Where is Labour Law Going? Collective and Individual Labour Relations*

Luigi Mariucci

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1. How to restore freedom to labour law after the bloodbath.

I find it extremely hard to pass from commemoration to the agenda. But I think that labour law experts, as individuals and as a community, should ask themselves a few questions.

The first "why" concerns the fact that the assassinations of Massimo D'Antona and Marco Biagi were similar in all respects but one. Massimo's death was a sudden, unexpected blow, at a time when the Red Brigades had been inactive for nearly ten years, whereas Marco's was a death foretold. From the summer of 2000 to September 2001, in fact, Marco had been given police protection, but it had inexplicably been removed just when he became most exposed to risk – following publication of the "White Paper on the Labour Market" – despite repeated requests on his part, especially after receiving detailed death threats. And what is even more incredible is that he was not given this protection in the last week before his death, when a weekly news magazine (Panorama) had pointed out, on the basis of a report by the secret services, the risk of a carbon copy of the assassination of D'Antona. Why Marco was not given protection, which would at least have forced the terrorists to step up their organisation of the attack on his life, why he was left there, defenceless, outside his own home, to be killed exactly as Massimo had been, remains a mystery that requires an explanation. It is impossible to accept the reply of the current Ministry of the Interior, according to which it all depended on a "glitch" in the system, not least because the Labour Ministry has made the contradictory statement that protection had been asked for. One of the two is obviously lying and the truth of this must be proved.

I also think that labour law experts should ask themselves why labour law should be "bathed in blood". Why, that is, after the serious injuries to Gino Giugni and the killing of men such as Ezio Tarantelli and Roberto Ruffilli twenty years ago, in the so-called "Years of Lead", Massimo D'Antona and Marco Biagi should have been killed, one nearly three years after the other. We have to ask ourselves the reason for this particular rage against labour law experts. I know that some of us feel that the two spheres – terrorism on the one hand and what we could call scientific debate on the other – should be radically separated. But I am unable to split the two. I need to reflect about the reasons for this terrorism, to recover my inner freedom. Otherwise I would no longer feel able to continue my job with full intellectual freedom. A great comfort to me in this arduous task is the lesson I was taught by the Professor under whose supervision I took my degree and whom I have always considered to be not so much a "master" – because only pupils wish to be trained by a master – but rather a constant source of inspiration for my repeated and at times contradictory attempts to understand what is happening in labour law and other spheres of the social and political scene, according to a totally personal, Popperian falsification of errors: I refer to Federico Mancini, who in fact took pleasure in defining himself the "founder of a family" and not a "master", and who in 1981 collected some of his writings in a small volume published by "Il Mulino", dedicated to his daughter Susanna, with the tragically prophetic title of "Terroristi e riformisti"(Mancini 1981).

I have therefore devoted myself to a task that I know will appear repugnant to many of my friends and colleagues, but one that seems to me to be necessary at this time: I have read the documents written by the Red Brigades claiming responsibility for the slaying of Massimo and Marco. The analysis has led me to the following conclusions. In Italy, there exists a residual group of left-wing terrorists called the Red Brigades, whom investigators are inexplicably unable to discover and dismantle and who nourish a particular grudge against those who undertake the task of defining new labour regulations and planning labour law, experts whose several activities in relation to

the various political stages represent an element of "equilibrium". This point must be made clear. For the Red Brigades, the centre-right and centre-left political line- ups are two tactical versions of a single strategic plan pursued by the "imperialistic bourgeoisie" and "monopolistic capital". According to them, since the current phase is – to use their own term – still one of "strategic retreat", it is pointless to seek converts or less still to spread their roots throughout the country. What counts is to act through what they call "political-military units" which in concrete terms does not consist of striking "one man, one structure, one state apparatus", but a "project" and thus "the personnel who construct a political equilibrium that favours the advance of the programmes of the imperialistic bourgeoisie". Hence the parallelism between Biagi and D'Antona, despite their individual differences[1].

The labour law community would do well to reflect on this reality, as Federico Mancini did when dealing with "terrorists and reformers". Only in this way will we be able to restore labour law to its natural role: that of an open forum, an extraordinary observatory of what is happening in the world outside and also a source of initiatives. If we do not succeed in understanding why labour law has been so brutally bathed in blood we will no longer be able to do our jobs freely and we will perhaps unconsciously abandon the field to a gang of assassins. We therefore need to construct a solid analytical basis for regular counteraction, which I would define as conceptual, cultural and political self-defence. This seems to me to be the only way to restore meaning to working in the field of labour law, abandoning the vicious circle of technicalities received with general indifference and the tragic visibility of the blood periodically shed in the labour law environment. It is the only way for us to regain complete freedom in our research and the proposals we make.

2. Where we come from. The Principles and Methods of Labour Law.

If, therefore, Marco were here in front of me, the first thing I would say is: "let's stop for a moment and think, let's take a short break from this frenetic activism and start by remembering where we came from". We became involved in labour law at a historic moment, between the "hot autumn" of 1969 and the coming into effect of the Workers' Statute. We were attracted to labour law on account of the central role taken by the regulation of labour relations with respect to social, institutional and political dynamics. So all of us young labour lawyers – Piergiovanni Alleva, Marcello Pedrazzoli, myself, Gian Guido Balandi, and Marco Biagi – grew up in the Bologna school founded by Federico Mancini, each with his own degree of sensitivity and outlook, in a pluralistic logic of which Federico was very proud. As I have mentioned elsewhere, we were alike and yet different at the same time. Alleva was soon caught up in his work handling labour disputes for the CGIL legal office and writing monographic studies; Marcello Pedrazzoli and Gian Guido Balandi devoted themselves during the sit-ins at the Law Faculty to a long seminar on "the alternative use of law" as Norberto Bobbio recently recalled; I and others led the study groups in the Faculty and a committee formed to investigate the health and safety conditions in a small chemicals plant in Bologna (the Longo plant) the result of which was a platform of demands and a conflict: we picketed the factory, the first picket of workers and students ever to be seen in Bologna. Scelba's old Flying Squad [the Police, *Note of the Translator*] swooped down, we took a thrashing and then, after a protest demonstration outside the Police Headquarters, some of us were arrested. That factory, with its abysmal health and safety conditions, was shut down years

[1] For a careful analysis, see Biacchessi (2001).

ago: it was transferred to the industrial belt near Casalecchio, and appears to have become a model technological enterprise. We were young and deeply committed to the "movement", but even then, each according to his own lights, our problem was not one of encouraging conflict as an end in itself, following the logic of mere antagonism, but rather of attempting to work out more efficient rules to make the conflict constructive. I still remember that when I was working on my dissertation on Art. 28 of the Workers' Statute, which perhaps undeservedly won the first prize to be awarded by the Brodolini Foundation, my first task was to deal with the more radically critical stance taken against the Statute whose slogan was "no to a Workers' Statute drawn up by employers and trade unions". When I was co-opted by Federico, who simply said in his priceless way "Dear Gigi, let's call each other by our first names", he gave me a lively description of the group of so-called pupils he had not "recruited" but to whom he had decided to offer the opportunity of a university career. "You will be part of a mixed bunch", Federico said, "That's the way I like it, I want you all to be different": He painted a brief but masterly portrait of some people I already knew and finally said: "The only one you don't know is Marco Biagi: he's the youngest of you all but he's got more sense of concrete reality than anyone else". Marco in fact arrived later: his first job was as editor in chief of "Quale giustizia", the journal for the judges who were defined as "progressive" at the time.

What I want to say is that even then, despite our differences, we were working on planning and constructing more advanced points of balance.

What, after all, is the job of a labour lawyer if not that of trying to find the most effective ways to regulate labour relations? I have always been reluctant to use the term "reformism" to define this approach. Not because of Marxist conditioning – quite the opposite in fact. When I was a boy Ugo La Malfa taught me that the term "reformism" referred to ideological diatribes between Socialists and Communists and that independent left-wingers should define themselves as "reformers": I have always remained profoundly faithful to his teaching.

I would not like this to be taken as an attempt to recall our collective biography. It is a return to our roots in search of a compass, so that we can proceed further.

Going backwards in this search, the aim of which is to find useful indications for the future rather than to reflect on lost time, I have found four principles, or rather methodological indications, which I am convinced are still valid today and which I will briefly summarise as follows.

"No scholarship is possible without conviction, without a view of totality". These are not the words of a left-wing follower of Hegel, but of a moderate Labourite whom life has taught the need for hard realism, Otto Kahn Freund[2]. They state that labour law is a window that opens out onto the world, not a self-contained technical discipline, and that to deal correctly with labour law, even though one has shed any ideological frame of mind, it is still necessary to have an idea of society and the great world outside.

"In a steady working relationship, a worker on his own, a worker left to defend himself against his employer, is a *capite deminutus*": this was written by Mancini in a well-known essay published in 1970 (now in Mancini 1976, p. 191), recalling a famous judgement passed by the Italian Constitutional Court. The statement enshrines the idea, which I think is still highly topical, that effective

[2] Cf. "Il pluralismo e il diritto del lavoro", edited by G.G. Balandi and Silvana Sciarra (1982), p. 203, note 6.

regulation of employment relationships always involves relations between the individual and collective dimensions. The point of balance may, of course, vary depending on the time and phase. The pendulum may tend to swing towards either the collective or the individual side (Vardaro 1987; Simitis 1990), but what is essential is that dialectic tension be maintained between the two poles.

"The foremost task of a trade union is to give voice to the inherently conflictual nature of labour relations, the worker's perennial refusal to be considered as a seller of wares". This is Mancini again (Mancini 1976, p.210), and it is a crucial statement because it alludes to a principle, or methodological indication, that cannot be revoked: "labour is not a commodity" (Grandi 1997). In an age of globalisation, when all exchanges between people boil down to market logic, an age obviously destined to self-destruction unless the necessary deterrents are quickly found, this apparently innocuous and universally accepted formula ("labour is not a commodity") takes on an intensely critical tone, as happ ened more than a century ag o with Proudhon's phrase "property is theft".

Finally, reflecting about the relationship between tradition and innovation, that is, the thin line separating excessive conservatism and ossification of thought from indiscriminate faith in innovation, Otto Kahn- Freund comes to mind again, with the extraordinary teaching and testament he left in the essay "Heritage and Adjustment" (Kahn-Freund 1979). Although he lashed out against the British trade unions, calling for radical renewal of their policies, (and I would point out that their turning a deaf ear to his advice led to a historic defeat under the Thatcher government), Kahn-Freund recalls the "moral and political collapse of the powerful German trade unions in the last days of the Weimar Republic" and states that "National Socialism would have encountered stronger resistance… if there had been a less institutionalised, less hyper- organised, more spontaneous and active trade union movement", concluding that safeguarding the concept of a trade union as a "movement" is "a positive guarantee of freedom" (Kahn-Freund 1979, p.20). I think it is worthwhile learning this lesson, concluding that juridical research becomes sterile when one loses a taste for innovation and the willingness to rethink one's position. But the rigour used to oppose conservatism must also be applied to critical supervision of the process of constant revision.

3. Application of the principles: the system of collective labour relations.

In applying the principles outlined above to the current labour relations scenario in Italy, the first point I wish to deal with is the topic of trade union representation. After a long period of debate regarding trade union representation and representativeness, after a popular referendum which did not result in any legislation referring to the private sector, the following rule is applied: "works councils may be formed by workers in any production unit, within the framework of the trade union associations that have signed collective agreements applied in the production unit involved" (Art.19 of the Workers' Statute). This rule implies that works councils in an enterprise are legitimate if the employer signs a collective agreement. That is all: no mention is made of the rules governing the legal effect of collective agreements, or the procedure whereby works councils are formed. In the public sector, which has virtually been privatised, precise regulations exist, starting with verification of the actual representativeness of the unions. This disparity in terms of regulation is unacceptable: it is no coincidence that Massimo D'Antona devoted a posthumously published paper to the topic (D'Antona 2000, p.305 ff.).

I should also like to point out that in Italy the so-called "concertation" method has become a pillar of government policy and a guarantee of social cohesion: in the 1970s and 80s, it was through concertation that a whole series of issues, including automatic entitlement to index-linked pay, were solved, and in the 90s an income control policy was introduced which allowed Italy to meet the requirements laid down for participation in the Euro.

I also note that in the last decade Italy has seen a whole series of political and institutional reforms, passing on the one hand from a system of proportional representation to a majority-based, bipolar system, however imperfect this may be, and on the other to state organisation of a federal nature. Having been deeply involved in this process of innovation, I can state that we are still far from having reached an acceptable balance in the modernisation of our institutions[3]. One the one hand, in fact, the majority bipolar system is construed by the current government according to a simplified, at times brutal, interpretation of the principle of majority, as if the problem of democracy were solved by the principle of majority alone, and were not a complex, many-sided system founded on "constitutional" government by the majority: the opposition rightly complains that government policy undermines the foundations of the constitutional pact in areas such as justice, legality, freedom of information, education, the tax system, social rights and labour. On the other hand, the transformation of the country into a federal state, following the reform of Art. 5 of the Constitution introduced by Constitutional Law n. 3/2001, is taking place in what could euphemistically be called a confused or even chaotic manner. And at the same time the country is involved in the fundamental reform of the nation-state required for the consolidation of the European Union. As far as federalism is concerned I will confine my remarks to the following observation. Some years ago, during a tour of Europe I spent some time in the Federal Republic of Germany. On the Schollsengart in Stuttgart everything I saw was regionalised: the State Theatre, the headquarters of the Regional Parliament, the Treasury, Culture and Sport Ministry buildings, the policemen and even their dogs. Everything was regionalised except labour law, the basic system of which remains a national discipline in Germany, whereas the mechanisms whereby the rules laid down by the federal State are applied are handled at a regional level[4].

Hence a further point: Europe is a complex social and institutional model. It is not, therefore, acceptable to give a simplified version of the social aspect of this model, implying homogenisation to the lowest common denominator[5].

On the basis of these observations I think that the first reform measures needed in Italian labour law should be the following: a discipline regulating trade union representation and the legal effect of collective employment contracts, a clear approach to implementation of the reform of Art. 5 of the Constitution with a view to introducing administrative rather than legislative federalism, confirmation of the usefulness, or better necessity, of the concertation method, and a reform of the collective bargaining system focusing on achievement of a reasonable balance between national contracts and the role of bargaining at a local or enterprise level.

In the "White Paper on the Labour Market" I was surprised to read statements to the contrary. Union Representation is not a government issue. Concertation is over. Federalism is implemented

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[3] I have attempted to draw conclusions on the topic in an essay entitled "Società e istituzioni negli anni novanta" (Mariucci 2001a).
[4] I have dealt with this in "Il federalismo in Europa. Appunti di viaggio" (Mariucci 2000).
[5] See the remarks made on this topic by Roccella (2002).

via the legislative power of each region over the whole system of employment relations.

National collective bargaining is to be dissolved in an indistinct system of local bargaining. Individuals can derogate from the legislative and contractual norms regarding employment. My natural reaction was that the text was not proposing a reform but a restructuring of the system of employment relationships and a sort of rootless Americanisation[6]

4. Individual employment relations: flexibility in hiring.

In the field of individual employment relations, there is a hiatus between the "White Paper" and the implementing Bill n. 848 of 15 November 2001, above all as far as method is concerned. In the Anglo-Saxon tradition, in fact, there is first of all a Green Paper formulating various options, on which opinions are gathered; it is not until later that a White Paper is published and any necessary legislative measures are taken. Here, on the other hand, we took a short cut and started off with the White Paper. What is more, when discussion of the text (published in October 2001) was just starting, the government issued Bill n. 848 (on November 15th 2001). Marco Biagi himself recognised the irregularity of this: "In the European Union and Anglo-Saxon countries," Marco writes, "it is the analysis made in a Green Paper that opens the debate. The White Paper only comes later and finalises the analysis. This is followed by legislative proposals. Our Government has proceeded in a different fashion; perhaps it could have been taken further with better results… Is the philosophy behind the White Paper contradicted by the Government's recent request to Parliament to be delegated powers in many issues affecting the labour market? I do not think so. Although, to be honest, I have no difficulty in stating that I was personally surprised by the political acceleration the government gave to translation of this document" (Biagi 2001). What Marco modestly defines as "acceleration" is in reality an extreme forcing of both method and contents. The truth is that the plan laid out in the White Paper has entered the whirlpool of the political arena, characterised by the Berlusconi government's need to stress that it has delivered on its promises for the "first 100 days".

The contents of Bill n. 848 of November 15th are, to be frank, frightening, even to a disenchanted labour law expert like myself. The Government is asking Parliament to delegate the power to legislate, via decrees to be issued within a year, with the possibility of making amendments in the subsequent two years, on a total of nineteen issues which cover practically the whole of individual employment relations, with obvious repercussions on collective relations. These range from the authorisation of employment agencies, with total liberalisation of private agencies, to a repeal of Law n. 1369 of 1960 regarding the contracting out of labour, to be replaced by a contract for the supply of labour, and to liberalisation of the partial transfers of undertakings (and workers), from the introduction of a series of flexible forms of employment (ranging from job on call to occasional and casual work, besides the introduction of further flexibility in part-time contracts) to regulation of co-ordinated work ("third category" workers, not subordinate nor autonomous) based on a procedure of certification, which in practice means making this type of employment available until structural modifications in the system of dismissals and arbitration are introduced. Were the text to be approved by Parliament in the version presented so far, the Government would be

[6] I have used these expressions in "La forza di un pensiero debole. Una critica del libro bianco del lavoro" (Mariucci 2001b). The term "destructuring" has also been used by Carinci (2002).

authorised to rewrite the whole of labour law for three years, via the initial decrees and subsequent amendments. How, I ask, can this be seen as representing a simple "acceleration"? The term "subversion" used by others is perhaps excessive[7]. I would define it as a total "upheaval" of classical labour law.

In my opinion the whole plan laid out by Bill n. 848/2001 is unacceptable from a functional point of view. What is the sense, even for private enterprise, of creating an infinite number of flexible forms of employment, supplementing fixed-term and part-time employment, work and training contracts, apprenticeships and temporary jobs with even more flexible contracts such as the supply of labour, job on call, occasional employment, casual work etc.?[8] But my main objection concerns another aspect – the basic approach to labour policy.

Here there is a crucial disagreement with the very philosophy behind the Government's plan. I find the obsessively repetitive litany about the virtues of flexibility and competitiveness unbearable. Where are we heading in a world that has turned "flexibility" and "competitiveness" into exclusive values and has betrayed enlightenment by viewing material interests as its guiding light? For labour law "competitiveness" can never be a value in itself: at most it can be a constraint to be taken into account. The same applies to "flexibility". Flexibility is not a value but a constraint and possibly an instrument. The only value is "stability" (Gallino 2001; Napoli 2002): only when a worker has steady employment and income prospects can he plan his future, start a family, have children, a home, a town, friends; only then can he try to find an element of security, however provisional it may be, in the precarious destiny we have been granted.

This may appear extremely idealistic. I take the liberty to object, however, that the sin of idealism is always better than that of cynicism. I know quite well that ideas never saved men, and at times have ruined them, as Machiavelli said. But it is just as true that the exclusive dimension of interests and conflicts of interest has been even more destructive.

5. Ambiguities and criticism of the proposal for a new "Jobs' Statute".

It is commonly believed that the combination of the "White Paper" and the subsequent Bill n. 848 2001 was not the right way to go about laying the bases for discussion of the problem of new regulations concerning employment relationships. I must say straight away that I have never liked the expression "Jobs' Statute" (Statuto dei lavori, in Italian)". It alludes to a projection onto a juridical plane of the concrete forms of labour produced by the market. It seems to be a sort of return to the statutes of guilds, a restoration of co-operative forms of labour that were dismantled, albeit in a contradictory fashion, by the French Revolution, equating the worker and the citizen under the banner of formal equality.

It may be a coincidence, but in speaking of a "Jobs' Statute" mention is also made of a singular new employment contract – the so-called "residence contract" for non-EU immigrants introduced by a recent Bill. Despite the admirable intention of providing immigrants with a clear position as regards employment the moment they set foot on Italian soil, I find the "residence con-

[7] See "Un disegno autoritario nel metodo, eversivo nei contenuti" by Alleva, Andreoni, Angiolini, Coccia, Naccari (2002).
[8] Similar criticism has been made by Treu (2002).

tract" formula odious: it gives the idea that there is someone, an employer, who by giving someone a job is also able to condition the subjective position of the worker, by guaranteeing his residence permit. Conceptually this appears to be a return to the idea of servitude.

This is another reason why I prefer the "Workers' Statute" formula to the "Jobs' Statute". It refers to men, the people who actually work, it has a subjective dimension and is entirely sufficient.

It is in any case clear that Bill n. 848 2001 has jeopardised any possibility of balanced discussion about new employment regulations that are capable of dealing with the functional crisis of the discrimination represented by Art. 2094 of the Italian Civil Code. The bill in fact proposes generalised flexibility in both hiring and firing.

This does not mean that it would not be a good idea to revise the criterion of subordination as the discriminating element in application of labour law. Various hypotheses have been formulated on this topic[9]. Personally, I claim to be an incorrigible "Barassian", despite the fact that I recently expressed harsh criticism of Barassi's ideas and actions. I am a Barassian in the sense that I agree that, in the ultimate analysis, work can be classified as either subordinate or autonomous. So I am in total disagreement with those who, blinded by the crisis of the Fordist model of mass production, deem it necessary to pass to regulation of employment *sans phrase* (Pedrazzoli 1998). I disagree. I consider work to be unfortunately still *avec phrase*: we are witnessing a global expansion of subordinate employment of unheard-of proportions. This is the most significant social phenomenon currently taking place. So I feel it is groundless to state that the social and juridical figure of the "subordinate" employee is a thing of the past only because great industries in developed countries have been re-dimensioned, the Tayloristic model of the organisation of labour is in crisis, and there has been an increase in flexible work or co-ordinated work, just as home- work expanded in the past as a subspecies of artisan labour. A case in point is the spread of a huge new form of subordinate employment in a global sense, via the multitudes of immigrants who enter or try to enter Italy and other European countries, willing to do any kind of work to make a living.

So in both theory and practice I am against discussion of new "Jobs' Statutes", of concentric circles and re-modulation of protective measures, unless it is based on firm premises. The "subordinate" employment of the past is in reality expanding geometrically in new forms, due to the primacy of the market logic that currently dominates the global scene. Here in Italy we can do two things. Either introduce special protection for workers who fall into neither of the two categories, as provided for in the "Smuraglia" Bill [this was a Bill presented to the Parliament some years ago in order to regulate co-ordinated work, *Note of the translator*], or modify the current wording of Art. 2094 by taking out the expression "under the direction of" and thus restoring the essential meaning of the criterion of subordination – the alienation of labour.

None of this, however, has anything to do with the withdrawal of protection by Bill n. 848 2001 as regards the regulation of dismissals.

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[9] See the accurate reconstruction of the debate by Biagi, Tiraboschi (1999). See also Ghezzi (ed.) (1996); Perulli (1997); AAVV (1998); Napoli (1998); Romagnoli (1999).

6. Flexibility in firing: the issue of Art. 18 of the Workers' Statute.

It has been stated by various people that the proposed changes to Art. 18 of the Workers' Statute via Arts. 10 and 12 of Bill. n. 848/2001 are a "false problem" or a "minor problem". If that were true, why was the problem raised? In reality it is not true: it is a real problem[10]. The modifications of Art.18 of the Workers' Statute proposed in Bill n. 848/2001 are in fact both structural and insidious. The Government is not courageous enough to propose a direct amendment, restoring the compensation for unfair dismissal provided for by Law n.604 of 1966, but is indirectly withdrawing the effectove protection afforded by Art. 18 of the Statute. If there were any truth in their thesis that a reduction in protection against unfair dismissal will favour an increase in employment, a structural reform of Art. 18 would be necessary, as has been proposed by those who are of the opinion that it is the labour market itself that provides the best protection for labour[11].

The amendments being proposed are indirect but that does not mean that they are less insidious. The first structural modification of Art. 18 of the Workers' Statute is proposed by Art. 12 of Bill n. 848, which introduces equity arbitration, giving the arbitrator the power to opt between reinstatement or compensation. Evidently it is not possible to imagine an arbitrator as having greater decision-making powers than a judge. So it is clear that the real intention is to change the structure of the protection against unfair dismissal, thus making the time limit laid down for the other amendments to Art. 18 via Art. 10 of Bill n. 848 (a four-year "trial period") appear Pharisaic to say the least. If we then take a look at the specific reasons given in Art. 10 for derogating from Art.18, it becomes even more evident. The first is that it will lead to a reduction in the amount of shadow economy employment. No one can believe that firms employing workers without paying contributions are going to be encouraged to regularise their positions just because reinstatement is to be replaced by compensation. This one example will suffice. Some time ago an Albanian worker fell to his death from scaffolding on a building site near the centre of Bologna. He was not on the company's books. Nobody will believe that the irregular employment of this Albanian depended on the problem of finding an alternative protection against unfair dismissal. It clearly depended on something else: the fact that hiring a worker without paying contributions and tax costs the company about two thirds less than a regular worker would.

Let us take a look at the second derogation from Art. 18 introduced by Art. 10 of Bill n. 848. Here it is stated that reinstatement protection against unfair dismissal will be withdrawn in enterprises employing more than 15 workers. Irrespective of the fact that the vast majority of firms in Italy have an average of 5 employees, no one is going to believe that an employer who has about 13-14 employees will hesitate to cross the threshold just because his employees would acquire a right to real protection against unfair dismissal. He is more likely to be worried that by employing more than 15 workers he will have to comply with a number of provisions laid down by the Workers' Statute such as the setting up of trade union delegations, the right to hold workers' assemblies, paid time-off for workers representatives, etc.). It is no coincidence that a Minister of the Republic, Mr Bossi, recently stated that it would be preferable to raise the threshold from 15 to 20 employees.

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[10] A highly effective analysis has been made by Caruso (2002) of Massimo D'Antona's ideas on dismissals.

[11] This is a simplification of the interesting thesis of Ichino (1996). A more problematic reconstruction of the relationship between the economy and labour law has been proposed by Del Punta (2001).

Finally, let us examine the last circumstance derogating from reinstatement protection against unfair dismissal, relating to the transformation of fixed-term work relationships into permanent ones. It is easy to imagine that this would encourage companies to offer only fixed- term contracts, thus determining a new dualism in the labour market which could only be remedied by extending compensation protection against unfair dismissal to all workers.

From a logical viewpoint, the Government's recent proposals to amend the discipline I have just described make matters even worse. The latest suggestion, in fact, is to derogate from reinstatement in the event of conversion of fixed-term contracts into permanent ones only in the Southern regions of Italy. Besides the delicate constitutional problems this would cause, given that the principle of equality applies to the whole country, there is a practical objection to this: if the introduction of flexibility concerning dismissals were really useful to increase employment rates, why was it first proposed for the whole country and then only for the South?

To be quite frank, as a rational policy to increase employment none of this makes sense. It does, however, make sense from another point of view – a clash of powers, a sort of *redde rationem* between different visions of society and its possible development.

If this is how matters stand, the only thing to do is to take sides, which has nothing to do with the technical work of labour law experts. I am on the side of the great number of people from all walks of life who, calm and convinced of the rightness of their action, took part in the demonstration in Rome on March 23rd organised by the CGIL and then the general strike of April 16th: I did not see any factiousness or sectarianism, no demagogy or crowd swaying typical of 20th century iconography, but an immense number of individuals peacefully gathered together to make claims of which they are rightly convinced and who deserve to win for that reason.

7. Conclusion.

To conclude I need to go back to my roots once more.

I remember that when he last spoke in public about these issues, when he was presented with two volumes written in his honour (the speech was subsequently published with the title "Dal diritto di frontiera al diritto senza frontiere") Federico Mancini said: "Then I left the country and it was from that moment on, 1982, that the directions taken by labour law started to become obscure to me. Obviously, obscure does not mean extraneous…But it was like, how can I say?, flashes of light illuminating a detail, perhaps an important one, a perspective, possibly a crucial one, but certainly not the whole picture. And I would like to know *where labour law is headed*, *all* of labour law, in an age of deregulation of the economy and reduction of the working class to an increasingly broad minority almost ignored by development. No one can doubt that European countries need to rewrite several clauses of the social contract that accompanied and made possible their progress after the Second World War. Well, I hope to find in the essays making up the first of these two volumes some hint, some attempt to answer questions that have tormented me for some time now: is there, among the conquests of the past, a hard nucleus of institutions that are capable of resisting this rewriting? In more explicit terms, which of the freedoms, rights and obligations about the use and usefulness of which we have reflected and agreed or disagreed from the years of my youth to those of maturity, which of these subjective situations will prove to be short-lived and which will survive?" (Mancini 1998). Federico was asking "where labour law is headed" and we spoke about it in one of our last conversations on the beach at Numana, as I

have mentioned elsewhere. Personally, I think Federico had already supplied an answer to the question in an article he wrote 20 years ago, which was published in the book I mentioned earlier, "Terroristi e riformisti". Dealing with amendments to be made to the Workers' Statute, Mancini stated: "For a new form of support of civil liberties to germinate, it may be necessary to get rid of the old roots; unless, of course, this is inadvisable on account of the fact that the norms embodying it have acquired deep social roots or an emblematic value. So, if the remarks I have made so far are correct, the articles of the Workers' Statute that transform every job into a sort of impregnable fortress seem to be becoming rather outdated. I think, however, it would be suicidal to pursue a policy that attempted to modify these articles using means other than sober administration of the rights and procedural mechanisms they provide for" (Mancini 1981, p.150). It would be hard to put it better today.

I wish to add that what is being discussed in labour law today is not an economic issue relating to the distribution of income. It is not, as it was 15 years ago, a question of how to reform or abolish index-linked pay, i.e. an important part of a worker's wages. What is being discussed is a question of rights. What is being discussed is whether the rights of people who work, of workers and citizens, are in themselves worth more than the market, or whether it really all boils down to a question of commodities.

8. References.

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