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Life Story from the right-to-die movement in Italy

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A fundamental dimension of comparative studies on social movements is the use of civil disobedience by activists as means of both overcoming the shortcomings of the law and exerting mass pressure on the political system. The article attempts to develop a reflection about civil disobedience by considering the case of the Italian right-to-die movement. In particular, it notes the key role that strategic litigation initially had in legitimizing the movement in public opinion and advancing its political goals. More importantly, the article notes that the movement also strongly relied on civil disobedience and it attempts to explore the interplay of various strategies, such as strategic litigation, disobedience to the law, and institutional change. Instead of asking which of these strategies – civil disobedience or the litigation – brought changes, the article examines how they interacted, each shaping and reinforcing the other. Indeed, the article concludes by stressing that all strategies – litigation, civil disobedience, and institutional change – have been a critical part of the campaigns carried on by the right-to-die movement in the country. In dealing with these questions, the article is based on the 'life story' of a leading activist of the Italian right-to-die movement.

The “right-to-die” movement

§1 Legal scholars from different jurisdictions and legal disciplines have been divided between authors arguing for the recognition of a right to die and scholars who question whether the expression “right to die” may be deemed itself acceptable. For example, the former Italian constitutional judge and professor Gustavo Zagrebelsky noted that the expression “right to die” contains a contradiction, given that we usually talk of rights or freedoms as an expansion of possibilities. In other words, this scholarship criticizes the possibility to develop a right or freedom to what they define as freedom from “nothing” (i.e. death)[1].

§2 Undoubtedly, the admissibility of such a “right” raises several difficult and overlapping sets of questions. First, when does life (and therefore the right to life by the law) end? Second, is it acceptable to provide palliative care to a terminally ill or dying person, even if the treatment may, as a side-effect, contribute to the shortening of the patient’s life? In addition, should the patient be consulted on this? Third, may, or must, the State “protect” the right to life even of a person who does not want to live any longer, against that person’s own wishes? Or do people have not just a right to life, and to live, but also a right to die under our Constitution? And if so, can they seek assistance from others to end their lives?

§3 The first right-to-die movements in Western societies trace back to the 1960s and 1970s when new essential moral foundations were established, shifting the focus to autonomy and individuality and emphasizing on individual choice and liberation from collective morality[2]. The religious view of the sacredness of life was abolished and replaced by secular moral views. The discussion on morality has revolved since then around the rights of the individual, including issues such as contraceptives, abortion, suffering, and ending life. The increased democratization of society and the emphasis on individual control thus made the practice of euthanasia more open and available[3].

§4 In 1980 the *World Federation of Right to Die Societies* was founded. It comprises around 53 organizations from 26 countries and works to protect the right of individuals to self-determination at the end of life[4]. During the same year, in the United States, Derek Humphry founded the Hemlock Society in order to help patients suffering from incurable diseases to die peacefully[5].

§5 Precisely, the right-to-die movement has been willing to advance the patient’s liberty and autonomy to make fatal choices at the end-of-life, the patient’s desire to maintain dignity, and the medical team’s effort to see that the patient’s dignity is preserved. The right-to-die movement speaks of our shared commitment to show respect and concern for vulnerable patients at the time of need, as well as the importance of quality-of-life considerations and the avoidance of suffering. Patients

who are in a state of irremediable and unbearable suffering are no longer able to appreciate and enjoy life. Some of them, especially those who are autonomous and strong-willed, may wish to decide the moment of their own death.

§6 Responsible and conscious supporters of the right to die share with their opponents the crucial concern of preventing abuses. After all, matters of life and death are most significant. They thus necessitate implementing close monitoring and control mechanisms to ensure that the right to die is not transformed into a duty to die.

§7 It is worth noting that the movements have adopted the expression “right to die” to define a shorthand for a number of inter-related issues concerning decisions made by a person under certain conditions. In particular, a leading activist we interviewed, has confirmed that:

> “‘Right to die’ (‘good’ or ‘without suffering’), or “right to euthanasia” are expressions that can be used as a synthesis of all this, making clear that, like other rights, but perhaps even more than other rights, it is not an absolute right, but that can only be activated under certain conditions”[6].

§8 Therefore, under the right-to-die expression, patients can be permitted to die by refusing medical treatment, through the withdrawal of artificial or heroic medical means (*i.e.* passive euthanasia), or by suicide before death occurs with the assistance of a prescribing physician, including with direct assistance to administer lethal drug doses (*i.e.* physician-assisted suicide, active euthanasia).

§9 While some commentators make a moral distinction between refusing medical treatment and other practices, others distinguish between active and passive euthanasia. Although controversially, there is some acceptance of the first two practices in Western countries, while the third – *i.e.* active euthanasia – is the most disputed and remains widely debated in Western societies. All three cases intersect with each other, although, in a strictly legal perspective, they are very different issues[7].

§10 Activists and their organizations tend to rely on such a wider notion of the right to die based on social understanding of these situations. In other words, they rely on a “social definition” that may not perfectly fit within the legal concepts concerning the withdrawal of medical treatment, *i.e.* passive or active euthanasia.

> ‘The expression “right to die” can be used as a synthesis of different concepts, even if not strictly legal, such as the freedom to choose how to die (“what death

to die", wanting to use a popular expression), or to escape from an unbearable suffering condition".

§11 Central to the notion are the right to withdraw medical treatment and to avoid suffering while dying, as our activist notes:

"(…) If we want to refer to a more strictly legal meaning, even if I am not a jurist, I believe, as a layman, there are two rights which correspond to precise 'duties', therefore payable rights, which may also be combined. Precisely, the right to withdraw a medical treatment (which is in practice a "right to die" for those in certain conditions) and the right not to suffer in dying, which in my opinion includes the right to the assumption of a lethal substance in case of unbearable suffering and irreversible illness".

New Social Movements

§12 The right-to-die movement has been analyzed within the wider conceptual framework of the new social movements (NSMs) theory that have emerged since the 1970s[8]. Precisely, it conceptualizes the plethora of new movements that have come up in various Western societies roughly since the mid-1960s (*i.e.* in a post-industrial economy) and which are claimed to depart significantly from the conventional social movements.

§13 Firstly, social scientists indicate four elements that characterize social movements: a network structure, the use of unconventional means, shared beliefs and solidarity, and the pursuit of some conflictual aims[9]. Once a marginal area in the social sciences, social movement studies grew into a main field of study in sociology and a significant one in other proximate disciplines, such as political science, anthropology, geography, history, and psychology. This growth was accompanied by significant shifts in how social movements have been addressed. Before the 1970s, especially (but not only) in the United States, social movements were conceived as forms of collective behavior, different from “normal” behavior because of high emotionality and, often, anomic syndromes. In Europe, especially the main historical social movement – the labor movement –, was addressed following a Marxist perspective, with attention to the structural conditions for its development. Since the 1970s, both approaches were shaken by the spread of new forms of protest. For example, in the United States, studies on the civil rights movement showed that it was neither irrational nor anomic, being instead guided by strategic behavior and strong normative systems. Social movement organizations started to be seen as actors that mobilize resources in their environment for collective action. In Europe, the emergence of the student, the women’s, and the environmental movements was considered as examples of new social movements, bound to substitute for the increasingly institutionalized labor movement.

§14 Since the 1990s, this structural bias was challenged by a renewed attention to various cultural aspects and to the causal mechanisms that intervene between structure and action, in a field redefined as contentious politics and covering social movements as well as revolutions, democratization, and other contentious phenomena.

§15 Secondly, NSMs tend to focus on a single issue or a limited range of issues connected to a single broad theme, such as peace and environment. Without attempting to develop a total politic under a single focus, NSMs aim to represent the interests of marginal or excluded groups[10]. Our case-study confirms the limited scope of these movements.

§16 In parallel with this ideology, it is worth outlining that the organization of new collective actions is also locally based, centred on small social groups, and loosely held by personal or informational networks such as radios, newspapers and posters. This “local- and issue-centered” characteristic, which does not necessarily require a highly agreed ideology or agreement on ultimate ends, distinguishes these new movements from the “old” labor movement with a high degree of tolerance of political and ideological difference, appealing to broader sections of the population. In particular, we are interested to discuss how NSMs use the law and/or civil disobedience to pursue their goals.

§17 In our case, the right-to-die movements have a societal and cultural aim given that they focus on identity and individual freedom with respect to the specific issue of the “right to die”. In particular, they propose a new scheme or system of dying, allowing those people experiencing pain and suffering to end their lives. The movement promotes the legalization of actions where the death of a human being is brought about on purpose as part of the medical care being given to him/her, with differentiation across countries.

§18 Furthermore, NSMs are primarily social and cultural and only secondarily, if any, political[11]. Departing from the worker’s movement – which was central to the political aim of gaining access for the working class with the extension of citizenship and representation –, NSMs focus on social mobilization through cultural innovations, development of new lifestyles, and transformation of identities.

§19 For instance, an author contends that the conflicts with which contemporary movements concern themselves have shifted “to the cultural sphere to focus on personal identity, the time and space of life, and the motivation and codes of daily behavior”[12]. NSMs are more overtly involved with personal aspects of human life, including how we die[13].

The case of the Italian right-to-die movement. A “life history”

§20 The history of the right-to-die Italian movement has not been fully explored by socio-legal scholars. According to activists, its origin traces back to the 1970s when the Radical Party launched several campaigns to advance civil rights in the country, including the right of abortion. We here aim at exploring such an interesting case for discussing of “new” social movements and civil disobedience[14]. Our reflection is based on the “life story” of a leading activist, Dr Marco Cappato, by including the written answers to an interview held in March 2018.

§21 The right-to-die movement originated from a political movement in the 1970s. Indeed, the Radical Party has considered “divorce-abortion-euthanasia-homosexual unions” as “strictly-related reforms” in a path that could have been completed in the 1980s. They still tend to consider the right to die as related to the first generation of civil rights. Such a project failed when the party’s campaigns fell short to reach that path because of political resistance.

§22 In this sense, it is often argued that NSMs, following their apolitical conceptions of autonomy and identity, place themselves beyond equality and welfare and in the sharp opposition posed between cultural and political-economic issues[15]. Thus, they are in some respect apolitical. However, our case study shows that the right-to-die movement is deeply connected with a political party (*i.e.* the Radical Party)[16]. Activists cannot afford to totally dismiss the political connotation, as they frequently find their grievances enmeshed in such instances of State control. In other words, the right-to-die movements are political, as the Italian case confirms, because they are concerned with shaping social relations at the State level and elsewhere. In particular, activists have considered that divorce, abortion, euthanasia and the quest for rights affecting lesbian and gay people, were directly related reforms in the Italian case.

§23 Coming to our main point, Italian organizations have relied on different strategies to pursue the movements’ goals, including the use of law and litigation, political-institutional initiatives and civil disobedience (*i.e.* the refusal to respect the law). In this respect, it is possible to note a tendency for specialization among organizations within the movement. In particular, some of them have focused on the political and institutional agenda (*Associazione Luca Coscioni*, *Exit* and *UAAR*), while few were offering individual advice and support to their members (*Exit*). In particular, the *Associazione Luca Coscioni* has been especially active on the issue, not only by proposing and promoting the popular bill on euthanasia and biological wills, which has been the basis for the new law (discussed below), but also through actions of civil disobedience[17].

Reliance on the Law. Pilot Cases

§24 Since the 2000s a group of patients decided to become activists by bringing their pilot cases before the courts, the media and, consequently, the public opinion. Their activism has opened a new phase in the history of the Italian movement[18]. The latter gained momentum because of some pilot cases brought before Italian courts and related to three patients and activists: Luca Coscioni – a co-founder of the *Associazione Luca Coscioni*, one of the most active organizations within the Italian movement –, Piergiorgio Welby, and Eluana Englaro. The Welby and Englaro cases will be briefly mentioned in the following paragraphs.

§25 The story of Piergiorgio Welby, a poet and painter, who bravely crusaded for his right to die his way, deserves our attention. Welby was diagnosed with muscular dystrophy as a teenager in the early 1960s. The disease progressed, and in 1997 he became unable to breathe on his own. He became politically active in the right-to-die movement, and in 2006 he publicly declared his wish to refuse the medical treatment that kept him alive: “Life is the woman who loves you, the wind through your hair, the sun on your face, an evening stroll with a friend (…) Life is also a woman who leaves you, a rainy day, a friend who deceives you. I am neither melancholic nor manic-depressive. I find the idea of dying horrible. But what is left to me is no longer a life”[19].

§26 On 22 September 2006, Welby sent an open video-letter to the President of the Republic – which has been shown on national television and made available for downloading on the Internet – describing his condition and explaining his desire to die. President Giorgio Napolitano answered he felt deeply touched by Welby’s situation, inviting political parties to a parliamentary debate on this and similar complex ethical issues.

§27 Welby’s case aroused a heated debate, involving political, ethical, religious, and medical aspects. Radical Party members supported his decision by organizing hunger strikes and demonstrations. The party founder, Marco Pannella, declared his readiness to turn the machines off himself as an act of civil disobedience. The case was brought to a court that denied the request[20], finding no specific law governing the matter and urging Parliament to solve the problem. In December 2006, the physician, Dr Mario Riccio, contacted Radical Party member Marco Cappato, informing him that he would be available to follow Welby’s will, arguing that there were no legal impediments or obstacles. The physician, after ensuring Welby’s request was voluntary and not dictated by external pressures, decided to grant his request[21].

§28 The issue went properly mainstream after the tragedy of Eluana Englaro (which arguably sparked a constitutional crisis in Italy)[22]. In 1992, she was

involved in a car accident that eventually left her in a permanent vegetative state requiring artificial nutrition and hydration[23]. For many years, Mr Englaro – Eluana's father – advocated to enforce what he considered his daughter's wish to discontinue life-prolonging treatment. The right to refuse unwanted invasions of physical integrity, and specifically medical treatment, is established by article 32 of the Italian Constitution and was applied by the courts in recent cases involving competent patients[24]. However, incompetent patients seem to lose this right in practice. In July 2008, the Court of Appeal of Milan gave its authorization for artificial life support to be withdrawn[25]. This ruling sparked a crusade, led by the government and the Vatican, against the court and Eluana's father, which included insinuations that the latter was murdering his daughter. The public opinion has overwhelmingly been sympathetic to the father's difficult decision, in stark contrast to the reactionary stance taken by the government.

§29 The cases of Welby and Englaro have changed the social and political landscape concerning the right-to-die in Italy. In the Englaro case, the right to suspend treatment, including feeding and artificial hydration, has been fixed for the first time in the country. Activists openly recognize the impact of these leading cases and, more generally, strategic litigation in advancing the goals of the movement within Italian society. Clearly, the movement has legitimized itself in the public opinion by promoting strategic litigation based on a few leading cases concerning patients who were also activists.

§30 Such a strategy has been quite successful in raising social awareness on the right-to-die as well as the social support for the movements in the country. At the same time, the strategy suffered for some serious limitations. The movement thus decided to pursue in parallel a different strategy by relying on civil disobedience.

§31 There is no need to note that some authors have explored the relationship between social movements and the courts and, specifically, the shortcomings of strategic litigation. For example, Galanter argued that strategic litigation almost always favors the powerful and wealthy, whose resources allow them to be "repeat players", presumably leaving little room for activist legal success[26]. Similarly, Rosenberg stressed that legal decisions simply echo changes well underway in the society, and thus, social movement groups can only succeed in court when broad cultural change is already taking place[27]. Other scholars also voice skepticism that litigation tactics can be a tool for change. On the other side, various researchers suggest that social movements legal mobilization, including litigation, can have impact, at least in some circumstances, in promoting their goals in societies and politics[28].

§32 The experience here considered seems to confirm Rosenberg's controversial early scholarship that social reform litigation is usually a futile tactic that drains

resources from social movements that could be more effectively employed in other ways[29]. In the words of the author

> “[C]ourts can seldom produce significant social reform. Yet if groups advocating such reform continue to look to the courts for aid, and spend precious resources in litigation, then the courts also limit change by deflecting claims from substantive political battles, where success is possible, to harmless legal ones where it is not. Even when major cases are won, the achievement is often more symbolic than real. Thus, courts may serve an ideological function of luring movements for social reform to an institution that is structurally constrained from serving their needs, providing only an illusion of change”[30].

Put it differently, the pilot cases seem not to have caused the much-hoped change into the law.

From Civil Disobedience to Institutional Change

§33 While Italian courts were admitting the patient right to self-determination and the admission of passive euthanasia, some leading activists of the Italian right-to-die movement have embraced a new strategy, consisting in actions of civil disobedience[31].

§34 In particular, some Italian activists, including Marco Cappato, have offered economic and logistic support to people, either terminally ill or suffering from debilitating illnesses, in travelling from Italy to Switzerland (and paying between 10,000 to 13,000 euros) in order to be freed from their pain and be granted a peaceful death. They considered this as an act of civil disobedience[32]. Those involved in assisting patients and activists have generally acted independently of each other and frequently for intensely personal reasons, but all have served, with the help of the media, to keep public interest high in active euthanasia[33].

§35 In adopting such a strategy, members of the movement risk criminal prosecution in Italy, where euthanasia is illegal. However, it is worth pointing out – as mentioned above – that patients do have the right to refuse care, consequently rendering narrower the line between what is allowed by the law and what is not.

§36 Anyway, activists expressly acted against the law. Cappato was charged with "reinforcing the suicidal will" and assisting with arrangements for the suicide of Fabiano Antoniani, who died in a Swiss clinic before the new law was enacted[34]. The activist, claiming he was acting for civil disobedience, faced up to 12 years in prison (under Article 580 of the Criminal Code)[35]. Finally, the case reached the Constitutional Court, called by the criminal court in Milan to render a judgment on the constitutional legitimacy of Article 580 of the Criminal Code[36]. The Constitutional Court met on 23 October 2018 to discuss the issue. The following day, the Court decided to suspend the proceedings against the activist and to reconvene on 24 September 2019, inviting Parliament to intervene by that date to offer "the respect of certain situations deserving protection and to balance them with other constitutionally relevant goods"[37]. In September 2019, the Italian Constitutional Court held that "anyone who facilitates the suicidal intention of a patient kept alive by life-support treatments and suffering from an irreversible pathology should not be punished under certain conditions"[38].

§37 Such action was aimed at stimulating the Parliament to amend the prohibition laid down in article 580 of the Italian Criminal Code and to finally approve a new law about the end of life – completely absent in the Italian system, despite the constitutional guarantees about the self-determination of the individual in the health sphere and the leading cases of Welby and Englaro.

§38 The bill concerning the end-of-life has covered a 30-years pathway before its relevant approval, due to strong resistance. The prolonged silence of the Italian Parliament had a negative impact on sick people who found themselves plunging into unsustainable physical and moral suffering, and at least demand respect for their right to refuse treatment.

§39 Finally, in December 2017, while Cappato's case was still pending before the criminal courts, the Parliament reached the necessary political consensus and passed on such end-of-life act, which allows adults to decide, in concordance with their doctors, the terms under which they can refuse treatment[39]. In brief, the law allows Italians to write "living wills" and refuse medical treatment, artificial nutrition and hydration. Under the new law, a "living will" is a written or video declaration of a person's preferences regarding future medical treatment, should he or she not be able to express informed consent. It is an effort to walk a fine line between the more permissive legislation in some European countries, and a more restrictive focus on the intention of the patient and individual[40]. It does not allow physician-assisted suicide, where the patient is administered a drug to put an end to his or her life, as is the case in Switzerland. The law also does not allow euthanasia, where a doctor intervenes to provoke the death of a patient.

§40 The notion of informed consent lies at the core of the legislation. Every individual has the right to know his/her medical situation and the consequences of every cure or intervention, thus leading, eventually, to the decision to refuse treatments. Italians will now have an option to fill out a form expressing their preferences might they be unable to express them in the future. According to the law, the patient's will may change at any time. Patients will also be able to identify another person, either a family member or trusted individual, who will take charge and speak to doctors if s/he is incapacitated. As long as minors and people with disabilities are concerned, the law provides that a parent or guardian may give that consent, although it specifies that the patient must be able to freely express his/her will. The new law recognizes artificial nutrition and hydration as "medical treatments, " because they are prescribed by a doctor. This means that in a living will individuals may refuse them and they can be suspended. Finally, the legislator provided that doctors must abstain from an unreasonable obstinacy in the administering of cures and from resorting to disproportionate and useless treatments. Physicians are still required to relieve the pain of their patients, even if they refuse medical care, placing a special focus on palliative care.

§41 The law on living wills has not shut down the discussion about the possibility to admit the much controversial active euthanasia within the Italian legal system[41]. To date, the right-to-die movement appears divided in its aims and political and social views. Part of the movement (*i.e. Associazione Luca Coscioni*) considers, for example, these recent developments just as a first step towards further campaigns around euthanasia in Italian public opinion. As Dr Marco Cappato told us:

> “I think it was a good idea for us to be ambitious in the final goal, the legalization of euthanasia, but also to be humble in accepting and supporting every step forward, without being maximalist. The known cases were the real factor that moved everything. Let’s go on in continuity with what has been done so far, also because the new law opens a huge contradiction: one can die by suspending the vital therapies, but there are patients who are not dependent on vital therapies and yet suffer equally and do not see why they do not have the same rights”.

§42 In our view, this important achievement for Italian society is the result of the interplay of the movement’s reliance on the positive force of law (*i.e.* changes to the institutional and political agenda), strategic litigation (*i.e.* pilot cases) and, more recently, acts of civil disobedience. Some fundamental research questions follow. Given that activists have done a deliberate choice, what are the underlying reasons of this shift towards civil disobedience? How the different strategies interplay with the movement’s goals?

Civil Disobedience and the Law

§43 With respect to social movements, civil disobedience has been defined as “a means of both exerting mass pressure on the political system and as a process through which participants of a movement perceive and construct an alternative and autonomous democratic power”[42].

§44 According to Fiedler, Rawls defines civil disobedience as a non-violent public act that is against the law but is carried out with the goal of changing laws or the government program. Precisely, Rawls outlines three conditions under which civil disobedience can be considered a legitimate public action in the context of the liberal-democratic contract. In the first place,

> “it is strictly necessary that all avenues of legal and institutional action are exhausted. Secondly, civil disobedience should be only used in explicit and concrete cases of injustice, such as when liberal principles, like equality before the law, are under attack, and not simply in response to any type of unjust law or government practice. Finally, the act of civil disobedience should always be proportional to the transgression, and should never reach a point where it poses a threat to the functioning of the constitutional order”[43].

§45 Fiedler argues that, while Habermas tends to agree with Rawls regarding these conditions, he gives civil disobedience a more central role in promoting public participation in the context of intrinsic imperfections of liberal democracy. For Habermas, civil disobedience is part of the process of rational deliberation and communication by which an argument or statement is put forward in the public sphere to appeal to the society’s sense of justice, creating more legitimate legislation and modes of rational governance[44].

§46 In light of our case study, it seems that the activist perceives the concept of law as including natural law. This means that their understanding is not limited to State law, but it includes living values currently recognized in Italian society. In this sense,

> “Law is all three since even natural law must be understood as historically acquired, certainly not as referring to an intrinsic nature, which does not exist”.

§47 For this reason, the movement considers the actions of civil disobedience as a means aimed at tackling unfair and unjust law. It is worth underlining that the movement does not stand against the law, but points out that legislative provisions might be an expression of the values recognized by Italian society. In such a perspective, civil disobedience is considered by Italian activists to be an expression of contempt for law. Following the activists' arguments, such civil disobedience is justified by article 32 of the Italian Constitution, used as leverage in order to annul the prohibitions contained in article 580 of the Italian Criminal Code. At the same time, the action intended to influence the parliamentary decision on the living will bill.

§48 Interestingly, they make an express reference to the words of Martin Luther King who noted:

> "You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. (…) The answer is found in the fact that there are two types of laws: there are just and there are unjust laws. I would agree with Saint Augustine that 'An unjust law is no law at all. (…) A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law"[45].

In addition, Luther King regarded civil disobedience to be a display and practice of reverence for law:

> "An individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law"[46].

§49 Thus, activists were trying to develop and disseminate the fact that the Italian legal and political frameworks were profoundly unjust to patients suffering, and both should be remedied by ending the Parliament's inertia. Such awareness of injustice gave rise, after thirty years, to the law mentioned before.

§50 It should also be underlined the change of tactic occurred when strategic litigation was proving to be quite successful in involving and mobilizing civil

society. The shift towards civil disobedience of part of the right-to-die movement may be explained for the following main reasons.

§51 First, activists may win in court, but a favorable judgment does not imply a change into the legal framework (*i.e.* changes to the law, or the adoption of a new law). The role of legal precedent (that is, the principle of *stare decisis*) in shaping judicial decisions, particularly in the lower courts, has long been documented[47]. In careful consideration of legal standing in the courts for the gay and lesbian movement, for instance, an author demonstrated the importance of statutory foundations and case precedent ("legal stock") and used these to develop the concept of "structural legal opportunity", which she finds can fuel both movement mobilization and judicial success[48].

§52 In our case, the Italian legal system is part of the Civil Law legal tradition in which judgments are usually not considered as binding precedents (contrary to the Common Law of England, for instance). Generally, precedents have a persuasive force in orienting the courts. Thus, the judgment is primarily relevant and applies only to the case at issue.

§53 Secondly, while the movements could, since the 1960s, to rely on pro bono lawyers, activists have often underlined that litigation inner risks, such as lengthy and costly proceedings, might undermine the possibility of advancing civil rights before the courts. This is particularly relevant in the context of the Italian legal and judicial system, that is characterized by non-efficient case management and tedious civil and criminal proceedings. In addition, researchers have traditionally pointed to critical resources such as legal advocacy organizations, a staff of expert lawyers, and funding to bring cases before the courts[49].

§54 Third, part of the right-to-die movement embraced civil disobedience in order to foster participation and mobilization needed to achieve the hoped change in society and politics. Strategic litigation has raised awareness of the problem in the country's public debate, but, despite the – however significant – results outlined above, it had not caused deep changes in the institutional and political agenda.

§55 In light of the above, these actions of civil disobedience were clearly aimed at causing an "evolutionary interpretation" of the existing legal framework in order to accommodate it to societal values. Leading cases opened the way for judicial recognition of the right of self-determination in individual cases. Nevertheless, the interplay of litigation and civil disobedience has finally pushed the Italian Parliament to discuss and pass a law to establish such right for all the citizens.

> "The civil disobedience refers to higher rights, that is, of constitutional or international level, in particular the right to self-determination. Rather than against current law, an evolutionary interpretation is sought, compatible with

fundamental rights".

§56 Such a deliberate choice consists of a reaction to the perception of a democratic paralysis of Italian institutions, and the lack of support from the media[50].

> "The paralysis of democracy, both from the point of view of the institutions and the media silence on the great social issues, makes actions in terms of nonviolence and civil disobedience indispensable".

Besides, right-to-die activists rely on an egalitarian argument in justifying actions by claiming that States have a duty to allow everyone's autonomy in end-of-life matters. Thus, activists stress the social dimension of the right-to-die in Italian society and politics. In the cases here examined, civil disobedience actions involve activists and, especially, patients who accepted to be exposed in the media and public opinion. Indeed, they consciously worked to mobilize broad networks of support and media publicity for their cases. Many socio-legal scholars have noted that popular support for expansions in legal rights is an important condition that can fuel success in judicial activism[51].

> "They are the patients who "choose", in the sense that they choose to act in public, to go from the body of the sick to the heart of politics. We do nothing but help them, simply verifying that they can withstand the psychological pressure to which they are subjected. Lawyers very often act pro bono. With civil disobedience, action and the process are one. A ruling certainly has a great effect on public opinion as well".

How strategies interplay

§57 One may question whether the movement adopted multi-strategies over time, going from the attempt to assert the rights before Italian criminal and civil courts, to acts of civil disobedience, to criminal law. Indeed, it is possible to observe that the strategies in accordance with the law *or* against the law have been advanced in parallel, depending on the patients' availability to be exposed to the media – and becoming in a sense an activist – and the circumstances of the case[52]. Thus, the Italian case seems to confirm that the various strategies and their interplay are all relevant and absolutely necessary to achieve the movement's goals. Our activist confirms that

> "As Associazione Luca Coscioni we have used both together, and I would add a political-institutional initiatives. Without using these three levers together, none of the three would have been sufficient to achieve the result. Civil disobediences have provoked judicial precedents and have unblocked institutional hitches, sentences have paved the way for the legislator, local institutions have pushed national ones, and Parliament has been able to listen, albeit with great delay, to the evolution of social reality".

§ 58 In our case, the favorable case law (see the pilot cases mentioned above) began to break the stalemate, thus reinforcing activists' belief in the reasonableness of their cause. Still, the success in strategic litigation did not secure change by itself and particularly a change into the law[53]. As they engage the court system, activists follow legal procedures and formulate demands using legal language, often a language of legal rights[54]. Activists take part in legal mobilization typically when movement legal advocacy groups pursue cases in court (legal cases are often designed to challenge core assumptions about the extent of a social group's legal rights)[55]. There is growing scholarly attention to activist litigation, much of it occurring among legal scholars and political scientists[56].

§59 The experience here considered shows the limits of legal mobilization in terms of impact, costs, and procedures that favored a turn towards acts of disobedience to the law aimed at causing a moral shock in the country. Thus, the article argues that the three strategies – litigation, civil disobedience, institutional change – have finally created a synergy that was the key to making changes in society, politics, and obtaining the above-mentioned law on living wills.

Conclusions

§60 The article discusses strategies concerned with the ultimate control of one's body at life's end, the right-to-die movement. In common with most NSMs, the right-to-die movement is principally a phenomenon of the Western world. It has focused on the manner of death, its mode and timing, as experienced by individuals of the late twentieth century. It is perhaps the quintessential new social movement, having taken the concern with resisting State control of cultural matters and reclaiming instances of identity, privacy and individual freedom to their ultimate level.

§61 Precisely, we traced the Italian movement from its origins to its progressive success during its comparatively hectic activity over the last decade. The article has moved, as has the movement itself, from a consideration of strategic litigation to the evolution of civil disobedience actions and their relationships. This case confirms that research on law and social movements is also much broader than a simple focus on litigation and courts. The constitutive approach to law and social movements broadens the analyst's gaze toward a broader set of relationships between law and social movements. Disobedience to the law becomes more than just litigation and court outcomes and instead becomes a powerful symbolic resource, and constraint, that may play a role with other strategies to favor a change in the law.

§62 In the case here examined, activists have relied on two strategies and their interplay: the use of law (*i.e.* institutional change and strategic litigation) and civil disobedience. According to activists, civil disobedience is against formal law, not natural law or law as perceived in society. Interestingly, acting against the law or outside it, aims at developing the law in light of present values shared in our societies, as well as promoting an egalitarian approach to the right to die, which means giving access to such right to all citizens, without limitations caused by the individuals' physical and economic conditions. Thus, it is possible to conclude that the adoption of the new law on living wills is the result of the interplay of different strategies *within* the boundaries of law, or *against* the (formal) law. It is worth pointing out that the two strategies have resulted to be mutually reinforcing. The article concludes that the experience of the Italian right-to-die movement showed the potential of mutually reinforcing strategies of disobedience and litigation for advancing the evolving landscape for civil rights in contemporary Western societies[57].

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1. Zagrebelsky, G., "Il diritto a morire non esiste" *in Il Fatto Quotidiano*, uploaded on14 December 2011, consulted on 13 December 2019 *in* [https://www.ilfattoquotidiano.it/2011/12/14/piazza-grande-il-diritto-di-morire-non-esiste/177305/]. ↩

2. Lewy, G., *Assisted Death in Europe and America. Four Regimes and Their Lessons*, Oxford, Oxford University Press, 2010; Cohen-Almagor, R., *The Right to Die with Dignity: An Argument in Ethics, Medicine, and Law*, Piscataway, NJ., Rutgers University Press, 2001; Cohen-Almagor, R., *Euthanasia in the Netherlands: The Policy and Practice of Mercy Killing*, Dordrecht, Springer-Kluwer, 2004. ↩

3. Cohen-Almagor, R., *Euthanasia in the Netherlands*, *ibid*., p. 58. ↩

4. Dowbiggin, I., *A Merciful End: The Euthanasia Movement in Modern America*, Oxford, Oxford University Press, 2003. ↩

5. Lewy, 2010, see *supra* note 2. ↩

6. Unless otherwise indicated, the excerpts reproduced in this article come from the in-depth interview conducted with Dr. Marco Cappato, head of the *Luca Coscioni Association for the freedom of scientific research*. ↩

7. Lewy, 2010, see *supra* note 2. ↩

8. Melucci, A., "A strange kind of newness: what's 'new' in new social movements?", *in* Laraña, E., Johnston, H. and Gusfield, J.R. (eds.), *New Social Movements: From Ideology to Identity*, Philadelphia, Temple University Press, 1994, pp. 101–130; Melucci, A., *Challenging Codes. Collective Action in the Information Age*, Cambridge, Cambridge University Press, 1996. On (new) social movements and law, Handler, J. F., *Social Movements and the Legal System: A Theory of Law Reform and Social Change*, New York, Academic Press, ↩

9. Della Porta, D. and Diani, M., *Social movements: An introduction,* Malden, Blackwell, 2006; Snow, D.A., Soule, S.A. and Kriesi, H. (eds.), *The Blackwell companion to social movements*, Malden, Blackwell, 2004; Cefaï, D., *Pourquoi se mobilise-t-on? Les théories de l'action collective*, Paris, La Découverte, 2004; Crossley, N., *Making sense of social movements*, Buckingham, Open University Press, 2002. ↩

10. Vanha, L., *Making Rights a Reality? Disability Rights Activists and Legal Mobilization*, Cambridge, Cambridge University Press, Disability Law and Policy Series, 2010; Simmons, B. A., *Mobilizing for Human Rights International Law in Domestic Politics*, Cambridge, Cambridge University Press, 2012; Engle Merry, S., *Human Rights and Gender Violence. Translating International Law into Local Justice*, Chicago, The University of Chicago Press, 2006. For a European perspective, see Della Porta, D., Caiani, M., *Social Movements and Europeanization*, Oxford, Oxford University Press, 2009; Anagnostou, D. (ed), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-Level European System*, Oxford, Hart, 2014. ↩

11. Habermas noted that new social movements are the 'new politics', which is about quality of life, individual self-realization and human rights whereas the 'old politics' focus on economic, political, and military security. Hence, new social movements are understood as new because they are first and foremost social. See Habermas, J., "New Social Movements", *in Telos*, 1981, vol. 49, pp. 33–37. ↩

12. Melucci, 1994, see *supra* note 8, p. 109. ↩

13. Johnston, H., Laraña, E., Gusfield, J.R., "Identities, Grievances, and New Social Movements", *in* Laraña, Johnston, Gusfield (eds.), see *supra* note ↩

14. Della Porta, D., *Methodological Practices in Social Movement Research*, Oxford, Oxford University Press, 2014. In particular, Chapter 11 about Life Stories and Chapter 10 about In-depth Interviews. ↩

15. Gusfield, J., "The reflexivity of social movements: collective behavior and mass society theory revisited" *in* Larana, Johnston, Gusfield, see *supra* note 8, pp. 58–78. ↩

16. Lewy, 2010, see *supra* note 2. ↩

17. The *Luca Coscioni Association for the freedom of scientific research* was founded on 20 September 2002 by Luca Coscioni, a victim of amyotrophic lateral sclerosis and a member of the Italian Radical Party who promoted the campaign for the freedom of scientific research on embryonic stem cells. ↩

18. Luca Coscioni, Piergiorgio Welby and Eluana Englaro marked the return of a secular path, after the first half of the 2000s, which, although very slow, has led to the law on civil unions and the law on living wills. ↩

19. The full text of Piergiorgio Welby's letter to President Giorgio Napolitano is available online, accessed 10 July 2020 *in* [https://www.associazionelucacoscioni.it/notizie/comunicati/gli-88-giorni-di-lotta-di-piero-welby/]. ↩

20. Tribunale di Roma, *ordinanza* 16 December 2006. ↩

21. After Welby's death, Dr Mario Riccio was prosecuted under article 580 of Criminal Code and subsequently discharged. See an interesting interview published on 20 December 2016 by the Italian newspaper *La Repubblica*, consulted on 10 July 2020, *in* [https://www.repubblica.it/salute/2016/12/20/news/welby_10_anni_intervista_riccio_legge_fine_vita-154477362/]. ↩

22. Such case deeply involved the "classic" relationship between law in a broad sense and legislation, as well as between law and ethics. See Groppi, T., *Il "caso Englaro": un viaggio alle origini dello stato di diritto e ritorno*, consulted 10 July 2020 *in* [http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0120_groppi.pdf]. ↩

23. Englaro, B., Nave, E., *Eluana. La libertà e la vita*, Milan, Rizzoli ↩

24. Article 32 of the Italian Constitution states that "The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent. No one shall be obliged to undergo particular health treatment except under the provisions of the law. The law cannot under any circumstances violate the limits imposed by respect for the human person". ↩

25. Court of Appeal of Milan, *decreto* 9 July 2008. ↩

26. Galanter, M., "Why the 'haves' come out ahead: Speculations on the limits of legal change", *in Law and Society Review*, 1974, vol. 9, pp. 95–160. About the different resources available among different groups, see also McCann, M., "Reform litigation on trial", *in Law & Social Inquiry*, vol. 17, n° 4, 1992, pp. 715–743, p. 740. ↩

27. Rosenberg, G., *The Hollow Hope: Can Courts Bring about Social Change?*, Chicago, The University of Chicago Press, 1991. ↩

28. McCammon, H., McGrath, A., "Litigating Change? Social Movements and the Court System", *in Sociology Compass,* 2015, vol. 9, n°2, pp. 128–139. See for example, Boutcher, S., "Mobilizing in the Shadow of the Law: Lesbian and Gay Rights in the Aftermath of Bowers v. Hardwick", *in Research in Social Movements, Conflict and Change*, 2010, vol. 31, pp. 175–205. ↩

29. Rosenberg, 1991, see *supra* note 27. This author has been criticized by McCann, M., "*Reform Litigation on Trial"*, see *supra* note 26, pp. 715–743 ("He is correct, of course, that the radiating effects of court actions often leave little discernible imprint in many aspects of many citizens' lives. But in many other cases the shadow of the courts […] plays a very important role in delimiting the tactical options, opportunities, and resources available to citizens seeking to challenge domination and improve their lives. And these implications of judicial action depend little on either the policy-making capacity or enforcement powers of courts themselves, around which Rosenberg builds his analytical framework"). ↩

30. Rosenberg, 1991, see *supra* note 27, p. 341. ↩

31. Morreall, J., "The justifiability of violent civil disobedience", *in Canadian Journal of Philosophy*, 1976, vol. 6, n° 1, pp. 35–47. Civil disobedience has also been defined as "the refusal to obey the demands or commands of a government or occupying power, without resorting to violence or active measures of opposition; its usual purpose is to force concessions from the government or occupying power", see "Civil disobedience" in *Encyclopaedia Britannica*, online, consulted on 10 July 2020 *in* [https://www.britannica.com/topic/civil-disobedience]. ↩

32. See Cappato, M., *Credere disobbedire combattere*, Rizzoli, 2017. ↩

33. McInerney, F., "'Requested death': a new social movement", *in Social Science & Medicine*, 2000, vol. 50, n° 1, pp. 137–154. ↩

34. Mr. Antoniani, a disc jockey known as D.J. Fabo, was left blind and paralyzed after a 2014 car accident. He breathed through a respirator, ate through a feeding tube and spoke with difficulty, though he remained lucid to the end. In January, Mr. Antoniani posted a video appealing to President Sergio Mattarella to urge the government to pass a law allowing euthanasia. A popular television program, "*Le Iene*," championed his cause, producing several segments about Mr. Antoniani before and after his death. ↩

35. Under article 580 of the Italian Penal Code, helping someone take their own life is a crime punishable by five to twelve years in prison. The text of the article states that “the action to help someone to commit suicide, or to convince someone to commit suicide, is punishable with a sentence between 5 and 12 years if the suicide succeeds, or between 1 and 5 years if it does not succeed but a body injury has been made. This, however, is considered murder if the suicide is under the age of 14”. The entire process was followed by the *Giurisprudenza Penale*, online journal, which published all the procedural documents on its website, online, consulted on 10 July 2020 *in* [https://www.giuris

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36. On 17 January 2018, prosecutors made a request for acquittal because the act did not constitute a crime. The Court of Milan set a hearing for 14 February 2018 to issue the final sentence. Both prosecutors and the defense council presented memos submitting questions of constitutional legitimacy relating to Article 580 of the Penal Code. ↩

37. Corte Costituzionale, *ordinanza* 16 November 2018, no. 207 . ↩

38. Corte Costituzionale, *sentenza* 22 November 2019 (deposit date), no. 242 . The case has also been reported by *The Guardian*, online, consulted on 13 December 2019 *in* [https://www.theguardian.com/society/2019/sep/25/assisting-a-suicide-is-not-always-a-rules-italian-court]. ↩

39. Law n°219 passed on 22 December 2017 (‘*Norme in materia di consenso informato e di disposizioni anticipate di trattamento*’, published in the *O. J.* n°12, 16 January 2018). The Law n°219/2017 entered into force on 31 January 2018 . A commentary of the act is available in the *BioLaw Journal* issue no. 1/2018, edited by the *BioDiritto* Observatory of the University of Trento, consulted on 10 July 2020 *in* [http://rivista.biodiritto.org/ojs/index.php?journal=biolaw&page=issue&op=view&path%5B%5D=13]. ↩

40. Moratti, S., “Italy”, *in* Griffiths, J., Weyers, H., Adams, M. (eds.), *Euthanasia and Law in Europe*, Oxford, Hart, 2008, pp. 395–423, at p. 399. ↩

41. See the report released on 18 July 2019 by the *Comitato Nazionale per la Bioetica* established by the Italian Government, *Riflessioni bioetiche sul suicidio medicalmente assistito*, online, consulted on 10 July 2020 *in* [http://bioetica.governo.it/media/3785/p135_2019_parere-suicidio-medicalmente-assistito.pdf]. ↩

42. Fiedler, S., “The Right to Rebel: Social Movements and Civil Disobedience”, *in Cosmopolitan Civil Societies Journal*, 2009, vol.1, n°2, pp. 43–61, p 44. ↩

43. *Ibid*., quoting Rawls, J., *A Theory of Justice*, 1978, p. 405. ↩

44. Habermas, J., “Civil Disobedience: Litmus Test for the Democratic Constitutional State”, *Berkeley Journal of Sociology*, 1985, vol. 30, pp. 95–116. ↩

45. Luther King, M, Jr., *Letter from a Birmingham jail*, 16 April 1963, online, consulted on 10 July 2020 *in* [https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html]; Aquinas (*Summa Theologiae*. *La Ilae*, qq. 90–97; see Pope, S.J. (ed.), *Ethics of Aquinas*, Washington DC, Georgetown University Press, 2002, p. 181) argued that human laws that contravene natural law are “acts of violence”, and “a perversion of law”. Such laws he argued do not bind the conscience. They have no legal validity and cease, in this regard, to be law. ↩

46. Luther King, M, Jr., *idem*. ↩

47. Epstein, L., Knight, J., “Courts and Judges” *in* Sarat, A., Malden, A.M. (eds.), *The Blackwell Companion to Law and Society*, Malden, Blackwell, 2004, pp. 170–194. ↩

48. Andersen, E. A., *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation*, Ann Arbor, University of Michigan Press 2005. See also Coglianese, C., “Social Movements, Law, and Society: The Institutionalization of the Environmental Movement”, *in University of Pennsylvania Law Review*, 2001, vol. 150, n°1, pp. 85–118. ↩

49. Epp, C., *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*, Chicago, The University of Chicago Press 1998. ↩

50. *Osservatorio sul nord-est, il nord est e l’eutanasia* collects data about Italian views on eutanasia. It confirms that, in that region, there is a growing consensus to favor euthanasia (62%). Online, consulted on 12 March 2018 *in* [http://www.demos.it/a00648.php]. ↩

51. Bernstein, M., “Perry and the LGBTQ Movement”, *in New York University Review of Law and Social Change*, 2013, vol. 37, n°1, pp. 23–8. ↩

52. The activist confirms: “It is a slow, almost natural evolution. In fact, even the Welby case could have ended up with a dramatic civil disobedience. If the doctor Mario Riccio had not been able to practice sedation, Belgian doctors were ready to practice euthanasia. Since then, the path has been gradual, and even judicial political actions have always shifted the bar of respect for the individual will a little further” (Annex, point 13). ↩

53. Galanter, 1974, see *supra* note 26. ↩

54. For a fundamental literature review, McCammon, McGrath, 2015, see *supra* note 28. ↩

55. Historically prominent examples include the NAACP’s efforts in *Brown v. Board of Education*, the *ACLU Women’s Rights Project’s* pursuit of greater legal equality for women in *Reed v. Reed*, and, more recently, the gay and lesbian movement’s struggle to win legal recognition of same-sex marriage. ↩

56. Scheingold, S., *The Politics of Rights: Lawyers, Public Policy, and Political Change*, Ann Arbor, University of Michigan Press 2004. See also Butchery, S., “Lawyering for Social Change: Pro Bono Publico, Cause Lawyering, and the Social Movement Society”, *in Mobilization*, 2013, vol. 18, n°2, pp. 179–196. ↩

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