Modern Italy, 2018
Vol. 23, No. 2, 201–214, doi:10.1017/mit.2018.8

(Trans)gender citizenship in Italy: a contradiction in terms? From the parliamentary debate about Law 164/1982 to the present

Stefania Voli*

Institute of Humanities and Social Sciences, Scuola Normale Superiore, Florence, Italy

(*Received 11 July 2017; final version accepted 25 January 2018*)

This article concerns the processes of normalisation and medicalisation of transgender people's experiences in Italy. Drawing on the analysis of the parliamentary debate which led to the endorsement of Law no. 164/1982, 'Rules Concerning the Rectification of Sex-Attribution', the article will foreground the (still) existing contradictions between trans people's (ostensible) individual rights over their own gendered bodies, as enshrined in law, and their subjection to medico-legal supervision and control. Next, it will look at the relationship between transgender experience and the notion of citizenship: in particular, it will explore the opportunities and contradictions in the possibility of trans citizenship in the current Italian context.

Keywords: transgender; gender recognition law; citizenship; sexuality; Italy

Introduction

> Everywhere that trans people appear in the law, a heavy reliance on medical evidence to establish gender identity is noticeable. Try to get your birth certificate amended to change your sex designation, and you will be asked to show evidence of the surgical procedures you have undergone to change your sex. Try to change your name to a name typically associated with the 'other gender', and in many places you will be told to resubmit your petition with evidence of the medical procedures you have completed. Try to get your driver's license sex designation changed, and again you will be required to present medical evidence.[…] In almost every trans-related case, whether it be about the legitimacy of a trans person's marriage, the custody of hir[1] children, hir right not to be discriminated against in employment, hir right to wear gender appropriate clothing in school or foster care, hir rights in prison, or whatever other context brings hir to court, medical evidence will be the cornerstone of the determination of hir rights. (Spade 2003, 16–18)

This quote from Dean Spade, a trans/activist and lawyer engaged in struggles for the rights of trans people in the United States, describes a situation that mirrors what most gender 'non-conforming' people experience in contemporary Italy as well, both in the public and private spheres.[2] In order for them to be recognised in the polis as citizens, for example, they must necessarily present proof of being under institutional medical care. Without this proof, people cannot take the desired steps toward changing their names on identity documents (passport, driver's licence, national health system card, etc.). Until 2015, trans people who had entered into a marriage contract before their gender transition were forced by the Law 164/1982 (Rules Concerning the Rectification of Sex-Attribution) to nullify the wedding and, in cases of separation, were denied custody over their children.[3] They cannot use public bathrooms, dressing rooms or fitting rooms that correspond to

*Email: stefania.voli@sns.it

their self-defined gender without the risk of being reported, harassed or imprisoned. Whether accessing voting booths or being imprisoned, hospitalised or enrolled in the labour market or in social welfare programmes, trans people experience a wide spectrum of discrimination and marginalisation (ILGA-Europe 2017a, 2017b; Transgender Europe 2014). This stems from the organisation, along a gender binary, of prisons, health, reformatory institutions and society in general.[4]

This article presents the results of my interdisciplinary PhD research project, using both historical and sociological methodologies, carried out during the period 2012–2015. It aimed to explore the relationship between body, gender, self-determination and citizenship in relation to trans people's body modification experiences in contemporary Italian society. The historical method has included multiple sources, chiefly official documents relating to the parliamentary debate. These were analysed in light of the audio broadcasts available on the online archive of Radio Radicale (Radical Radio),[5] relating to the trans movement's political initiatives (congresses, interviews, press conferences) during the period between 1980 and 1982. Next, I consulted original materials relating to the history of the trans movement in Italy, from its birth to the present, at the MIT (Movimento Identità Trans, Identity Trans Movement) Documentation Centre in Bologna. Lastly, I have consulted some newspapers, such as *La Stampa*, *Stampa Sera*, and *L'Unità*, paying particular attention to the parliamentary debate period. The historical research was interweaved with the sociological research, which draws on 24 in-depth interviews with trans individuals who had undergone (and/or were in the process of undergoing) gender transition, and my three-month participant observation in the MIT association.

Sociologist Paola Borgna observed that every norm incorporates specific representations of the body (2005, 66): accordingly, I will explore how the Italian law on gender reassignment originated within a specific heterosexual matrix (Butler 1990, 1993), which paradoxically aimed at safeguarding the gender binary system, rather than going beyond it. Building on the long-term perspective enabled by my historical investigation, in the second part of this article I will focus on the relationship between trans bodies and citizenship in the wake of the law. Thus, I will criticise processes of protecting/normalising/controlling trans people which determine their access to citizenship in Italy, and demonstrate how the pathological approach fostered by the law threatens the development of a full trans citizenship. Citizenship in my account figures as a technology which defines, names and grants recognition, visibility and resources to citizens at the same time as it covers up and marginalises non-citizens, who are considered deficient because of the lack of a specific series of capabilities and features. My theoretical framework is mainly based on the groundswell of research, especially in feminist studies, which explores the intersection of sexuality and citizenship, and which criticises the heteronormative character of traditional citizenship for excluding the heterogeneity of gender expression and sexual orientation (Richardson 1998; Monro 2000). This is well encapsulated in the notions of *sexual* (Evans 1993; Weeks 1998), *intimate* and *embodied citizenship* (Bell and Binnie 2000; Richardson 1998, 2000; Plummer 2003), which grants importance to sexuality, intimacy and embodiment. This line of inquiry also succeeds in drawing attention to the intersection of class, sex and 'race' in processes of exclusion within the polis (Crenshaw 1989; Bimbi and Del Re 1997; Bertone et al. 2003; Monro 2005; Sciurba 2012; Ochoa 2014).

What are, then, the implications for trans people when the 'outlaw' (Bornstein 1994) bodies come into relationship with citizenship rights (Davy 2011)? What are the possibilities and conditions for accessing citizenship for individuals who have been historically excluded from decision-making processes due to their supposed pathological condition (as trans people), from

which would descend their inability to manage their own bodies (Preciado 2015)? These are some of the questions which this paper aims to address.

Towards Law 164/1982

If transsexuality began to gain public visibility in Italy in the 1950s and 1960s, sex change in Italy was illegal until the approval of the Law 164 in 1982. Transvestitism was governed by the Criminal Code as illicit concealment (Art. 85). Alternatively, trans people were considered 'habitual offenders' (Art. 1) and, if judged 'potentially dangerous to public safety or the national order' (1931 Fascist Public Safety Laws, Royal Decree no. 733), the law could be enforced to the extent of confinement or special surveillance. Subsequently, pursuant to Law 1423/1956 (Preventive Measures against Those Threatening Security and Public Morals), transsexuals were likely to be subjected to warnings, preventive measures, confinement, and the confiscation of their identity documents and driving licences (Benadusi 2008; Cecconi 1976; Marcasciano 2002). However, by the end of the 1960s and early 1970s, Italy (like several other Western countries)[6] witnessed the increasing process of making transsexuality a public and political issue. In 1967, Romina Cecconi (popularly known as 'La Romanina') was the first trans woman to publicly announce her gender reassignment surgery (undergone in Geneva, Switzerland). For this reason, she was considered by the state a morally and socially dangerous person, and was sentenced to confinement in a small town in Southern Italy. She was eventually recognised as a woman by the Court of Lucca in 1972 (Cecconi 1976). In that year, members of several European homosexual associations gathered publicly for the first time, in San Remo, in order to disrupt the International Congress on Sexual Deviancy organised by the Italian Centre for Sexology, which supported conversion therapy for homosexuals. Amongst the protesting associations was the newly formed group known as *FUORI!*, an acronym for *Fronte Unitario Omosessuale Rivoluzionario Italiano* (Italian Revolutionary Homosexual United Front), which, as we will see, became an important ally in the battle for transgender people's rights (Barilli 1999; Prearo 2015). One of the leading figures in the group, until 1974, was Mario Mieli, gay activist, intellectual and author of one of the milestones of the Italian LGBTQ political culture, *Elementi di critica omosessuale* (1977).

Two events in particular are related to the struggle for a gender recognition law, and to the official birth of the Italian transsexual movement (MIT). In the summer of 1979 the Constitutional Court was called on to assess the legitimacy of three articles of the Italian Civil Code (no. 454 of the Royal Legislative Decree 12 December 1938; nos. 165 and 167 of the Royal Legislative Decree, 9 July 1939; No. 1238). They dictated that vital records could be rectified in cases of omission, destruction or loss, and provided rectification if the civil registrar official who drafted the personal information had made a material error in identifying the person's sex. Until then, trans people had used these articles as a way of (illicitly) modifying their registered sex by falsely claiming erroneous registration or transcription of sex at birth.[7] The court ruled[8] that the aforementioned articles did not include, 'among fundamental human rights, the right to register an external sex other than the [individual's] original sex, acquired through surgical transformation to make this sex correspond to an original psychic personality.'[9] In acknowledging that there was a gap in the Italian legislation on this topic, on the occasion of this ruling the court explicitly addressed the Italian parliament, inviting it to resolve this issue. However, to all intents and purposes, in the short term the ruling of the Constitutional Court constituted an insurmountable obstacle for trans people, and their scant possibilities for adapting their personal data to match their physical appearance and gender identity.

https://doi.org/10.1017/mit.2018.8 Published online by Cambridge University Press

Nevertheless, the verdict triggered the emergence of trans experience on the public stage. Thus, in reaction to the court decision, in July 1979 several trans women organised a protest in a public swimming pool in Milan (Marcasciano 2006, 42).[10] They wanted to show to the public, to the institutions and, above all, to the state, the contradictions of their condition (having a female body but male identity documents), and to demand full social and legal recognition of their belonging to the female gender. This initiative granted for the first time public visibility to the 'transsexual issue', and fostered the creation of trans women's groups and protests in many Italian cities, which aimed at securing a law that would allow them to change their personal data on their identity documents. The first outcome of these demonstrations was the creation of MIT, officially in 1979 (Voli 2016). From the outset, the group sought dialogue with political actors, especially in the institutions; these included the Radical Party, which went on to become the movement's spokesperson in parliament, the Italian Communist Party (hereafter PCI), the Left more generally – both inside and outside parliament – and, above all, *FUORI!*. Born at the beginning of the 1970s, and part of the Radical Party from 1974, *FUORI!* became the main ally of MIT. Immediately after the ruling of the Constitutional Court, it drafted the first bill for gender recognition, which the Radical Party submitted to parliament on 27 February 1980.[11]

Yet, the original objectives of the draft legislative act proposed by the Radical Party (law proposal no. 1442/1980), appear to have been quite different and more limited than they eventually became during the discussion in parliament. The so-called 'De Cataldo Law', in fact, was solely aimed at simplifying procedures for changing sex in *vital records* (but not through *surgery*), which had been outlawed by the 1979 Constitutional Court ruling. The draft proposed that the rectification of personal data could be generically made 'in *all* cases in which the current situation no longer appears to conform to the one established at the time of birth' (rather than only in cases of error, omission, destruction or loss), as the Radical De Cataldo himself declared, introducing the bill in the Chamber of Deputies on 27 February 1980.[12] Such wide-ranging formulation intentionally omitted any specific reference to trans experience: the Radical Party hoped that this would have easily and quickly allowed the passing of the law, avoiding conflicts with the Christian Democracy (hereafter DC). In fact, the Radicals were persuaded that any confrontation with the DC would have occurred on the slippery grounds of morality,[13] making it difficult to reach a rapid vote on, and adoption of, the proposal. Indeed, they were aware that the transsexual phenomenon could be seen as a threat to the traditional gender system, of which DC was the chief upholder in parliament.

The Radicals' urgency to obtain the approval of the law characterised the entire parliamentary debate, and it deeply affected the arguments concerning transsexuality and, consequently, the wording of the law. Emblematically, when in February 1980 De Cataldo first presented the bill no. 1442, he did not mention the principle of self-determination, but referred to trans experience in terms of a 'dramatic condition' and the 'result of a mistake of nature', basically reducing it to the medical and psychological sphere. Indeed, he unhesitatingly stated that he did not intend to discuss 'the nature of transsexuality', which in his opinion had already been exhaustively covered by medical experts.[14] In particular, he mentioned Harry Benjamin and Aldo Franchini – two well-known figures at the international and national level respectively; at the beginning of the 1960s the American endocrinologist Harry Benjamin had brought the term 'transsexual' into common usage,[15] and the diagnostic criteria he devised have constituted (and still constitute) a fundamental reference for the international scientific community. Aldo Franchini, an expert on forensic medicine, criminologist and child psychopathology specialist, authored the article entitled 'Schizosessualità e cambiamenti di sesso' (1967), which De Cataldo explicitly cited in his intervention in parliament. Without being directly referenced, its discursive framework more broadly

nevertheless underlay most of the parliamentary debate across the political spectrum, granting significant space to the pathologising approach.

When on 1 October 1980 the Chamber of Deputies opened the discussion of the De Cataldo bill, all the main political parties proposed amendments. The Communists were the first to present their position, calling for a 'more scientifically accurate formulation' of the problem. In particular, they proposed that the text of art. 454 should also specify the possibility of rectifying personal data in cases in which an 'effective, original or subsequent sexuality has been ascertained that differs from that reported at birth'.[16] After the PCI, the Gruppo misto-sinistra indipendente (Mixed Group – Independent Left) invited deputies to consider what effects changes on registered sex would have on existing marriages – implicitly hinting at the risk that they would be turned into same-sex unions.[17] Next, it suggested that judges should carry out 'inquiries, including health examinations, to determine the sex of the person',[18] thereby introducing for the first time in the debate the requirement of a medical intervention to ascertain the 'true' sex of a person.

Fearing that these amendments might bog down the discussion, the parties which had proposed them withdrew them on the very same day. The DC, however, requested additional time to better consider the implications of the bill, which resulted in a postponement. In the next day's session, Catholic MPs made lengthy speeches revolving around the elaboration of a definition of the transsexual condition, and the legal, social and cultural repercussions potentially ensuing from the Radical Party's bill. Two elements seemed to be DC's biggest worries. One was the difficulty to scientifically track down the origins of transsexualism and, accordingly, the most appropriate 'cure' for what they considered a pathology. The other was the fear that such a law would represent a Trojan horse in the Italian legal system, which would have legitimised sex change.[19]

Within the overall political confrontation taking place within the Chamber of Deputies, only two MPs, the radical Adele Faccio and Aldo Rizzo from the Mixed Group – Independent Left, expressed a non-pathologic approach to the trans experience, supporting instead trans people's right to self-determination. Although their position remained a minority, and notwithstanding the DC's doubts, at the end of the second day of debate De Cataldo's bill was approved, with 19 favourable votes out of a total of 24 voters. Supporters included Radical, Communist and Socialist MPs, and a representative of the radical right-wing party Movimento Sociale Italiano (Italian Social Movement, MSI). Members of the Partito Socialdemocratico Italiano (Italian Social Democratic Party), Partito Liberale (Liberal Party) and the Partito Repubblicano (Republican Party) were absent, while several Christian Democrats voted against it. However, DC MPs considered that the bill was too vague, eventually leading the government to draft a new law, more specifically focused on the issue of changing trans people's name and gender marker on identity documents.

This time, however, the DC senators took over the discussion in parliament. On 5 November of the same year, they presented another bill in Senate:[20] bill no. 1591 entitled *Norme in materia di riconoscimento di mutamento di sesso* (Rules Concerning the Rectification of Sex-Attribution). In introducing the bill, the Catholic senator Rosi explicitly chose a narrative register that framed his interpretations, terminology and reasons within the medical and legal sphere:

> It is known that some individuals, although morphologically belonging to one sex, are convinced that they belong to the opposite sex and behave sexually in accordance with this belief [...]. The delicate and complex moral and legal considerations surrounding transsexuality are evident, even more so considering that the nature and origin of such deviation from the sexual norm have yet to be fully verified scientifically.[21]

> This will make it possible to protect individuals' interest in legitimating their new sexual identities and the associated annotation in vital records and, at the same time, protect the essential values of the

https://doi.org/10.1017/mit.2018.8 Published online by Cambridge University Press

> community such as the physical integrity of components of society, the guarantee of the continuity of the human species and standards of propriety. To this end, a procedure has been set up with the public prosecutor who, as is well known, is authorised to intervene actively and passively in matters governed by laws of public order, which include those concerning the verification and attribution of sex [...]. For this purpose, a medical and legal consultation is required regarding the various aspects of the sexual phenomenon and aimed at ascertaining the sexual status of the person in question and its irreversibility. This consultation is essential for both the final decision regarding the change request and the previous decision by which the court authorises the person in question to undergo surgery, when necessary, to carry out the definitive sex adjustment. (ibid., 2)[22]

With this proposal, senator Rosi and his party aimed to define a medico-legal procedure to discipline the gender change, 'in order to manage adjustments to vital records to reflect the sexual reality of individuals and regulate cases in which sex change might be allowed and ways to ascertain it'. On the clinical side, the bill required medical-legal consultation that would assure the 'new' gender identity and its irreversibility (through hormonal and surgical treatments which cause sterilisation and, consequently, the deprivation of trans people's right to reproduction). On the legal side, the requirement that the process leading to gender change ought to involve the public prosecutor, framed verification and attribution of gender identity as a matter of public order. The obligation to annul pre-existing marriages, moreover, prevented the legalisation of same-sex unions resulting from a spouse's sex change, thereby reaffirming the heterosexual marriage as the only bond legally authorised to reproduce 'the human species'. In other words, Rosi's speech encapsulated some of the main points that were later integrated into the final text of the bill, and which reflect some of its problematic constraints to trans people's rights.

Rosi's bill rapidly made its way to the Senate's Justice Commission, which jointly examined the two texts (no. 1442 and no. 1591), sending the new unified law to the Deputies' Justice Commission for final approval in February 1982. Finally, on 1 April, the parliament unanimously approved Law No. 164/1982, which definitively regulated changes in name and sex attribution in a person's identity documents. Although commonly known as the 'De Cataldo Law', of the seven articles that compose the law only the first matches the original bill presented by the Radical Party's senator.[23]

For MIT and the Radical Party, the 'De Cataldo Law' immediately came to represent a symbolic political victory, and is still considered as 'an historic turning point in the history of our country's law and moral framework' (Arietti et al., 2010, 23). However, it did not provide concrete solutions to the problems affecting transsexual people: the text of the law reflected the contradictions embedded in the synthesis of the two bills resulting from the parliamentary debate, above all between the DC and the Radicals, whose initial aim was simply the legal change of gender on documents, rather than a medico-legal regulation of it. At the same time, it also revealed from the very outset many problems that trans people came to face from then on. MIT activists' demand for self-determination in gender identity was in fact substantially and institutionally hijacked. The law, in fact, established trans people's enforced medicalisation through the institutionalisation of the medical-legal consultation necessary to begin the process of gender transition. Moreover, they were subjected to public order through the institutionalisation of the court procedure with the *pubblico ministero* (state's attorney, PM).[24] The law, hence, failed to promote freedom of choice and self-determination for trans people: rather, it delivered them into the hands of the arbitrary system of regulations associated with the clinical and legal sphere now tasked with regulating and managing their lives.

In conclusion, throughout the parliamentary debate the principle that the right to change one's sex might derive from a principle of self-determination was repeatedly denied.[25] Instead, it was replaced by a reiteration of the pathological nature of the trans condition. This outcome is the

direct consequence of the distress experienced by parliamentarians – especially Christian Democrats – in the face of a lack of definitive scientific interpretations establishing the 'true' causes of transsexuality. In the text of the law this uncertainty is expressed in the demand for procedures to establish the irreversibility ('definitive adjustment') of the transsexual condition, which would erase any (at least) aesthetic ambiguity or trace of – using senator Rosi's words – 'deviation from the sexual norm',[26] as the basis on which to approve or reject a person's name change in the state's vital records.[27] What remained untouched, however, was the forcefulness of the heterosexual binary model, which deeply characterised Italy's sex change law and conditioned people's ways of and possibilities for experiencing gender transition. It was only in July 2015 that the Court of Cassation ruled out the legal obligation to undergo surgery as a prerequisite for vital records rectification.[28]

The controversial relationship between trans bodies and citizenship

As I have shown so far, in the Italian context trans individuals are granted the freedom to change their own bodies and name conforming to their inner gender by means of Law 164/1982. In reality, though, this apparent freedom operates alongside the pathologisation of the subject, which to all intents and purposes serves to deny them this very freedom. As emerged from the trajectory leading to the approval of Law 164/1982, for people whose bodies do not conform to the gender binarism, citizenship is the result of their acceptance of being diagnosed a pathology,[29] and of the ensuing medico-legal procedures set to guarantee the transition toward a definite and indisputable (masculine or feminine) gender identity.[30]

If citizenship is a process historically premised on the basis of an exchange of rights and duties between institutions and individuals, pathologisation is what structures the 'duty' of gender non-conforming subjects to comply with the gender binary system, by delegating decision-making power over their bodies to medico-legal institutions. Accepting pathologisation thus becomes the only means to acquire the status of citizen, exclusively reserved for trans subjects who agree to become 'recognisable' and 'normed', thereby showing themselves 'deserving' of citizenship. Nevertheless, it is precisely pathologisation that reveals the contradictions which affect trans citizenship in contemporary Italy.

The first of these contradictions is related to the disconnection between the wealth of sociological studies focused on citizenship,[31] and those on the body (Shilling 2012; Turner 2008, 2012), despite the fact that it is precisely the body which grants substance to the subjects of citizenship. Ultimately, this process results in a lack of attention to the role bodies play in the process of defining citizenship. Research envisaging the convergence between bodies and citizenship in relation to trans people's experiences is even rarer. As Bacchi and Beasley (2002, 324–325) pointed out:

> This point becomes obvious if we mention the range of government responsibilities associated with controlling the spaces in which citizen bodies operate, and with deciding the kinds of support services needed to house and feed those bodies. The functions of governance are centrally concerned with bodies and yet bodies are almost never talked about.

If we analyse the Italian context from the point of view of the relationship between pathology and citizenship, however, there is the possibility of de-structuring it. In particular, the acquisition of citizenship corresponds to different degrees of autonomy in subjects' ability to act on their own bodies. Furthermore, this relationship reflects the dichotomy of '"control over body" versus "controlled by body"' (ibid.). Pathologisation turns trans people into patients, as they are subjected to a process of 'expropriation of the Self' enacted by medical figures, likewise 'infantilised'

https://doi.org/10.1017/mit.2018.8 Published online by Cambridge University Press

in order to make them more manageable as gendered subjects (Indino 2014, 27). In other words, this apparent freedom coexists with the idea that self-determination can derive from its own antithesis, which is the unavoidability of the medical diagnosis. Hence, underlying the 'pact' on the basis of which medical and legal powers have allowed trans bodies to re-enter the population of citizens as bodies restored to the norm, and thus reconstructed as conforming and productive, is its very unfeasibility. Moreover, the standardised set of procedures for sex reassignment, which in Italy usually follow the diagnosis of gender dysphoria, is mainly based on an international manual which defines that '[b]eing transsexual, transgender, or gender nonconforming is a matter of diversity, not pathology' (WPATH 2011, 168). In light of these points, I argue that the only way that citizenship might operate without excluding gender non-conforming people is by valorising the wealth of heterogeneity embodied by trans lives. Only by doing so might a transgender citizenship exist 'both as a way of expanding our understanding of citizenship, and as a means of informing the political debates' (Monro and Warren 2004, 359).

As recent judicial rulings clearly illustrate, achieving this result is far from simple. In January 2015, some of Italy's most important LGBTQI associations filed a request that the obligation for trans people to undergo sterilisation procedures in order to change their identity documents be declared unconstitutional.[32] In November 2015 the Constitutional Court accepted this request with ruling no. 221/2015, which granted the possibility of changing a person's sex on identity documents without the obligation to submit to surgical sterilisation and genital mutilation. Declaring that they wished to position individual rights at the centre of the process, the Constitutional Court judges in fact ruled that surgery constitutes only one of the 'possible techniques for carrying out sexual modification', and that the person in transition should be free to decide. Yet, this gender transition does not rely on subjects' self-definition, but rather continues to be constrained within precise clinical and legal procedures. According to the Court, in fact:

> removing the obligation of surgical intervention for the purposes of rectifying vital records appears to be the corollary of an approach which, consistent with supreme constitutional values, grants the individual the choice of the means through which to carry out their process of transition, with the assistance of doctors or other specialists.

This last sentence clearly illustrates the dual register (freedom of choice/medical assistance) that reinforces specific limits on trans people's self-determination, which similarly characterises the ruling no. 15138/2015 of the Court of Cassation.[33] The aforementioned rulings recognise that the decision to undergo surgical modification is the result of a 'process of self-determination towards the goal of sex change', and interpret these surgeries as 'one of the many possible pathways for ensuring that the person's external appearance matches their personal identity, as perceived by the subject'. Yet there is no attempt whatsoever to question the pathologisation of trans people. Illustrative of this is the requirement to obtain judicial recognition of the rectification of vital records according to which a judge is required to declare – according to the timing of case-law, and not the individual's process – that the person in question has in fact completed a transition to the opposite sex (thus also confirming the foundational gender binary system underlying the construction of citizenship). Additionally, by confirming the existence of a pathology, this ruling essentially validates the standardised procedures for gender reassignment as their 'cure', which ought to ensure that the individual develops 'secondary' sexual characteristics (such as breast, voice pitch, facial hair) and hormone levels comparable to those that non-trans men and women tend to present.

The rulings confirm that the price to be paid as a prerequisite for social acceptance and legal inclusion is that the trans condition be rendered invisible, reabsorbed, or normalised within the

binary gender system, reconfirming – in Paul Preciado's words – that 'there is no recognition without standardisation' (2015). These judgements undoubtedly represent an important legal shift in relation to trans people's experiences, and have the effect of eliminating systems of social exclusion for people undergoing gender transition. At the same time, however, the persistence of a pathological lens and the procedures accompanying this interpretive framework ensure that individuals who 'transgress' remain on the margins of citizenship, i.e. in the condition of 'non-citizens'. In order to reformulate citizenship, which has traditionally excluded and marginalised gender non-conforming experiences, articulating a causal relationship with the condition of pathologisation, it is important to stress that the possibility of a trans citizenship must necessarily revolve around the fundamental requirement of bodily self-determination, free from the pathologising lens and the medical-legal apparatus.

Conclusion

As we saw in the introduction, the range of problems trans people experience in their everyday life is rooted in the sex-gender binary structure of society. Through their existence and claim to the right to not conform to it, trans people question the consolidated citizenship acquisition process and the resulting division between 'deserving' and 'not deserving' citizens, and affirm new forms of embodied experiences. As my analysis of the parliamentary debate leading to the endorsement of the Law 164/1982 has shown, the law represents a 'compensatory mechanism' (Goffman 1963) aimed at preventing ambiguities in, or violation of, the binary gender system, embodied by trans people themselves. In the process of recognition, trans people are asked to exchange their rights to choose on their own bodies and life for access to free and legal medico-legal gender transitioning processes. But, in Preciado's words (2015), how could we call 'citizen' an individual who cannot establish the terms of his/her/hir own entry into the public space or decide his/her/hir role within it? What are the possibilities for building a trans citizenship? Are these possibilities in opposition to the construction of a political perspective focused on the issue of self-determination?

Monro and Warren (2004, 349) answer these questions when they suggest bringing 'the erotic and the embodiment into discussions about citizenship, and [making] space for dissident citizenship – including reshaping the terrain of citizenship by remaining outside it'. Without such a radical rethinking, the current notion of citizenship is incapable of accounting for a broader gender diversity. While awaiting, or in the absence of, this potential overturning of the concept of citizenship – challenged and problematic because it has proved incapable, thus far, of being reformulated without creating new forms of exclusion – trans subjectivities represent the best means of creating change in culture, healthcare, politics and the economy. As McQueen stated (2014, 545–546):

> By offering alternative narratives of gender identity and identification, we can disrupt and challenge the norms that underpin acceptable citizenship, thus creating the means for new claims for citizenship and ultimately new forms of political subjectivity. This can work to render the body less enslaving, but first we must learn to live and negotiate with differences and contradictions rather than trying to eradicate them in the name of the normal.

This is perhaps the most important challenge facing contemporary gender outlaw experiences (Bornstein 1994): to affirm that all that has traditionally been considered contradictory, abject, ambiguous and out of place (Borghi 2014) can no longer be considered expendable, and, above all, pathological (McQueen 2014). This will allow the assertion of new forms of embodied political subjectivity that may subvert binary gender norms (Butler 1990).

https://doi.org/10.1017/mit.2018.8 Published online by Cambridge University Press

Acknowledgements

The author is grateful to the anonymous reviewers and to the editors for their useful suggestions which improved the article. Thanks are also due to MIT (Trans Identity Movement) of Bologna for helping and supporting me in my research work.

Notes on contributor

Stefania Voli is a post-doctoral researcher member at the Institute of Humanities and Social Sciences at the Scuola Normale Superiore (Florence). She holds a PhD in Citizenship, Rights and Gender Equality in Modern and Contemporary History (University of Naples 'L'Orientale'), with a dissertation on Radical Left Movements in 1970s Italy. In 2016 she earned a second PhD in Applied Sociology and Social Research Methodology at the University of Milan-Bicocca, working on Transgender Rights and Citizenship in current Italy. From 2015 to 2017 she has taught Italian Contemporary History and Gender, Race and Representation in Italy with the CIEE (Council of International Educational Exchange), Ferrara, Italy. She is on the board of the Italian Association of Women Historians (SIS) and of its Summer School.

Notes

1. This term is a gender-neutral third-person singular object pronoun, resulting from the combination of 'his' and 'her'.
2. 'Gender non-conforming' people is an umbrella term which includes any person whose gender identity and/or gender expression differs from the gender they were assigned at birth. Hence, they transgress the gender binary system, which recognises as legitimate only the two traditional and complementary genders (male and female).
3. Art. 4 of Law 164/1982 prevented the continuation of marriage between two people who were now of the same sex following the sex change by one of the two spouses. A recent ruling by the Court of Cassation (No. 8097 of 21 April 2015) eliminated the automatic annulment of their marriage. Shortly after, same-sex unions were legalised, thereby overcoming the legal grounds for its nullification (Pezzini 2014).
4. The gender binary is a system that pairs together sex assigned at birth (which categorises subjects as male or female as a result of having genitals encoded by biomedical science as masculine or feminine); gender (the social norms and expectations projected upon a person's 'endowment' with either a masculine or a feminine body); and sexual orientation (the erotic desire for the opposite sex, hence heterosexual). As the trans experience aptly demonstrates, subjects who disobey the normativity of this binary system have been labelled as pathologic, deviant, and abject (Butler 1990; Haraway 1990; Sedgwick 1990).
5. See the web page of the archive of Radio Radicale: https://www.radioradicale.it/pagine/larchivio.
6. Just to name the most important and well-known event that contributed to bringing trans persons out of the closet: in 1969 the Stonewall Riots exploded in New York, constituting what became the most renowned instance within a growing wave of radical protests against the oppression of Lesbian, Gay, Bisexual, Transsexual and Queer (LGBTQ) people (Stryker 2006).
7. See the intervention of Alberta Franciolini in the panel interview by Carlo Romeo (1981).
8. Constitutional Court judgment no. 98, 12 July 1979.
9. Ruling no. 98 of 12 July 1979 (*Gazzetta Ufficiale* no. 217, 8 August 1979). It restated a previous decision by the Court of Cassation (22 February 1972).
10. People who were assigned to the male sex at birth and identified with a female gender, were the visible representatives of the struggle to approve Law 164/1982. In Italy, people transitioning from female to male did not gain political subjectivity and visibility until the 1990s.
11. Regarding the role of FUORI!, see the speech by the group's leader Enzo Francone at the second MIT conference. http://www.radioradicale.it/scheda/2706/2719-ii-congresso-nazionale-del-movimento-italiano-transessuali)
12. Deputy De Cataldo in parliamentary acts – Law proposal no. 1442, 27 February 1980 – *Amendment of Article 454 of the Italian Civil Code*, p. 4.
13. For the same reason, the jurist Francesco Bilotta (2013) suggests that the terms 'transsexual' and 'transsexualism' were omitted from the text due to policymakers' attempt to render the law acceptable to

a more conservative segment of public opinion, by refraining from openly upsetting the duality of the sexes and admitting the existence of a third way of experiencing gender.

14. Deputy De Cataldo in parliamentary acts – Draft Law no. 1442, 27 February 1980 – *Amendment of Article 454 of the Italian Civil Code*, p. 2.
15. The term was coined in 1949 by the physician David Cauldwell, who used it in an article entitled *Psychopathia Transsexualis* (1949), outlining the case of a girl who obsessively wanted to be a boy. The word entered into common usage in 1953 after the publication of Harry Benjamin's work, *Transvestism and Transsexualism*, but especially after the publication of Benjamin's *The Transsexual Phenomenon* (1966). The world's best-known association of trans health professionals was also named after Benjamin: the Harry Benjamin International Gender Dysphoria Association (HBIGDA), today the World Professional Association for Transgender Health (WPATH).
16. Chamber of Deputies' Justice Committee (IV), 1 October 1981, 779.
17. See note 3.
18. Chamber of Deputies' Justice Committee (IV), 1 October 1981, 779.
19. Carlo Casini is a magistrate of the Court of Cassation. Furthermore, he has held many positions as Italian and European MP in the ranks of the DC and then of the Union of the Centrist and Christian Democrats. He is also one of the founders of the ultra-Catholic Movimento per la Vita (Pro-Life movement), of which he was the president from 1990 to 2015.
20. The DC senators who signed the bill were: Rosi, Di Lembo, Bausi, De Giuseppe, Fracassi, Fimognari.
21. Senate of the Republic, Draft law no. 1621 – *Norms on recognition of gender reassignment*, 1–2.
22. Until recently, the requirement to perform surgery to complete the process of rectification of a person's vital records (art. 4 of the Law 164/1982) was interpreted in case law in a restrictive way, positing surgery as an indispensable prerequisite for name and sex change procedures on identity documents.
23. Art. 1 states: 'The sex change, as per article 454 of the civil code, is made possible by a definitive sentence of the competent judge attributing to a person a sex different from that declared at birth, after the modification of her/his sexual characteristics has occurred.'
24. This passage is clearly stated in art. 3 of the Law no. 164: 'The judge, when an adaptation of sexual characteristics through medical and surgical treatment is proven necessary, authorises this intervention with a sentence. Once verified that the authorised treatment has been carried out, the judge orders the rectification [of the personal data]' (Garosi 2012, 469–470).
25. In the same period, Radicals and Christian Democrats were involved in another sexual freedom battle, with an abrogative referendum. While the Catholic Movimento per la Vita (Pro-Life Movement) sought to repeal the abortion law (Law no. 194/1978), the Radical Party wanted to erase some of its provisions in order to make abortion more freely accessible. The right to abortion was reconfirmed by 67.9 per cent of Italians.
26. Senate of the Republic, Draft law no. 1621 – *Norms on recognition of gender reassignment*, 1–2.
27. Several rulings issued immediately after the passage of Law 164/1982 attest to this point. In these verdicts, the Court explicitly requested that: 'the physical and psychic characteristics of the opposite sex' be displayed 'with certainty; the rectification be authorised only when external sexual characteristics had been modified or in cases in which the subject had already lost the main anatomical characteristics of [his or her] original sex'; and that the person had acquired 'a sufficient anatomical specification of the opposite sex' (Court of Cagliari ruling 25 October 1982; Court of Milan ruling 2 November 1982; Court of Rome ruling 3 December 1982; Court of Sanremo ruling 7 October 1991).
28. On July 2015, the Court of Cassation ruled that there is no legal obligation to undergo surgery as a prerequisite for vital records rectification (ruling no. 15138/2015); on 5 November 2015, the Constitutional Court confirmed this decision (ruling no. 221/2015).
29. In 1980 the American Psychiatric Association (APA) introduced transsexualism in the Diagnostic and Statistical Manual of Mental Disorders (DSM-III) as a Gender Identity Disorder (GID). DSM, which provides standard criteria used worldwide for the evaluation of mental illnesses, defined GID as a pathological condition, characterised by a mismatch between the body and the internal self. Linked to the diagnosis of GID, the surgical transformation of sexual characteristics was considered as the main feature. In 2013, the DSM 5 has changed the diagnosis for trans people from GID to Gender Dysphoria.
30. In Italy the medical procedures for gender reassignment follow the guidelines of the Osservatorio Nazionale Italiano sulla Disforia di Genere (Italian National Observatory on Gender Dysphoria, ONIG). In turn, these are based on the Standard of Care (SoC) promoted by the WPATH (2011).
31. See note 2.

https://doi.org/10.1017/mit.2018.8 Published online by Cambridge University Press

32. These included MIT, Associazione Radicale Certi Diritti, Associazione ONIG – Osservatorio Nazionale sull'Identità di Genere, Fondazione Genere Identità Cultura and Associazione di Volontariato Libellula.
33. On one side, ruling no. 15138/2015 affirms that '[t]he right to self-determination is inviolable and cannot be limited even by one of the three powers of the state, in the sense that no one may take the place of the appellant in determining whether or not it is appropriate to modify their primary sex characters in order to ensure their personal identity is respected by third parties as well.' On the other, it also states that 'the seriousness and univocity of the chosen pathway [the acquisition of a new gender identity] and the completeness of the final result has been ascertained, where necessary, by rigorous technical assessments in court.' Furthermore, it states that the 'judicial recognition of the right to sex change must necessarily be preceded by a rigorous assessment to be carried out through a documentation of the medical and psychotherapeutic treatments the applicant has undergone, supplemented if necessary by official technical investigations aimed at attesting to the individual irreversibility of the choice in question.'

References

American Psychiatric Association (APA). 1980. *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III).

Arietti, L., C. Ballarin, G. Cuccio, and P. Marcasciano, eds. 2010. *Elementi di critica trans*. Rome: Manifestolibri.

Bacchi, C.L., and C. Beasley 2002. 'Citizen Bodies: Is Embodied Citizenship a Contradiction in Terms?' *Critical Social Policy* 22 (2): 324–352.

Barilli, G. Rossi 1999. *Il movimento gay in Italia*. Milan: Feltrinelli.

Bell, D., and J. Binnie 2000. *The Sexual Citizen: Queer Politics and Beyond*. Cambridge: Blackwell Publishers.

Benadusi, L. 2008. 'Dalla paura al mito dell'indeterminatezza. Storia di ermafroditi, travestiti, invertiti e transessuali'. In *Transessualità e scienze sociali. Identità di genere nella postmodernità*, edited by E. Ruspini, and M. Inghilleri. Naples: Liguori.

Benjamin, H. 1953. 'Transvestism and Transsexualism'. *International Journal of Sexology* 7: 12–14.

Benjamin, H. 1966. *The Transsexual Phenomenon*. New York: Julian Press.

Bertone, C., A. Casiccia, C. Saraceno, and P. Torrioni 2003. *Diversi da chi? Gay, lesbiche, transessuali in un'area metropolitan*. Milan: Guerini.

Bilotta, F. 2013. 'Transessualismo'. In *Digesto delle discipline privatistiche, sezione civile*, edited by R. Sacco. Turin: Utet.

Bimbi, F., and A. Del Re 1997. *Genere e democrazia. La cittadinanza delle donne a cinquant'anni dal voto*. Turin: Rosenberg & Sellier.

Borghi, R. 2014. 'Performance de-genere. Pratiche di resistenza all'(etero)norma nello spazio pubblico'. *Doppiozero*. http://www.doppiozero.com/materiali/soglie/performance-de-genere, 17 September.

Borgna, P. 2005. *Sociologia del corpo*. Rome-Bari: Laterza.

Bornstein, K. 1994. *Gender Outlaw: On Men, Women and the Rest of Us*. New York: Routledge.

Butler, J. 1990. *Gender Trouble, Feminism and the Subversion of Identity*. New York and London: Routledge.

Butler, J. 1993. *Bodies that Matter. On the Discursive Limits of Sex*. New York and London: Routledge.

Cauldwell, D. 1949. 'Psychopathia Transsexualis'. *Sexology* 16: 274–280.

Cecconi, R. 1976. *Io, la 'Romanina': perché sono diventato donna*. Florence: Vallecchi.

Crenshaw, K. 1989. 'Demarginalising the Intersection of Race and Sex: A Black Feminism Critique to Antidiscrimination Doctrine, Feminist Theory and Anti-Racist Politics'. In *The University of Chicago Legal Forum* 1: 136–167.

Davy, Z. 2011. *Recognizing Transsexuals: Personal, Political and Medicolegal Embodiment*. Farnham: Ashgate.

Evans, D. 1993. *Sexual Citizenship: The Material Construction of Sexualities*. London: Routledge.

Franchini, A. 1967. 'Schizosessualità e cambiamenti di sesso'. *Medicina Legale e delle Assicurazioni* XV: 52–58.
Garosi, E. 2012. 'The politics of gender transitioning in Italy'. *Modern Italy* 17 (4): 465–478.
Goffman, E. 1963. *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, NJ: Prentice-Hall.
Haraway, D. J. 1990. *Simians, Cyborgs and Women: The Reinvention of Nature*. New York: Routledge.
ILGA-Europe. 2017a. *Annual Review Rainbow Europe.* https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2017_online.pdf/.
ILGA-Europe. 2017b. *Rainbow Europe Map*. https://www.ilga-europe.org/sites/default/files/Attachments/rainbow_europe_map_2017.pdf/.
Indino, V. 2014. 'No(du)li di senso e fiocchi rosa'. In *Tutta salute! Resistenze (trans)femministe e queer*, edited by DWF (Donna Woman Femme) 3–4 (103–104): 25–36.
Marcasciano, P. 2002. *Tra le rose e le viole. La storia e le storie di transessuali e travestiti*. Rome: Manifestolibri.
Marcasciano, P. 2006. 'Trans, donne e femministe. Coscienze divergenti e/o sincroniche'. In *Altri femminismi. Corpi culture lavoro*, edited by T. Bertilotti, C. Gallasso, A. Gissi, and F. Lagorio. Rome: Manifestolibri.
McQueen, P. 2014. 'Enslaved by One's Body? Gender, Citizenship and the "Wrong Body" Narrative'. *Citizenship Studies* 18 (5): 533–548.
Mieli, M. 1977. *Elementi di critica omosessuale*. Turin: Einaudi. Translated as *Homosexuality and Liberation: Elements of a Gay Critique, by* D. Fernbach. 1980. London: Gay Men's Press.
Monro, S. 2000. 'Theorizing Transgender Diversity: Towards a Social Model of Health'. *Sexual and Relationship Therapy* 15 (1): 33–45.
Monro, S. 2005. *Gender Politics: Citizenship, Activism and Sexual Diversity*. London: Pluto Press.
Monro, S., and L. Warren 2004. 'Transgendering Citizenship'. *Sexualities* 7 (3): 345–362.
Ochoa, M. 2014. 'Perverse Citizenship: Divas, Marginality, and Participation in *Loca*-lization'. In *The Transgender Studies Reader*, edited by S. Stryker, and A.Z. Aizura, 443–456. New York: Routledge.
Pezzini, B., ed. 2014. 'Mutamento di sesso e divorzio imposto: il diritto all'identità di genere e al matrimonio'. *GenIUS: Rivista di Studi Giuridici sull'orientamento sessuale e l'identità di genere*. Special issue. Vol. 1.
Plummer, K. 2003. *Intimate Citizenship: Private Decisions and Public Dialogues*. Seattle: University of Washington Press.
Prearo, M. 2015. *La fabbrica dell'orgoglio. Una genealogia dei movimenti LGBT*. Pisa: Edizioni ETS.
Preciado, P. B. 2015. 'Scordiamoci di essere speciali'. *Internazionale* 11 February. https://www.internazionale.it/opinione/beatriz-preciado/2016/02/11/scordiamoci-di-essere-speciali/.
Richardson, D. 1998. 'Sexuality and Citizenship'. *Sociology* 32 (1): 83–100.
Richardson, D. 2000. 'Claiming Citizenship? Sexuality, Citizenship and Lesbian/Feminist Theory'. *Sexualities* 3 (2): 255–272.
Romeo, C., interviewer. 1981. 'Il Movimento italiano transessuali'. 9 January. http://www.radioradicale.it/scheda/1810/1823-il-movimento-italiano-transessuali/.
Sciurba, A. 2012. 'Cittadinanza. Diritti confinati e atti performativi'. In *Femministe a parole. Grovigli da districare*, edited by S. Marchetti, J. Mascat, and V. Perilli, 44–49. Rome: Ediesse.
Sedgwick, E. K. 1990. *Epistemology of the Closet*. Berkeley: University of California Press.
Shilling, C. 2012. *The Body and Social Theory*, 3rd ed. London: Sage.
Spade, D. 2003. 'Resisting Medicine, Re/modeling Gender'. *Berkeley Women's Law Journal* 18: 15–37.
Stryker, S., and S. Whittle, eds. 2006. *The Transgender Studies Reader*. New York: Routledge.
Transgender Europe. 2014. *Legal and Social Mapping*. Transgender Europe's Transrespect versus Transphobia Worldwide (TvT) project. http://transrespect.org/en/legal-and-social-mapping-publications/.
Turner, B. S. 2008. *The Body and Society: Explorations in Social Theory*. Los Angeles: Sage.
Turner, B. S., ed. 2012. *Routledge Handbook of Body Studies*. New York: Routledge.
Voli, S. 2016. 'Broadening the Gendered Polis. Italian Feminist and Transsexual Movements, 1979–1982'. *TSQ (Transgender Studies Quarterly)* 3 (1–2): 235–245.

Weeks, J. 1998. 'The Sexual Citizenship'. *Theory, Culture & Society* 15 (3): 35–52.
Word Professional Association for Transgender Health (WPATH). 2011. *Standard of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.* 7th edition. http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf/.

Italian summary

Questo articolo discute i processi di normalizzazione e medicalizzazione delle esperienze delle persone transgender in Italia. A partire dall'analisi del dibattito parlamentare che ha condotto all'approvazione della Legge 164/1982 'Norme in materia di rettificazione di attribuzione di sesso', esso porterà in primo piano le contraddizioni che (tuttora) esistono tra (gli apparenti) diritti individuali delle persone trans sui loro corpi *gendered*, così come sancito dalla legge, e il loro assoggettamento alla supervisione ed al controllo medico-legale. Guardando alla relazione tra l'esperienza transgender e la nozione di cittadinanza, l'articolo analizza nella seconda parte opportunità e contraddizioni di una 'cittadinanza trans' nell'attuale contesto italiano.