatherland. In Italy, prison sentences constituted ground for divorce, but not if committed for political crimes; again, the difference concerned not the impact that imprisonment had on marriage or on the spouse who sought the divorce, but the relationship between the imprisoned, the national community and the State.

Even when the generic formula of 'irremediable breakdown' substituted the complex specification of the grounds upon which a divorce could be sought, the possibility of ending a marriage remained a concession from above, dependent on the will of courts and judges. The imposition of long periods of separation, typified by Italian legislation, underlined the notion that marriage remained a public affair, down to its final stage.

Both in Italy and in Poland, divorce went to the core of the relationship between citizens, the State and religious authorities. Although having apparently followed very different trajectories, the way in which the end of marriage was discussed and regulated in the two countries confirmed the idea that 'public' investment in the family was stronger than any sense of individual entitlement. This was not only the consequence of the strong influence of the Church, which in both countries opposed any notion of divorce as antithetical to Catholic values. States also upheld an idea of the family as a common good, to be given priority over individuals' rights and expectations.