Book reviews

The Landscape of LGBTQI+ Rights in Italy: Advancements and Setbacks

Book Review: M. Pelissero and A. Vercellone, *Diritto e persone LGBTQI+* (Torino: Giappichelli, 2022), 1-353.

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Diritto e persone LGBTQI+ (Law and LGBTQI+ people), a volume edited by Marco Pelissero and Antonio Vercellone, and published by Giappichelli is an anthology on the rights of LGBTQI+[1] persons in Italy. The volume combines comparative legal methods and an interdisciplinary and holistic approach to addressing this important topic. It cuts across a number of disciplines and willfully defies traditional boundaries amongst different areas of law – in a context where the legal professional culture still displays an attachment to such boundaries – to offer a comprehensive picture of a complex relationship: that between LGBTQI+ populations and the law. These disciplines include history, law, and socio-legal studies, and within the area of law, covered fields span criminal law, constitutional law, administrative law, private law, international private law, anti-discrimination law, to mention a few. The book has another notable merit that pertains to the chosen methodology: in its decision to involve as contributors not only legal scholars but also prominent voices within the Italian LGBTQI+ movement,[2] it adopts what the European Commission would call open science practices, 'involving all relevant knowledge actors including citizens, civil society and end users in the co-creation of R&I agendas and contents'.[3]

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[1] The present review adopts the acronym chosen by the editors, 'LGBTQI+'.

[2] See, eg, the introductory notes of Gigi Malaroda: 'Interesting is the choice of addressing the invitation for this collection to activists of the LGBTQI+ movement alongside those who work in academia and research. Indeed, I read in this choice a stimulating call for 'positive cross-fertilization' between an academic knowledge and a social knowledge, built on the basis of political and civic engagement'. G. Malaroda, 'Un po' di storia, tante storie', in M. Pellissero and A. Vercellone eds, *Diritto e persone LGBTQI+* (Torino: Giappichelli, 2021), 15 (my translation).

[3] Horizon Europe Programme, Standard Application Form Marie Skłodowska - Curie Actions - Postdoctoral Fellowships (HE MSCA PF), Project proposal – Technical description (Part B), 05 May 2022.

With its wide-ranging set of contributions on various topics related to the rights of LGBTQI+ people, *Diritto e persone LGBTQI+* turns out to be the first opus magnum on LGBTQI+ rights in Italy. The chosen topics are diverse but the editors walk us through the book and all readers, including non-specialized audiences, can easily understand its structure.

The first three chapters offer an historical overview of the notion of homosexuality and of the LGBT movement in Italy (respectively pp 1-14 and 15-30), and an introduction to queer theory (pp 31-54), thereby setting solid foundations to the subsequent chapters focusing on more niche topics. The chapters on civil unions (pp 55-76), and same-sex couples' parenting rights (pp 77-90 and 91-110), including surrogacy (pp 111-136), offer an in-depth analysis of Italian law. The volume then expands its geographic reach to the international, European, and comparative context. Here, the authors look at the notion of ordre public in international law (pp 137-162), at European anti-discrimination law and whether it can offer protection to intersex persons (pp 163-176), at the issue of the legal recognition of polyamory in the West (pp 177-194), and, ultimately, at international refugee law and its application to LGBTQI+ people (pp 195-210).

The last part of the collection is devoted to pressing issues in criminal law. These include the criminalization of homophobic speech (respectively, pp 211-224, 225-244, and 245-264), conversion therapies and their criminalization (pp 265-296), and the delicate issues surrounding the incarceration of trans people (pp 297-314) and LGBTQ persons in general (pp 315-334), including the ways in which Italy fails to recognize the specific harms suffered by the trans and LGBTQI+ community in prison. While this third part is fascinating, this review will not address the chapters therein as they form the object of a separate review for *this journal*.

Thus, as mentioned, this is a book about LGBTQI+ rights and the law. Its first mentioned merit is the editors' decision to offer a 'unitary reflection on the law',[4] across and beyond categories. Its additional merit is to present itself as a handbook for students who will want to study this topic at the university level: considering that university courses on this specific topic are almost absent in Italy,[5] this anthology aims to first create an imagery and sense of possibility, the very possibility of having a university class on LGBTQI+ rights; at the same time, it creates a language and a comprehensive conceptual framework for navigating the topic. While it must be admitted that language and ways of seeing (imagery) cannot affect reality alone,[6] they could indeed 'facilitate ways of perceiving it and thus affecting

[4] M. Pellissero and A. Vercellone, n 2 above, XIV.

[5] The University of Turin has this year offered for the first time a course on LGBTQI+ rights open to 4th and 5th year law students ('Seminario di Diritto LGBTQ+'), that gave rise to the idea of creating a handbook for future courses at the University of Turin and elsewhere.

[6] This seems to be MacKinnon's claim in chapter 13 'Not a Moral Issue' in C.A. MacKinnon, *Feminism Unmodified Discourses on Life and Law* (Cambridge: Harvard University Press, 1988), 149.

our chances of changing it'.[7] This is precisely what *Diritto e persone LGBTQI+* does.

What is 'homosexuality', for instance? The first chapter by Maya De Leo and the second one by Gigi Malaroda answer this conceptual question by situating the notion in the contemporary moment and explaining how unthinkable it was in the ancient world (p 4), and pretty much until it was constructed as an identity (p 17). It is not until the second half of the Nineteenth Century in the Germanic Reich, Malaroda observes, that can one see personal experiences and conducts linked to what we now define as a homosexual identity, and that the two themes of 'identity' and 'visibility' start surfacing more clearly (p 17).

Further, this is a rare book which includes a queer perspective to addressing this convolute relationship (between LGBTQI+ rights and the law), thereby answering the call of those who recognize how scant works in queer legal theory are[8] – unlike other disciplines, such as queer sociology, that are now relatively established.[9] Queer theory embraces the critique of the liberationist movement within the LGBT community to celebrate non-normative identities, ie all those identities and subjectivities that deviate from proscribed steps and mainstream ways of experiencing a certain identity (eg gender, sexual orientation or family status). It arose as a reaction to the 'institutionalization' of sexuality by the American liberal left through the conformist lenses of identity politics in the 1980s.[10] In sum, as a popular definition puts it, ' 'queer' can refer to… whatever is at odds with the normal, the legitimate, the dominant. There is nothing in particular to which it necessarily refers'.[11]

> This perspective complicates things further, because queer identities hold a skeptical stance towards the law, a love-hate one. As Marella notes in her chapter, there are several dangers associated with legal recognition:
>
> '…one of the theoretical premises of the queer attack on identity politics is the realization that it 'makes up people', that is, it itself creates the subjects who are the addresses of the law. Queer theory is also a tool for analyzing and critiquing performativity of social norms, culture – the high and the pop culture of cinema and, not least, law. The various forms of normativity that intervene in social relations are responsible for the 'invention' of the subjects they normalize. Similarly, reforms, legal change, law in general, as already

[7] R. Gavison, 'Feminism and the Private/Public Distiction' 45 *Stanford Law Review*, 40, fn 104 (1992).

[8] R. Leckey, *After Legal Equality* (Abingdon: Routledge, 2014).

[9] See S. Seidman, *Queer Theory/Sociology* (Oxford: Blackwell, 1996); A. Stein and K. Plummer, ' "I Can't Even Think Straight": Queer' Theory and the Missing Sexual Revolution in Sociology', in S. Seidman ed, *Queer Theory/ Sociology* (Oxford: Blackwell, 1996), 129-44.

[10] M.R. Marella, 'Teoria queer e analisi giuridica', in M. Pellissero and A. Vercellone, n 2 above, 31.

[11] D. Halperin, *Saint Foucault: Towards a Gay Hagiography* (New York: Oxford University Press, 1995), 62.

> pointed out, 'make up people', and create their own subjects. A queer approach is valuable in grasping these dynamics and discussing them'.[12]

Legal recognition can hence suffocate the vitality of the identity at stake, by generating a risk of normalization, civilization, and assimilation into the mainstream.[13] Marella offers as a tangible example the limits of the legal regulation of families through same-sex marriage, a widely critiqued institution in queer literature for its compression of plural lifestyles.[14] Yet, queer theory can also become a critical posture when conducting legal analysis more generally. Such theory foregrounds the idea of resisting normativity, and the mainstream: to achieve this aim, one must resist the gravitational pull of any new orthodoxy, including within queer theory,[15] and strive to connect multiple dimensions, including, as Marella notes, a redistributive one, attentive to material conditions.[16]

Family is a core theme within the book. The hurdles encountered by LGBTQI+ families testify to how law is needed as a tool for obtaining material benefits that would make the life of LGBTQI+ families much easier – such as the ability to enjoy default provisions in case the parties did not stipulate contracts or, more importantly, the possibility of accessing the universe of public benefits that cannot be allocated through contracts.[17] Equally important, family status also conveys expressive or symbolic benefits, including a sense of belonging and acceptance within one's community. More generally, it confers upon couple that kind of 'dignity' that public recognition conveys.[18]

What we could call a 'longing for law' crisply emerges from the chapter discussing the introduction of civil unions in Italy, and the rich chapters on the hurdles that LGBTQI+ parents encounter when seeking the legal recognition of their ties with children.

Civil unions were introduced in 2016 to offer legal recognition to same-sex couples alone – in the sense that, unlike other countries they are not open to opposite-sex couples, despite a growing interest towards their expansion in

[12] M.R. Marella, n 10 above, 40.

[13] N. Barker, 'Sex and the Civil Partnership Act: The Future of (Non) Conjugality?' *Feminist Legal Studies*, 241-259 (2006).

[14] See, eg, J.R. Feinberg, 'Avoiding Marriage Tunnel Vision' 88 *Tulane Law Review*, 259 (2013); P. Ettelbrick, 'Since When Is Marriage a Path to Liberation?' reprinted in W.B. Rubenstein, C.A. Ball and J.S. Schacter, *Cases and Materials on Sexual Orientation and the Law* (West Academic, 3rd ed, 2008), 683; M. Bernstein Sycamore, *That's Revolting!: Queer Strategies for Resisting Assimilation* (New York: Soft Skull Press, revised ed, 2008).

[15] In Italy, for instance, philosopher Mariano Croce is currently investigating the risk of essentialism inherent to queer theory. See the conference schedule 'Populismi, identità personali, diritti fondamentali', available at https://tinyurl.com/yeyzw66v (last visited 20 September 2023).

[16] M.R. Marella, n 10 above, 51.

[17] N. Palazzo, 'Marriage Apostates: Why Heterosexuals Seek Same-Sex Registered Partnerships' 42 *Columbia Journal of Gender and Law*, 193 (2022).

[18] As to the United States, see L.A. Rosenbury, 'Friends with Benefits' *Michigan Law Review*, 189, 231 (2007). See generally also E. Grande, 'La famiglia poliamorosa nel prisma del diritto', in M. Pellissero and A. Vercellone, n 2 above.

Europe.[19] The law conjured up different reactions. On the one side, civil unions were seen as a major step forward improving the social and legal status of LGB couples, once invisible, with Italy being the sole Western European country unable to offer comprehensive legal recognition to such couples – as opposed to scattered legal recognition through court decisions. Italy's inability to provide what the European Court of Human Rights would call a 'specific legal framework'[20] even triggered a bolder case law of the Court, which now basically recognizes a convention right to legalized unions for same-sex couples (through, at minimum, registration) – a right which it recently upheld against former contracting party Russia.[21]

Hence, on the one side the new legal framework was a clear victory for these couples.[22] On the other side, queer commentators noted that law turned out to be

> 'a genuine pinkwashing strategy that has had all too easy a game in instrumentalizing a significant segment of the population, which due to its complete legal invisibility, could now settle for little'.[23]

In his chapter, Azzarri looks at this law from an interesting angle. The chosen angle is that of an internal comparison between the civil union law and marriage law; the aim is to outline the differences; the perspective is, however, original in that not only do these differences can be analyzed from the perspective of the symbolic harms inflicted upon same-sex couples but also from the perspective of modernizing family law,[24] including marriage law, through a critical assessment of some of its provisions. Examples of (marriage law) provisions not included in the civil union law and in need of critical contemplation are the duty of fidelity,[25] the

[19] N. Palazzo, n 17 above, 252, fn 324. Italian nonprofit organization Certi Diritti contemplated taking action to expand the law to opposite-sex couples. Their argument is that the current legal framework is perpetrating an arbitrary and irrational discrimination towards both same-sex couples (unable to access marriage) and opposite-sex couples (unable to access civil unions). D. Tarozzi, 'A tu per tu con la libertà: i diritti civili e i sex workers in Italia e non solo. Amore Che Cambia #23' *Italia Che Cambia*, 9 September 2021, available at https://tinyurl.com/4cd6ma3h (last visited 20 September 2023).

[20] Eur. Court H.R., *Oliari and Others* v *Italy*, Judgment of 21 July 2015, available at www.hudoc.echr.coe.it, ('the Court finds that the Italian Government have overstepped their margin of appreciation and failed to fulfil their positive obligation to ensure that the applicants have available a specific legal framework providing for the recognition and protection of their same-sex unions').

[21] Eur. Court H.R., *Fedotova and Others* v *Russia*, Judgment of 13 July 2021, available at www.hudoc.echr.coe.it.

[22] F. Azzarri, 'Le unioni civili: luci e ombre', in M. Pellissero and A. Vercellone, n 2 above, 55.

[23] F. Zappino, 'Il diritto, l'amore e i fantasmi' *Effimera*, available at https://tinyurl.com/5h7u4y4n (last visited 20 September 2023) (my translation).

[24] F. Azzarri, n 22 above, 58. See also I. Pistolesi, 'La legge n. 76 del 2016 sulle unioni civili e sulle convivenze: qualche breve osservazione' *Quaderni di diritto e politica ecclesiastica,* 891 (2017); M. Gattuso, 'Cosa C'è nella Legge Sulle Unioni Civili: Una Prima Guida' *Articolo29,* 25 February 2016, available at https://tinyurl.com/y4b4zbcz (last visited 20 September 2023).

[25] On the expressive harms that certain political parties wanted to inflict upon same-sex couples see A. Carugato, 'Unioni civili, Renzi: 'Accordo fatto'. Dopo la stepchild adoption, salta

duty of cooperation under Art 143, para 2 Civil Code,[26] and the public display of the decision to create a civil union (pubblicazioni).[27] Examples of new provisions in civil unions that move in the direction of modernizing family law include the gender-neutral regulation of the common surname.[28]

Same-sex parents are also displaying that kind of longing for law that reminds us how central legal-regulatory tools are to the life, sense of wellbeing, social status, and dignity of LGBTQI+ persons. Same-sex parents include those same-sex couples/single parents who have a reproductive project, that is an intention to procreate. In order to do so, they must resort to artificial reproductive techniques and (or)[29] the intervention of a sperm donor, surrogate, or egg donor, or they must resort to adoption.[30] All the mentioned development complicate the question of 'who is a parent?'. Events of such magnitude, spanning surrogacy, and ARTs, prompt us to rethink the initial question of 'who is a parent?' to ask '*what* is a parent?'.[31] Along more traditional formal definitions of parenthood (parenthood by blood and adoption), functional definitions of parenthood (eg psychological, or social parents) are becoming more widespread, and with them the awareness that these parents lacking biological ties need legal recognition and should not be doomed to legal irrelevance. As an example, think about the non-biological parent of the child in a same-sex couple who needs to be delegated by the biological parent to pick up the child at school.

Chapters by Long, Schillaci and Lollini masterfully tackle this question, by offering a composite picture of same-sex parenting and of the severe hurdles these parents encounter in Italy. Long notes an ongoing attachment under Italian law to biological notions of parenthood. An idea of 'biologic verisimilitude'[32] is engrafted into laws that are supposed to recognize a broader understanding of parent, such as the Italian law on adoption (law of 4 May 1983, no 184) and the Italian law on medically assisted reproduction (law of 19 February 2004, no 40). Tellingly, only opposite-sex couples in a 'potentially fertile age'[33] can access adoption and medically assisted procreation techniques. This model of the heterosexual nuclear family as the ideal site for the upbringing of children is also well instantiated in the words

anche l'obbligo di fedeltà. La vittoria di Alfano' *Huffpost*, 24 February 2016, available at https://tinyurl.com/2vueumua (last visited 20 September 2023).

[26] F. Azzarri, n 22 above, 57.

[27] ibid 62.

[28] Azzarri, however, points to the limits of the new provisions due to the wrongheaded implementation through subsequent legislative decrees. ibid 64.

[29] This occurs in the case of a lesbian couple who decides to procreate through sexual intercourse with a third person, including a friend, which could then join or not join the family thereby creating new, complex kindship structures characterized by camaraderie, and companionship.

[30] J. Long, 'L'omogenitorialità nell'ordinamento giuridico italiano', in M. Pellissero and A. Vercellone, n 2 above.

[31] E. Jackson, 'What Is a Parent?', in A. Diduck and K. O'Donovan eds, *Feminist Perspectives on Family Law* (Abingdon, UK: Routledge-Cavendish, 2006).

[32] ibid 78.

[33] Art 6, Law no 184/1983 and Art 5, Law no 40/2004.

of the Italian Constitutional Court, noting that there is a general 'idea that an *ad instar naturae* family – namely, two parents of the opposite sex, both alive and potentially fertile – represents in principle, the most suitable 'place' to receive and raise' offspring.[34] She then traces the narrow paths for these families to acquire legal recognition, the main one being the so-called special-case adoption (*adozione in casi particolari*).[35] The point of the ongoing attachment of ARTs and adoption laws to traditional models of parenthood is an interesting one. In a completely different – and cutting-edge context – like Canada, where a growing number of provinces recognizes more than two parents as legal parents,[36] for instance, Lois Harder still notes the limited potential of these laws in so as they only can imagine a reproductive project with the two partners and a third person as donor or surrogate.[37] The lack of 'imagination', according to her, negatively affects the status of those families that do not fit the model, including polyamorous families and multiple parents.[38] The gravitational pull of newly constructed models – in this case the monogamous relationship plus a donor or surrogate model[39] – is a point worth flagging for purposes of future reform, to avoid reproducing the harms inflicted upon other non-traditional families.

Lollini offers a picture of this patchworked legal framework noting how differentiated legal protection for same-sex couples is. For instance, on the one side the transcription of foreign birth certificates of children born within a lesbian couple is now well-settled, after a favorable court decision in 2013.[40] Unfortunately, the case law of the Supreme Court (*Corte di Cassazione*) in favor of the transcription for lesbian mothers is framed as an exception, which, as such, does not apply to gay couples, nor does authorize the formation of similar birth certificates in Italy.[41] She furthermore offers a snapshot of the hostile legal framework for children born in Italy, whose same-sex parents *subsequently* seek legal recognition.[42] The legal framework is hostile because their legal invisibility has not been remedied

[34] Constitutional Court 23 October 2019, no 221, cited in Long, n 30 above, 79.

[35] ibid 79, 84-89.

[36] Canadian provinces with laws recognizing more than two parents include British Columbia, Ontario and Saskatchewan.

[37] Multi-parenting laws allow the registration of an 'other parent' on birth registration either in addition to the birth parent or, in cases of surrogacy, in place of the birth parent. L. Harder, 'How queer!? Canadian approaches to recognizing queer families in the law' *Whatever*, 5 (2021).

[38] ibid 5-30.

[39] F. Kelly, 'Multiple-parent families under British Columbia's new Family Law Act: a challenge to the supremacy of the nuclear family or a method by which to preserve biological ties and opposite-sex parenting?' 47 *UBC Law Review*, 565-595, 567 (2014) ('the scenario commonly envisaged… is one in which a couple conceives a child with the assistance of a sperm donor or surrogate with the shared pre-conception intention that the donor or surrogate be the child's third legal parent').

[40] S. Lollini, 'Il riconoscimento della genitorialità omosessuale: un percorso lungo e tortuoso', in M. Pellissero and A. Vercellone, n 2 above.

[41] ibid 95, citing Corte di Cassazione-Sezioni unite 8 May 2019 no 12193; Corte di Cassazione 22 April 2020 no 8029. On the workarounds found by gay fathers see ibid, 96.

[42] The applicable law is Arts 8 and 9, Law no 40/2004, considering that most children of same-sex couples in Italy are born through artificial reproductive techniques. ibid 104.

by the law on civil unions – which explicitly prohibits the application of *status filiationis* rules to such couples. The overall picture is disheartening, and the need for prompt reform is well captured in the words of the Constitutional Court, which recently declared inadmissible the constitutional challenge to law no 40/2004 on ARTs brought by two mothers who could not have their ties recognized under the law. As Lollini notes, the Court did not hear the petition as a matter of legislative coherence – by refusing to tackle the problem through a case-by-case approach – and by recognizing that this is the province of the legislature. In so doing, however, the Court points to

> 'a worrisome shortcoming of the legal system in offering protection to minors and their best interest – in harmony with established case law of the two European courts, as well as domestic constitutional court – through the necessary permanence of affective and family ties, even if not biological, and legal recognition thereof, in order to confer certainty in the construction of personal identity… In declaring the inadmissibility of the petition under consideration, by deferring to the legislature's overriding assessment of the appropriateness of the means suitable to achieve a constitutionally necessary end, this Court notes that *ongoing legislative inertia would no longer be tolerable*, considering how severe is the gap in the protection of the child's preeminent interest found in this ruling'.[43]

Schillaci then enriches this overview of same-sex parenting by zooming in the delicate issues surrounding the regulation of surrogacy. Especially in Italy, this issue has been heated and tainted by political animus and ideology, which emerges from assertions that surrogacy amounts to a 'universal crime'[44] and that is it is a tool whereby women rent out their uterus.[45] Recently, the Constitutional Court seems to have barred the possibility of expanding access to surrogacy through a constitutional avenue. In a first (inadmissibility) decision, scrutinizing the rule on birth certificate contestation due to lack of veracity, the Court concluded that 'surrogacy… intolerably violates the dignity of women and severely undermines human relationships.'[46] However, the reasoning of the Court in declaring the petition inadmissible was much more nuanced. Especially noteworthy is the Court's conclusion that the current legal framework should already be interpreted as excluding any automatic and abstract consequence: the fact that a child was born through surrogacy (what Court refers to as the 'modes of birth') cannot

[43] Corte costituzionale 28 January 2021 no 32, cited in Lollini, n 40 above, 109.

[44] M. Pellissero, 'Surrogazione di maternità: la pretesa di un diritto punitivo universale. Osservazioni sulle proposte di legge n. 2599 (Carfagna) e 306 (Meloni), Camera dei Deputati' *Sistema Penale*, 1-12 (2021).

[45] B. Pezzini, 'Nascere da un corpo di donna: un inquadramento costituzionalmente orientato dall'analisi di genere della gravidanza per altri' *Costituzionalismo.it*, 183 ff, 194 (2017).

[46] A. Schillaci, 'Le gestazioni per altri: una sfida per il diritto', in M. Pellissero and A. Vercellone, n 2 above, 114, citing Corte costituzionale 18 dicembre 2017 no 272.

automatically lead to challenge its status as a child. By contrast, it is necessary to verify, in *concrete* terms, whether the annulment of the birth certificate is in the best interest of the child.[47]

Similarly, in a second decision of 2021, the Court dealt with the transcription of a birth certificate of a child of two fathers born abroad through surrogacy.[48] While the Court does not venture into declaring such transcription admissible into the Italian legal system, the Author argues that the Court seems to show a more open-minded and holistic approach towards the issue.[49] Schillaci then compares the Italian case law with the decisions of the Constitutional Court in Portugal and then urges on a more case-sensitive approach that excludes any automatic consequence from the mere fact of resorting to surrogacy.

Valentina Calderai joins forces with a contribution from the perspective of international private law, rethinking the notion of public order in a way that duly accounts for the phenomenon.[50] She claims that rights protection and harm prevention should be the ultimate aim of future legal reforms.[51] As specifically concerns surrogacy, she notes that

> 'in the context of the transformation of the human body into a resource of the knowledge economy, it is not immediately clear why reproductive labor should be treated differently from other forms of clinical labor underlying the value chains of the biomedical and pharmaceutical industries. … The idea that surrogacy as such violates the dignity of the pregnant woman lends itself to the criticisms of essentialism and paternalism, whereas an interpretation of the principle of dignity from the perspective of distributive and corrective justice raises questions similar to those raised by other forms of use and trade of the body and intimacy – prostitution, medical experimentation, tissue collection and circulation for biomedical research and industry – that could well, according to some, be regulated having in mind rights protection and harm reduction'.[52]

Two additional valuable contributions from Lorenzetti and Grande bring in the comparative and European dimension to account for the multi-level nature of rights protection and the cross-fertilization of legal systems attesting to how comparative endeavors are now commonplace in family law as well.[53] Lorenzetti

[47] ibid 114-15.

[48] Corte costituzionale 9 March 2021 no 33.

[49] A. Schillaci, n 46 above, 118.

[50] She interprets surrogacy not as an expression of self-determination but as an 'extreme and risky product of the convergence of reproductive technologies and regulatory competition.' V. Calderai, 'Il dito e la luna. Ordine pubblico internazionale e drittwirkung dei diritti dell'infanzia', in M. Pellissero and A. Vercellone, n 2 above, 140.

[51] ibid 140.

[52] ibid 146.

[53] See H.D. Krause, 'Comparative Family Law: Past Traditions Battle Future Trends — and

offers a contribution regarding the question of whether the current ground-based anti-discrimination model in force in the European Union could offer protection to intersex persons. After tracing the multiple harms suffered by this especially vulnerable group both at birth and throughout their lives,[54] a common theme through her chapter is the observation that the law has ceased to help the people to accommodate abstract interests that run against the mental and physical well-being of the person concerned – ie, the interest in preserving the gender binary and erase abnormal deviations therefrom.[55]

Ultimately, Grande offers a snapshot of polyamory as a phenomenon, and as an object of legal regulation. In so doing, she draws a parallel with polygamy outlining the multifold ways in which Western legislatures engrafted the monogamous model of family into law.[56] Interestingly, she joins two strands of critique, both the critique in the queer camp and the critique against neoliberalism and its penchant for wearing down social ties – a theme common to other chapters as well.[57] In doing so, she argues that polyamory and polygamy as a family model capable of fostering community and social groups faces special obstacles that hinder its legal recognition by the West, due to its inherent 'incompatibility with the dominant neoliberal agenda'.[58] Drawing from the US literature in the area, she then offers an overview of potential avenues of legal recognition.[59]

'Complexity' is hence the keyword of the collection: an acknowledgement of the delicate and growingly intricate issues surrounding the legal regulation of LGBTQI+ populations are warranted. The editors especially warn us that when it comes to sexual orientation and gender, complexity is often overshadowed by a value-laden and increasingly moralizing political discussion. By the term 'complexity' they especially refer to the 'technical-legal and policy implications

Vice Versa', in M. Reimann and R. Zimmermann eds, *The Oxford Handbook of Comparative Law* (Oxford: OUP, 1st ed, 2006), 1101 ('[f]amily laws are unfolding in similar directions. For all their very real differences, nations around the world find themselves facing fundamentally similar questions and dilemmas in defining and regulating the modern family'); F. Nicola, 'Family Law Exceptionalism in Comparative Law' 58 *American Journal of Comparative Law*, 777-810, 780 (2010) (arguing that '[t]his shift to human rights and fundamental principles enshrined in constitutional regimes has enlisted the family as a fundamental field for comparative and international law projects addressing the possibilities for convergence, unification, and harmonization of family law'). See also J. Herring Jonathan, R. Probert and S. Gilmore, *Great Debates in Family Law* (Basingstoke: Palgrave Macmillan, 2nd ed, 2015).

[54] A. Lorenzetti, 'Le persone intersex nel diritto antidiscriminatorio: fra vuoti normativi e necessità di protezione', in M. Pellissero and A. Vercellone, n 2 above, 166-169.

[55] See, eg, ibid 170.

[56] E. Grande, n 18 above, 179. See also A. Vercellone, 'Più di due. Verso uno statuto giuridico della famiglia poliamore' *Rivista Critica di Diritto Privato*, 607 (2017).

[57] See esp. V. Calderai, n 50 above.

[58] ibid 180.

[59] ibid 185-191. See especially, H. Aviram and G.M. Leachman, 'The Future of Polyamorous Marriage: Lessons From The Marriage Equality Struggle' 38 *Harvard Journal of Law & Gender*, 269, 330 (2015).

necessary to enable the rights of LGBTQI+ people'.[60] A suggestion for the next updated version of this volume is to expand on this aspect as it holds potential to resist the increasingly value-laden discourses around LGBTQI+ rights of illiberal actors in Europe, such as the ruling élite in Poland and Hungary. With illiberal political parties such as Lega and Fratelli d'Italia taking center stage in Italy, this backward-looking analysis (trying to understand the traditional-conservative family, gender, and sexual orientation norms on these actors' agenda and which current legal protections are at risk of being dismantled) is not only desirable but indispensable to predict the fate of LGBTQI+ populations in an increasingly fragile Europe.

While I attempted to highlight some specific noteworthy aspects emerging from selected chapters, the width, ambitious and comprehensive nature of the collection speak for themselves. This collection is set to become a reference point for LGBTQI+ studies in Italy, and the starting point of a more sustained, comprehensive discussion about the ways in which law affects the status of LGBTQI+ subjectivities.

[60] M. Pellissero and A. Vercellone, n 2 above, XIII.