Special issue

Ex malo, bonum? Dilemmas (and Opportunities) as a result of Dobbs

Francesco Clementi*

ABSTRACT: This contribution aims to retrace the fundamental stages of the complex and critical jurisprudential affirmation of the right to voluntary termination of pregnancy in the US experience, trying to synthetically highlight at least three elements: (a) the political-social difficulty that there is today in the search for a new political-juridical balance to be established at the federal level; (b) the path of the 'defederalization' of rights as an always helpful tool for posing crucial questions to the people in a federal state; finally (c) highlight the potential opportunities offered by the Dobbs v. Jackson Women's Health Organization of 2022 ruling to reduce social-political polarization and confrontation.

KEYWORDS: Abortion; United States Supreme Court; Jurisprudence; Women's Rights; Reproduction

1. Introduction

The voluntary interruption of pregnancy in the United States of America was never regulated at the federal level until the Supreme Court's *Roe v. Wade* ruling in 1973. Thus, until then precisely, each individual state had provided for different legislation configuring a relatively diversified panorama, which had been the outcome of an important campaign against abortion, conducted by the American Medical Association at the beginning of the 20th century to pass laws making the termination of pregnancy illegal, except in the case of severe danger to the life of the pregnant woman.

Moreover, the picture that historically emerged – unlike what one might imagine at first glance today – portrayed this political dialectic: the Democrats (and the states where they governed) tended to be pro-life, supporting the right to life and the protection of the unborn child; while the Republicans (and the states where they governed) tended to be pro-choice, in favor of constitutional recognition of the right to abortion.

Thus, the federal ruling of 1973, which governed the voluntary termination of pregnancy across all US states until 2022, not only reflected a cultural shift in American society and politics but also aimed to rectify legislative disparities that had emerged over time, resulting in varying state-level regulations of this right.

* *Full Professor of Comparative Public Law, University of Rome 'La Sapienza'. Mail: francesco.clementi@uniroma1.it.* *Invited contribution.*

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As a result, from 1973 to the present, the issue of abortion rights has increasingly been at the forefront of public and political discourse, revealing the deep-seated divisions in American society and challenging the cultural foundations of both the Democrats and Republicans. This fluctuation has been amplified and polarized over time by intense media coverage of politics, which has in turn impacted US society.

In this sense, the *Dobbs v. Jackson Women's Health Organization* ruling (597 US_2022), in which the Supreme Court annulled *Roe v. Wade* in 1973 (410 US 113, 1973), represents the end – but also the beginning – of a story that, at the bottom, is none other than the proof of how rights are always the central pivot on which to measure the dynamics of the integration or non-integration of a federal system; that is, of a system that was born and always lives within the clash and dialogue between the States and the Federation, in a continuous and dynamic confrontation that is its strength but also inevitably its weakness, as the great scholar Carl J. Friedrich has long stressed.

The aim of this contribution is to retrace the fundamental stages of the complex and criticized jurisprudential affirmation of the right to abortion in the US experience, trying to synthetically highlight at least three elements: (a) the socio-political difficulty that there is today in the search for a new political-legal balance to be established at the federal level; (b) the strategy of 'de-federalization' of rights in that system, which remains a valuable tool for raising critical questions to the American people, who ultimately hold the power to determine the political and institutional balance for each right across the federal landscape, as the rightful owner of this decision-making process; finally (c) the appropriateness of the *Dobbs v. Jackson Women's Health Organization* of 2022, which overruled *Roe v. Wade* of 1973, offers to the US constitutional system to rediscover the right balance of rights, duties and responsibilities between the different institutions in the US legal system.

On the other hand, the principle of equality – which was born based on differentiation and is affirmed against discrimination but also thanks to discrimination – has always been qualified in the United States in very peculiar ways, which each time raises one crucial question: the change that at first sight seems a regression could, instead, be considered as a tool to move forward in a better way, with greater awareness and responsibility by all political-institutional actors?

2. Towards *Roe v. Wade*

Federal constitutions, born from the union of a group of states, are based on a pact (the word federation derives from *foedus*, Latin for pact),[1] that is, on a treaty defining the distribution of powers within the union. Thus, while the states retain some of their original features and, in particular, independent power in a limited but well-defined number of areas, similarly, the federal government has limited but real power in other areas.

In any case, whatever the nature of the federative process is, not only the federal government is always granted a minimum amount of powers sufficient to ensure the political and economic unity of the federation, but progressively – precisely from the experience of the United States – the historical evolution of this form of state has highlighted the dynamics of the relationship between the two levels of government of the federation. Therefore, at times, the relationship between the federal gov-

[1] See D. J. ELAZAR, *Idee e forme del federalismo*, Milan, 1998.

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ernment and states in the US has been characterized by a dual federalism approach, which emphasized separateness or a hierarchical relationship between the superior and inferior levels. At other times, however, the relationship was more cooperative, with a focus on coordinating powers through a collaborative federalism approach.

Hence, in the continuous oscillation between centripetal and centrifugal thrusts, the constitutional balance, above all on the subject of fundamental rights, such as the right to abortion, has always been prohibited or promoted, incentivized or disincentivized, by the keystone of the federal edifice, that is, by the Supreme Court: the entity responsible for guaranteeing the supremacy of the constitution over all powers and safeguarding the unity of the state and of the legal system, protecting above freedoms and rights of citizens.

Thus, the federal system as a form of organization of power has always been centered on two elements: a natural dynamism in the relationship between the federal institutions, i.e. the states and the Federation; and the 'wisdom' of the Supreme Court in establishing, case by case, the right balance in the allocation of rights within the competences between the federal institutions.

So it is within this background that the right to abortion in the United States and its historical evolution should be analyzed.[2]

Then, in this perspective, the historic Roe vs Wade ruling of 1973 represents one of the most prominent moments in the jurisprudence of the Supreme Court: a true milestone both for the affirmation of women's freedom as such in the United States (which had also effects in most stabilized democracies), and for the definition of an important set-up in the definition of the relationship between Federation and States. This is expressed, above all, by the contrast between values, also about the impact on the organization of health provisions to make rights that are extended at the federal level a concrete reality.[3]

The different choices on abortion that have emerged over the course of US history originate from a combination of multiple factors that forcefully began from 1966 when, with the support of the Democrats and based on the recommendations of the American Law Institute, the pro-choicers proposed the reform of the law to decriminalize therapeutic abortion to protect abortionists.[4]

Within a very divided landscape – at the beginning of the 1960s, only the state of Pennsylvania prohibited abortion without taking women's physical or mental health into account, while in other states such as Alabama, Colorado, New Mexico, Massachusetts, and the District of Columbia, abortion was only permitted if the woman's life or physical health was in danger, and Mississippi even in the case of rape – the situation gradually changed with the emancipation of women and the awareness of women's rights. The latter, from being passive and inactive subjects of social life, historically deputed to the care of the home and the family, developed an identity as a politically relevant group, bearer of demands and interests to be promoted and protected: among all, reproductive rights were evidently among their top priorities.

[2] On the subject, briefly, see: R. SIEGEL, *The Constitutionalization of abortion*, in R.J. COOK, J.N. ERDMAN, B.M. DICKENS, *Abortion Law in Transnational Perspective*, Madison, 2014; more recently, on the different models of abortion regulation, see: G. BOGNETTI, *Aborto (voice)*, in *Enciclopedia Treccani*, 1991.

[3] See L. BUSATTA, *Quanto vincola un precedente? La Corte suprema degli Stati Uniti torna sull'aborto*, in *dpceonline.it*, 3, 2020, 4453 ss

[4] See G. GALEOTTI, *Storia dell'Aborto,* Bologna, 2003.

Thus, while in 1962 the American Law Institute suggested a model of penal code to legalize abortion, bringing the United States to an initial turning point, between 1967 and 1971 as many as seventeen states reformed or abrogated their domestic laws on the subject to favor a progressive legalization of abortion.[5]

These changes clearly took place even though that since 1873 the United States had passed the Comstock Act, a federal statute prohibiting the publication or circulation of medicines and information materials concerning not only abortion but also contraception. This law has such consequences that it also effectively prohibits the use of contraceptives. Hence the recourse of many women to illegal abortion, which, when denounced, has always resulted in convictions and appeals in district or federal courts over the decades.

Yet the revolution of the 1960s and 1970s not only produced the manifesto that, in 1968, Frederick Jaffe, former president of the International Planned Parenthood Federation, wrote on behalf of the World Health Organization to control fertility, encouraging a policy of sex education aimed at reducing the number of births but even found as an ally the then Secretary of State of US President Gerald Ford, Henry Kissinger. Kissinger drew up a document entitled '*Implications of World Population Growth for the Security of the United States and Foreign Interests*', which, in line with the views of Margaret Higgins Sanger, the founder and first president of the International Planned Parenthood Federation, emphasized the importance of birth control in the United States to avoid the scourge of illegal abortions and the number of women who died as a result of them; as another decisive figure, gynecologist Bernard Nathanson, one of the founders of the National Association for the Repeal of Abortion Laws, had repeatedly stressed.

It is clear, then, that the Supreme Court itself could not fail to have a decisive role to play on this issue as well; not least because over the years it had been called upon several times to compensate precisely for the asymmetries that had emerged in the area of the protection of fundamental rights between individual state legislatures.

On the other hand, the Supreme Court, in the meantime, had strengthened its basis for broader protection of fundamental rights not codified in the Constitution, but certainly included in the notions of liberty and due process. This had taken place both through the definition and strengthening of the theory of incorporation as well as through that of the due process clause; techniques and decisional instruments useful – as far back as the *Palko v. Connecticut* ruling of 1937 (302 US 319, 1937) – to establish that the fundamental rights, protected by the due process clause, correspond to principles of justice so deeply rooted in the traditions in the conscience of the American people as to be classified as fundamental, in fact finding their historical roots as far back as the Bill of Rights of 1791.

Thus, by the end of the 1930s, those concepts and those protections to be guaranteed in the balancing against other rights and against public interests were consolidated; legal solutions that require and impose, in short, careful and severe scrutiny in the judicial review of legislation.

The turning point, as is well known, came in 1953 with the appointment as Chief Justice of the Supreme Court of Earl Warren, who invited and promoted the work of the Supreme Court towards a robust expansion of the catalogue of fundamental rights, especially in the field of freedoms and civil rights, within what was later called the Civil Rights Revolution of the Warren Court.

[5] See M. NIJSTEN, *Abortion and Constitutional Law. A Comparative European-American Study,* Florence, 1985.

Thus, civil rights were strengthened, the role of religion in schools was scaled down, and racial segregation was combated, since the well-known *Brown v. Board of Education of Topeka* ruling (347 US 483, 1954). Here, through the application of the equal protection clause provided by the 14th Amendment, the US Supreme Court, overruled its precedents, and consolidated on particularly conservative and restrictive positions. Similarly, through the *Griswold v. Connecticut* judgement (381 US 479, 1965), the Court expansively applied the doctrine of incorporation and expanded the right to privacy to the full protection of individual self-determination, elaborating the doctrine of penumbras.[6]

Indeed, the Warren Court's action was strategic in overcoming the many political, legislative, and judicial resistances made by state courts and in strengthening the freedom of choice of individuals. This way, it launched with a strongly centralizing approach, the expansion of fundamental rights at the federal level, giving rise to a New Federalism, the main cultural basis of the 1973 *Roe v. Wade* ruling.

3. Roe v. Wade between flexibility, oscillations, and self-constraints

The legal basis of *Roe v. Wade* is to be found first and foremost in the concept of the right to privacy, already proposed and declared by the Supreme Court in *Griswold v. Connecticut*; although already in the 1940s the Supreme Court had been asked about the constitutionality of state laws against the use of contraceptive methods. Thus, for example, as early as 1943, in *Tileston v. Ullman* (318 U.S. 44, 1943), a doctor appealed for the repeal of a Connecticut law, which on the one hand prohibited the use of any method of preventing and impeding conception and on the other prohibited medical personnel from recommending the use of contraceptives to women to whom a pregnancy could result in serious damage to their health if not death. However, the Court dismissed that case on mere procedural grounds, again striking down Tileston himself in *Poe v. Ullman*, holding instead that the annulment of that unimplemented legislation in this case potentially precluded constitutionally adequate alternative solutions that had not yet been applied.

Therefore, the *Griswold v. Connecticut* decision – which codified the right to privacy in the US legal system, despite the first theorization on the subject by Samuel Warren and Louis D. Brandeis in 1890 in the Harvard Law Review[7] – paved the way for *Roe v. Wade*; since in that judgement, *inter alia*, the Court sanctioned the right of the State not to interfere in the contraceptive methods that a married couple decides to use, thus leaving this right within the realm of the private choices of individuals. Thus, still, in the hands of the States.

So, these continuous oscillations within a natural flexibility of the right to abortion as a field of confrontation and clash between states and the Federation in the definition of individual rights, if on the one hand led to self-binding on the part of individuals as well as certain states while awaiting a decision on the subject by the Supreme Court; on the one hand, at the same time, all this pushed forcefully for a change of mentality on the subject of abortion, such as to favor a new interpretation of the problem by the Supreme Court itself, within those very penumbras that were first underlined in 1965 in *Griswold v. Connecticut*.

[6] See V. BARSOTTI, *Privacy e Orientamento sessuale. Una storia americana*, Torino, 2005

[7] See S. WARREN, L.D. BRANDEIS, *The Right of Privacy*, in *Harvard Law Review*, 4, 1890, 193 ss

On the other hand, it should never be forgotten that until 1973 abortion was permitted, at the woman's request only, in just four states: Hawaii, New York, Alaska, and Washington. And that in over thirty states until then, abortion was criminally prosecuted.[8]

The Supreme Court first dealt with abortion in 1971, ruling negatively in *United States v. Vuitch* (402 US 62, 1971).

However, the turning point came on 22 January 1973 when, by a majority of seven votes to two, relying on a broad interpretation of the Fourteenth Amendment of the Constitution, again on the subject of the right to privacy, here understood as the right to free choice in matters relating to the intimate sphere of the person, the Supreme Court emphasized that the Texas legislation violated the Due Process Clause of the Fourteenth Amendment because the choice to terminate a pregnancy fell within the scope of the right to privacy, included in the concept of liberty; and that the decision must be free from state interference. At the same time, the Court identifies three distinct moments during pregnancy to ensure a balance between the right to privacy and the State's interest in protecting potential life. Thus, by the end of the first trimester of gestation, a doctor is empowered to assess whether to allow an abortion to take place. Abortion in the second trimester, on the other hand, is left to the legislation of individual states, taking into account the protection of the woman's health. Finally, if the abortion takes place at a time when the fetus has a chance of survival, and therefore in the last trimester, priority is given to protecting the life of the fetus.

On this basis, Justice Blackmun, writing for the majority, not only explains why historically the preeminent federal interest, supported by the case law developed from the late 19th to early 20th century, has always been that of protecting the health of the woman over the protection of the life of the fetus, but also why it is precisely the right to terminate a pregnancy that represents the declination of the right to privacy, referable to the principle of personal liberty enclosed in the Due Process Clause of the Fourteenth Amendment. Abortion thus looms as a personal choice – in a 'protected period' of three months – in which the State cannot afford to interfere.

While this ruling recognizes abortion as a right, it does not absolutize it. In fact, it allows state legislation to regulate health, the provision of medical standards and the protection of potential life, pointing out that the state interest, in some cases, might even have prevailed over the particular interest of the pregnant woman.

Thus, the right to privacy allows the woman to choose to terminate the pregnancy within the first trimester freely, subject to consultation with and approval by a doctor; after that, and up to and including the sixth month, the state has full power to place limitations designed to safeguard the woman's health, but not to prohibit abortion tout court; after the seventh month, the state may legitimately prohibit the termination of pregnancy, since the fetus is endowed with viability, that is, the capacity for autonomous survival.

Hence this judgement definitively opens up a new right – the practice of abortion – causing the consequent unconstitutionality of all state laws contrary to the practice of abortion in the manner and form defined by the Court (in particular, it concerned all state laws on abortion, except for that of the State of New York, at the time the only one compatible with the principles enunciated by the Court).

[8] See J. SHIMABUKURO, *Reviewing Recently Enacted State Abortion Laws and Resulting Litigation*, CRS Report LSB 10346, September 6, 2019.

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From 1973 onwards, however, this judgement was criticized from many quarters, also because of the style of argument used by the Court, which for some was not sufficiently anchored to the constitutional provisions, since as by supporting the right to abortion on the right to privacy – in itself already sufficiently broad and controversial – it would have rendered the right to abortion itself very unstable, which, as is well known, had no significant basis in the texts, legislative history or precedents of US jurisprudence before this judgement.[9]

In short, many unresolved issues seem to emerge from the fundamental principles established in the judgement, including the refusal to establish, without a shadow of a doubt, the moment in which life can be said to have begun and the impossibility of considering the unborn child in the same way as a person who already exists; although in some respects this appears to contradict the 'trimester theory' defined by the Court itself, which becomes the demarcation point for considering abortion a right or not.

In short, for many critics of this ruling, right from the start we were faced with a text that affirms a right based on a fundamental ambiguity, insofar as it is founded on a concept that is legally unstable and fragile insofar as it is not universally recognized as the exact beginning of life.

Therefore, over the years, and then decades, it was the same liberal-minded interpreters, before those of a conservative bent, who emphasized very strongly the need for the right to terminate pregnancy recognized by the Supreme Court through *Roe v. Wade* in 1973 was to be strengthened, specified and definitively perimetried by a federal law of Congress; in fact, only an act of this kind could have given, precisely because it stemmed from the synthesis of a political choice, a truly balanced response; one that would have promoted a new type of equality because it was politically more shared.

Yet the political fracture caused by the Roe ruling ended up increasingly dividing and polarizing political positions; preventing, in fact, any form of strengthening and legislative consolidation of that decision. On the contrary, already after three years, Congress, sponsored by Illinois Republican Congressman Henry J. Hyde, passed the first Hyde Amendment to the Medicaid tax to prohibit the use of federal Medicaid funds for abortion and to cancel its therapeutic practice for general health reasons, i.e. 98% of recurrences.

The objective was therefore clear: to prevent the implementation of *Roe v. Wade* in practice.

The abortion issue then lands, year after year, in national political debates, especially during presidential elections. And political conflict after political conflict, election campaign after election campaign, it becomes more and more evident that the polarization is such that it is very difficult to find an agreement on a law in Congress, thus leaving the right to abortion increasingly becoming a lawless right.

The most evident concrete effect is that abortion, as a right, is actually a right only for those who can afford it in private, given that federal health care coverage for the exercise of this right is systematically reduced within the political conflict by laws of Congress or measures by Presidents with a Republican majority; thus, emptied from within, the first to pay the price for a right proclaimed but dif-

[9] See L. FABIANO, *Tanto tuonò che piovve: l'aborto, la polarizzazione politica e la crisi democratica nell'esperienza federale statunitense*, in *BioLaw Journal*, 3, 2022.

ficult to demand because of its high costs are women in poor economic situations, mostly foreigners or belonging to minorities.

In short, the economic constraints on the practice of abortion are such as to make it very expensive, and therefore very difficult, for women with less economic means, to terminate a pregnancy. To such an extent that it becomes clear that it will be very difficult to imagine the passing of a law in Congress when, within the progressive affirmation of the originalist orientation of the constitutional text starting from the Reagan Administration, the Mexico City Policy is affirmed: a regulation wanted by Reagan in 1984 to prohibit foreign non-governmental organizations, which receive federal funds, from using their own funds to pay for abortion practices for those who cannot afford it. The sharp expansion over the years of the legislative restrictions already in place as a result of this policy then made it increasingly difficult for less affluent women to access the practice.

Representing one of the most controversial rulings in the history of the United States, the Court itself has intervened on several occasions over the years in an attempt to redefine the boundaries of the right to abortion enshrined in it. Thus, in 1992, with *Planned Parenthood v. Casey* (505 US 833, 1992), the Court introduced the undue burden test to scrutinize the legitimacy of state legislation on the subject, while in 2007, with *Gonzales v. Carhart* (550 US 124, 2007), the Court declared the constitutionality of the federal law outlawing one of the techniques of so-called partial-birth abortion. At the same time, state legislators have also tried to regain the spaces that the Roe ruling had taken away from them; by limiting, where possible, the right to abortion with the famous 'trap laws' (TRAPs law), which affect various procedural and substantive aspects of abortion, such as the provisions concerning standards for abortion clinics and for doctors who perform abortions, requirements which paradoxically are not required of facilities where the medical interventions are performed, such as childbirth, which expose patients to far greater risks.

The point is that, even though that the Roe ruling has brought abortion to the level of constitutional law, the issue is far from settled, and the progressive and increasingly extreme polarization between pro-life and pro-choice is perhaps a natural consequence of the very intervention of the Supreme Court, that legally imposed a choice, perhaps not yet fully mature on a social and political level.

4. On the prospects of a de-federalized right (and of laws against the right to terminate a pregnancy)

The Supreme Court's landmark *Dobbs v. Jackson Women's Health Organization* decision of 24 June 2022 overrules *Roe v. Wade* of 1973 but also *Planned Parenthood v. Casey* of 1992 and affirms the non-existence of a federal right to abortion. It also gives individual states full power to regulate any aspect of abortion not protected by federal law.

On the one hand, in an attempt to overcome *Roe v. Wade*, it has in fact allowed those 'trigger laws', promoted by more than thirteen states in favor of a pro-life cultural line, which aim to prohibit abortion completely, to become automatically effective; on the other hand, it has favored the rush by another sixteen states, in favor of a pro-choice cultural line, to enact laws to expand and protect that right.

What emerges from this picture is an America in which women with unwanted pregnancies will still be able to obtain abortions, but to do so, they will need access to information about the medical facilities that allow abortions and the private organizations to which they can turn. At the same time, they will have to avoid spreading the news so as not to fall victim to criminal and administrative sanctions if they are residents in a state that is against the termination of pregnancy; and thus, to have the time – and the financial resources, let it be clear – to travel outside the borders of that state whose legislation is against them.

A further element: for women seeking a legal abortion, the most difficult issue concerns the availability and the accessibility of information on the ways, forms, places, and facilities, as well as costs, where they can exercise what is only recognized as a right at the state level, asymmetrically, depending on their state of residence. The risk is therefore that we will soon find ourselves faced with an internal 'migration' of women who, seeking access to a legal and safe abortion practice primarily outside their state of residence, move along 'routes' to abortionist states; while, at the same time, other states will do everything in their power to avoid this internal movement to deny pregnant women from having abortions. On the other hand, it cannot be ruled out that there could be cases where some anti-abortion states could require women of childbearing age to take a pregnancy test before boarding a flight to destinations where abortion is legal.

The fact Is that although efforts to halt the right to abortion altogether are likely to meet with a violent backlash, the change and evolution in the composition of the Supreme Court have indeed initiated a new season of jurisprudence that aims to consolidate the pro-life movement; even further, if it makes evident the importance of the dissent of Justices Steven Breyer, Elena Kagan, and Sonia Sotomayor in the Dobbs ruling as being capable of well highlighting the limitation of women's rights and their status as free and equal citizens, it presents it in itself however ultimately fragile, as it is incapable of drawing strength from the divisions within the majority line-up.

Thus a way to find, within the framework of the Court's argumentative path, a solution that would in any case recover the possibility of exercising that freedom now denied, can only rest on the position of Chief Justice John Roberts. Coming from a republican culture, while supporting the Court's decision, the Chief Justice wanted to add a concurring opinion of his own, which says something significant, namely that a reasonable opportunity to choose rights must always be guaranteed.[10]

Therefore, beyond of the polarizations that politics will want to take, and setting aside for a moment the severe reflections on the choices that, daily, considering this political and legal situation, women will be dramatically forced to make in their lives to find an adequate, balanced and proper path, to return to guaranteeing this right throughout the federation there is only one natural way forward in the absence of an act of Congress: that of making the position expressed by the Chief Justice a majority one, thus rediscovering that lost balance.

[10] On President Roberts' reading of this issue, see T.J.MOLONY, *Taking Another Look at the Call on the Field: Roe, Chief Justice Roberts, and Stare Decisis*, in *Harvard Journal of Law & Public Policy*, 43, 3, 2020, 733 ss.

5. Final remarks

The loss of a fundamental constitutional protection, which the Roe ruling had instead helped to give to many women, allows for some final annotations, which start from a consideration, namely that the United States, following the Dobbs ruling, represents an anomaly in the world of stabilized democracies in this regard, given that internationally today it is mostly recognized among human rights that a right to abortion is protected.[11]

Therefore, if this choice inevitably marginalizes the United States in the protection of sexual and reproductive health and rights, as has rightly been noted by US Ambassador Linda Thomas-Greenfield,[12] it may, on the other hand, spur the citizens of the United States themselves – the Americans – to rediscover among themselves the reasons for overcoming what a true democratic regression is.

On the other hand, the judicial federalization or de-federalization of a right by the Supreme Court, or the legislative or not-legislative extension of a right at the federal level for all by Congress, has always been nothing more than a great question of meaning – a real dilemma – posed to citizens before their representatives; therefore in front of themselves as first and last holders of the right to decide in their democracy. A question that, facing the historical decades-long inertia of Congress, now can also be experienced at the same time as a pressing invitation to overcome the political polarization that has weighed heavily in this regard in recent years, and to devote oneself instead to reasoning about the long-term effects that this ruling could produce: including those resulting from a permanent state of 'culture wars' that can do nothing to improve the civil coexistence in that society and, at the same time, to ameliorate the daily life first and foremost of the American women.

In essence, the question that the outcome of Dobbs poses to an American citizen continues to be always the same: that democracy must be nurtured every day, and that rights without duties, starting with that of participation and of their legislative consolidation, ultimately produce only empty and misunderstood rights, which gradually lose their force and come to be degraded.

The solution then lies once again in the commitment of individuals to rediscover the reasons for that right, to strive to affirm them, explaining the true meaning that right represents. And to find in the dialogue between those who are against it, the non-violent ways to affirm it, first and foremost in a federal legislative form.

If the situation will be as we prefigure, perhaps then it will be possible to say that, in the end, the effect that has sprung from Dobbs will have been opposite and contrary to that defined by the judicial majority opinion, such that it will even lead one to say, surprisingly: *ex malo, bonum*.

[11] See S. MANCINI, *Un affare di donne. L'aborto tra libertà eguale e controllo sociale*, Padova, 2012.

[12] See the Statement by Ambassador Linda Thomas-Greenfield on Supreme Court Ruling in Dobbs v. Jackson Women's Health Organization, available at: https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-supreme-court-ruling-in-dobbs-v-jackson-womens-health-organization/.

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