

Labour Law and Sustainable Development*

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* Previously published as WP C.S.D.L.E. "Massimo D'Antona".INT – 130/2016

1. Labour law and development: a complex relationship.

In the last years, labor law and industrial relations are under the pressure of many hostile factors: on one side job killing technologies and global competition on the other political instability and deregulatory policies. Economic crisis which has hit many developed and developing countries has enhanced the negative impact of these factors on the real economy and on the labor market. The increased unemployment is the most dramatic evidence.

The traditional protective legislation is accused of being incapable of meeting the present economic challenges and even of representing an obstacle to innovation and development.

Certainly many of the historical traits of labor law and of social policies have to be redefined in order to face the problems posed by the new economic and social context. Here I will stress the need of a major redirection of the focus of our discipline.

Traditionally labor law was concerned mainly with the protection of workers and with the distribution of income, on the assumption that growth was a self-sustaining mechanism in a linear direction of development. This assumption has been contradicted by the recurrent crisis which have altered the once stable economic scenario, both in developed and developing countries.

Labor law and labor policies, in order to be effective and accountable to their stakeholders need to share with other policy measures the concern for growth. It has been argued (also) by international organization - ILO in the first place – that a major function of labor law is to reconcile economic growth with social justice. More specifically a most challenging task for our discipline is to prove that it can contribute to the sustainability of development and to advancing human capabilities.⁷⁷⁷

The relevance of the capability approach for a renewed labor law has been recently sustained and discussed by several scholars.⁷⁷⁸ Arguments have been advanced to show that this approach perspective can provide new value basis for our discipline in various fields, particularly where the traditional approach appears more vulnerable to neoliberal critics and inadequate to respond to the present economic and social challenges.

According to these arguments the capability theory may be useful in many respects: to bring our discipline closer to the concrete needs of workers, to indicate a more pragmatic path of development, to develop new techniques of protection based on the active engagement of the workers and capable of opening their margins of choice. This approach, which is typically located within a liberal framework, has been criticized “from the left”, because the centrality recognized to personal freedoms and choices can go to the detriment of the value of equality which is central in traditional labor law.

⁷⁷⁷ The ways in which labor law may contribute to these ends, and has historically done so, is a matter of both theoretical and empirical research: see Simon Deakin, *The contribution of labour law to economic and human development*, in G. Davidov, B. Langille, *The idea of labor law*, OUP, 2011, cap. 10, p. 268 ff., who refers to the approaches of A. Sen and M. Nussbaum, for applying the capability theory to labor law. The author argues that while a certain level of economic development is a necessary precondition for a functioning labor law system, there is also evidence that certain types of labor law can stimulate development and limit the market in the interest of a broader concept of individual and societal well being; see also R. Del Punta, *Labor law and the capability approach*, forthcoming in *International Journal of Comparative Labor Law and Industrial Relations*, vol. 32, 2016.

⁷⁷⁸ See in particular the Authors quoted in foot note 1, also for further references.

Without going into this debate, I want to notice that the capability theory may offer valuable responses to this critique and escape the risk of an exclusively individualistic perspective, on two major conditions: provided that it develops also the collective dimension of social actions, including the promotion of collective capabilities, and that it recognizes a major role of public institutions in supporting fundamental personal and social rights.⁷⁷⁹

In this respect the suggestions of this theory need to be analyzed and developed in combination with the broader policy approach necessary to promote sustainable economic growth and development goals conducive to human and social progress.

The extent to which employment standards and labor relations regimes influence economic development, investment decisions and job creation, has been object of extensive research, but with limited convergent results.⁷⁸⁰ Convincing arguments have been advanced to show that the relationship between labour regulations and development is a complex one. It depends on many variables: most important are the general economic and social condition of a given national system, its stage of growth and its model of development, the public politics adopted in the years, the strategies of the social parties. The influence of law is only one contributing factor, and depends on the type and contents of labour regulation. The types of regulation have greatly diversified even in the legal system traditionally centered on rigid mandatory legislation. Different kind of reflexive and soft regulations have been adopted in order to better respond to complex economic and social issues and to leave room to flexible implementation by public and private actors. To the same end the practice of negotiated regulation has been widely used in variable forms, often innovative with respect to the tripartite concertation developed in Europe during the 70ies and 80ies.

Also taking into account these changes in the regulation the positions of many experts and of international organizations have been modified in recent years.

The OECD and the World Bank whose judgements were particularly negative about the impact of protective labor laws on development, have shifted to a more nuance' position and even recognized that "employment regulation are unquestionably necessary not just to protect workers and

⁷⁷⁹ See R. Del Punta, *Labor law and the capability approach*, quoted, p. 19-22, who concludes that the encounter with labor law can be successful if it allows labor law can become reconciled with the socially-oriented strand of liberal thought, which is the best candidate to gather the heritage of social democratic ideal.

⁷⁸⁰ This has been a major point of discussion at the 21th World Congress of the ISLSSL in Capetown, 15-18 sept. 2015: see in particular the reports by S. Deakin, *The contribution of labor law to economic development and growth*, and by A. Supiot, *What social justice in the XXI Century?*, both published in English in Bulletin of comparative labor relations, *Labor law and social progress. Holding the line or shifting the boundaries?*, n. 92, Darcy du Toit (ed), p. 19 ff., 1 ff., and in Spanish in *Laborem*, n. 18, 2016, p. 43 ff., p. 19 ff.; see also my paper written following the Capetown Congress, *Labor law and social policies: agenda for international research*, 2016. The question has been extensively debated by scholars: see the recent divergent positions by A. Verma, *Labor regulation and jurisdictional competitiveness. Investment and business formation*, a Review of the mechanisms and evidence, Queen's Printer for Ontario, 2016; A. Bassanini, Luca Nunziata, D. Venn, *Job protection legislation and productivity growth in OECD countries*, 2008, IZA, DP, n. 3555; W. Olney, *A race to the bottom? Employment protection and foreign direct investment*, Dpt. Of Economics, Williamstown, MA, 2013. The same issue has been repeatedly explored by international organization: OECD has changed its position from the Employment Outlook of 2004 to a more nuance opinion in the Employment Outlook of 2012, cap. 2, *What makes labor market resilient during recessions?*, and in the Employment Outlook 2013. The ILO has held that regulations well designed and conducive to decent work relationship are also important to promote inclusive growth: ILO, *Developing with jobs*, Report 2014, spec. p. 127 ff.; ILO, *An employment oriented investment strategy for Europe 2014*, Research Department. See also for similar opinions European Commission, *Joint employment report and communication on the annual growth survey 2016*, Comm. (2015) final.

for the proper functioning of the labor markets, but also to increase stability and productivity through employers workers participation".⁷⁸¹ Various aspects of labor and welfare legislation will be important in determining the positive impact of labor law and industrial relations on development;⁷⁸² examples will be presented below.

Development itself is not a uniform process shaped after standard models. Historical experience, if not blurred by ideology, confirms that, although national systems face common problems and constraints, the ways in which they respond may differ considerably from one country to another.⁷⁸³

2. Sustainable and human development.

Moreover the objectives and the very concept of development are undergoing a process of revision in order to include not only economic indicators (GDP in first place), but a wider set of goals and of immaterial goods, essential for the quality of life and associated with the concept of human development. According to this concept the performance of the national systems should be evaluated not only on the basis of the traditional parameters, even less of short term financial accumulation, but taking into account social and welfare indicators, such as health of the population, life expectancy, diffusion of education and culture, degree of equality, public and private safety, rate of employment, social and political participation, quality of services, etc.

⁷⁸¹ World Bank 2014, *Doing business 2015. Going beyond efficiency*, (Washington DC, International Bank for reconstruction and development), p. 231 ff.; ID 2015, *Doing business. Measuring regulatory quality efficiency*, (Washington DC, International Bank for reconstruction and development), p. 247 ff.

⁷⁸² A critical discussion of the various positions has been presented by S. Deakin at the Capetown Congress, *The contribution*, quoted, spec. p. 31 ff., based on extensive research and revision of the data and indices used by various studies to evaluate the "rigidity" of national regulations and their link with economic outcomes. These data support some significant although tentative findings showing that Employees Protection Legislation (EPL) often has the positive effect of encouraging employees to innovate, that laws supporting workers participation within enterprise and collective bargaining induce employment and productivities gains through their impact on workers motivation and commitment, and that support to collective employee representation is correlated with more equalitarian outcomes in wage bargaining. Moreover new statistical evidence may support the hypothesis that labor law changes which impose higher costs to employers in the short run may have long run positive effects in facilitating improvement in training and labor use, then reflected in productivity and employment gains. The need to consider long term trends is stressed by A. Verma, *Labor regulation*, quoted: labor regulation implemented in step with enhanced investment in skills may have positive effects on development and new capital investments, while the impact may be negative if greater regulation is not combined with commensurate investment in skills and innovation. See also C. Crouch, *Making capitalism fit for society*, Polity Press, cap. I, p. 18 ff., cap. IV, p. 74 ff.

⁷⁸³ The importance of national institutions, public and private in shaping the path of growth and the models of development has been differently considered; it is at the basis of theory of varieties of capitalism, expressed in the seminal work of P. Hall, D. Saskice (eds), *Oxford Univ. Press*, 2001. See on the importance of institutions and of institutional change, C. Howell and R. Kolins Givan, *Rethinking institutions and institutional change in European Industrial Relations*, BJIR 49, 2011, p. 231 ss.; K. Thelen, *Institutional change in advanced political economies*, in BJIR, n. 3, 2009; ID, *Varieties of liberalization and the new politics of social solidarity*, Cambridge Univ. Press, 2014.

For an analysis of the different reaction of European countries to the challenges of the economic crisis, see J. Visser, *Recent trends and persistent variations in Europe's industrial relations*, Ducht Social and economic Council, EURO, 2014; Bordogna, Pedersini, *How EMU is changing national industrial relations in Europe*, GDLRI, 2015, p. 183 ff. A different view, arguing for a convergence of national labor relations models toward a common neo liberal trajectory: in L. Baccaro, C. Howell, 2011, *A common neoliberal trajectory. The transformation of industrial relations in advanced capitalism*, Politics and society, n.3, p. 521-563.

Some of these parameters have been elaborated by various international organization and research groups;⁷⁸⁴ but they still meet with widespread resistance or skepticism among policy makers (and sometime public opinion). This perspective however represents a great opportunity for labor law and social policy because our discipline is challenged to reconcile economic growth and make it compatible with human development in the wider sense envisaged by those organizations.

This is indeed the main orientation and source of inspiration which should guide the revision of labor law and social policies, our discipline has full title to contribute to a new direction of growth and of development for the very fact that decent work is an essential condition (to promote) for sustainable growth.⁷⁸⁵

The range of innovative measures which might contribute to sustainable development covers many areas which go beyond the traditional domain of our discipline and indeed of legal regulation.⁷⁸⁶ They concern all public policies necessary to create a more inclusive economic and social environment favorable to sustainable development and to job rich growth. These policies are wide ranging and include, among others: public and private investments necessary to guarantee quality services and infrastructure and to spread education; innovative research and dynamic business environment, favorable financial conditions for long term investments, etc. Moreover, in order to be consistent with these objectives all major economic decisions, not only at national but at supranational level, should take into account their impact on social and welfare conditions of the people concerned.

A similar approach has been adopted in the European Lisbon Treaty of 2009 (art.9), which provides that all major economic decisions, at national and international level, should take into account their impact on social and individual welfare.⁷⁸⁷ This is an important policy approach whose implementation is meeting many obstacles in the actual national and European policymaking. But it is a decisive test for the truth of European social model.

⁷⁸⁴ J. Stiglitz; A. Sen; J.P. Fitoussi, 2009, Report by the Commission on the measurement to Economic performance and social progress, Report of the French President of the Republic, www.stiglitz.sen.fitoussi.fr/documents/rapport_anglais. See the declaration of Istanbul. See the "Declaration of Istanbul" adopted in 2007 and subscribed by the European Commission, the OECD, the Islamic Conference, the United Nations, the World Bank, the Program of United Nations for Development (UNDP), <http://www.OEDC.org/data-OECD/14/46/38883774>.

⁷⁸⁵ The concept and the indicators of decent work were first launched by the Dir. Gen. of the ILO at the 87th Conference in June 1999, see the discussion paper by D. Ghay, *Decent work: concept, models and indicators*, DP/139/2002, Int. Inst. of labor studies, Geneva. The ILO has repeatedly stressed that the quality and quantity of employment are themselves drivers of development: ILO Developing with Jobs, 2014, quoted, p. 33. See also with specific reference to development and security G.S. Fields, *Decent work and development policies*, Int. Labor Review, 20013, vol. 142, n. 2, p. 239 ff.; P. Auer, *Security in Labor markets: combining flexibility with security for decent work*, ILO 2007, Econ. and labor market papers, 2007/12.

⁷⁸⁶ Labor scholars should not overestimate the possible impact of legal regulation on competitiveness. The "Global competitiveness report" based on 12 indicators estimates that labor market efficiency, which includes regulations, counts only for 1/12 on system competitiveness (see data in

www.3.wereform.org/docs/WEF_globalcompetitivenessreport_2013.14, Pdf.

⁷⁸⁷ S. Giubboni, *Social Europe after the Lisbon Treaty: some skeptical remarks*, in European Journal of social law, 2011, p. 246 ff.; G. Vettori, *Fundamental and social rights. A discussion between two crisis*, ivi, p. 240. M. Roccella, T. Treu, *Diritto del lavoro dell'Unione Europea*, Wolter Kluwer, Cedam, 2016, p. 30 ff.

This vision has specific implications on many aspects, technical and political, of our discipline. Let me indicate some areas where a revision of traditional approaches is necessary to promote innovative policy-making in employment and social security matters. It is a tentative list which needs to be enriched by common research. To this research activity our international society and its members are committed, as we have witnessed in recent years. In the congress of Capetown seven research groups have been launched in these directions.

3. The future of protective legislation: more selective and essential.

A first area has to do with the core of traditional labor law, namely protective legislation. The rigidity of this type of regulation is the most controversial trait which is accused of discouraging investments and innovation.

The evidence to support this view is far from conclusive. Nor there is widespread evidence of a “race to the bottom” in labour regulation across the globe directed to correct the rigidity of traditional labor law.⁷⁸⁸ Similarly data do not confirm the supposed 'erosion' of long term employment relationship, which is still the norm in most countries (but the average job tenure is decreasing particularly for younger workers).⁷⁸⁹

The regulatory trends are not markedly different, but rather convergent, between developed and emerging countries. As indicated above even organizations critical such as the World Bank have qualified their previous positions on the economic impact of labor law rules and have asserted the necessity for some kind of labor regulation as a response to the failures and imperfections which are inherent in the operation of the labor market. Recent studies as those presented by S. Deakin in Capetown, confirm that employment protections laws often have the positive effect, among others, of encouraging employers to invest in productivity -enhancing technologies.⁷⁹⁰

On the other hand the changing characters not only of informal employment but also of the standard contracts of work, may well require new adaptable types of regulation. Legal and collective decisions are involved in this search and have followed different paths, short of sheer deregulation.

A major area of innovation in many countries has been to differentiate some aspects and types of regulation according to the different positions and needs of employees in order to capture non standard forms of work, or, in the words of ILO, in order “to formalize the informal”. The treatment of atypical forms of employment may be improved by a the selective application of some basic standards.

The policy approach of individual countries to this problem are different; but the best examples have in common the aim of mitigating the dualism of the labor market. In some countries this approach has favored a new regulatory approach, simplified, better finalized and more flexible.

⁷⁸⁸ A. Verma, 2016, *Labor regulation and jurisdictional competitiveness*, quoted.

⁷⁸⁹ P. Auer, S. Cazes., (eds), *Employment stability in the age of flexibility*, ILO, 2003, *Introduction*.

⁷⁹⁰ S. Deakin, *The contribution of Labour Law*, quoted, 31 ff., 2016

A more selective and simplified type of regulation maybe more acceptable to employers, because there is evidence that investors, while avoiding over-regulation,⁷⁹¹ seek reasonable level of regulation. It may also useful to reduce the number of norms of detail which are burdening many legal systems and to increase the importance of basic standards, both at national and international level. According to the ILO these standards are to be suited to the economic conditions of the different countries. But the essential core of them should be universally respected. The commitment to guarantee their effectiveness is a major contribution of the legal systems to decent work, to equality and to social cohesion.

A different and difficult target is to capture the vast numbers of employees which, not only in developing countries, work in the grey areas of the labor market and in totally irregular or illegal conditions.⁷⁹² This task cannot be performed using only the controls of labor inspectors but modifying the economic and social conditions which are at the origin of high levels of informal employment.⁷⁹³ Performing the task requires the adoption of public policies aimed on one hand at providing better incomes and security for the groups working in the informal economy (both self employed and dependent workers), on the other hand at facilitating the integration of these workers into formal employment through various measures: public employment programs, training activities, tax reductions for informal firms, etc.⁷⁹⁴

Financial incentives aimed at promoting a gradual emergence of employment from the black market have been introduced in some countries, with some but uneven results. The legalization of these sectors of the labor market can be pursued only by convergent and lasting interventions of public institutions and of social actors directed to promote the culture and practice of legality. And these interventions need to be supported by economic policies capable of creating local and sectorial ecosystems favorable to stable development.

4. Regulated and skills- friendly flexibility.

Flexibility is another controversial area where labor law and industrial relations must adapt their traditional instruments to meet the changing needs of the enterprises, while maintaining their mission to guarantee the respect of workers and to promote decent work.

Flexibility is a necessity in modern systems of production which cannot simply be ignored. But the use of flexibility needs to be regulated in order to be compatible with decent work. Regulating

⁷⁹¹ A. Verma, *Labor regulation and jurisdictional competitiveness*, quoted. The World bank specifies that the impact of labor regulation may be negative when it is excessive but also when it is insufficient, World Bank, 2014, quoted, p. 231.

⁷⁹² See in general R. Hausmanns, *Defining and measuring informal employment*, Statistic Paper, ILO, Geneva, February 2004; C. Williams, M. Lansky, *Informal employment in developed and developing economics: perspectives and policy responses*, in Int. Labor Review, vol. 152, 2013, p. 335-380, and the panel discussion chaired by M. Weiss at the 21th ISLSSL World Congress, Cape Town, Sept. 16, 2015.

⁷⁹³ ILO, *Developing with jobs*, quoted, 97 ff. Evidence of some significant impact of these policies on informal work can be derived by recent ILO data which indicate a rising share of formal employment in quite a few emerging countries, particularly in east Asia, where the proportion of this kind of work has increased from a quarter to over a half in the last twenty five years, ILO 2015, *World employment and social outlook: the changing nature of jobs* Geneva, p. 29. See also the special issue of Inter. Lab. Review (2013, n. 3) devoted to "informality across the global economy: subsistence, avoidance, and violation".

⁷⁹⁴ See the recent ILO recommendation n. 204, *Transition from the informal to the formal economy*, 104th session conference, 12 June, 2015.

flexibility has different implications in various areas. Innovative regulation is most needed for non standard forms of work and in the grey area between dependent employment and self employment/individual entrepreneurs. Most of these workers, whose number has been growing in both developed and developing countries, are formally independent but economically dependent. Quite a few national legislations (Spain, Germany, Italy) have been passed to extend some protective and promotional norms to these workers.⁷⁹⁵

A different objective of the regulation of flexibility valid for all types of work is to prevent excessive pressure on the stability of working life. Equally important is to finalize the various forms of flexible employment to the enrichment of the content and value of work. The importance of internal flexibility, also relative to the external, has increased in recent years due to various factors, such as the need of enterprises to respond positively to the economic shocks and to technological change.⁷⁹⁶

A significant example in this direction can be found in some recent legislations which have committed the employers to provide specific training to the employees involved in horizontal and vertical mobility, with the aim of enabling them to perform the new jobs assigned to them.⁷⁹⁷ A virtuous use of “functional mobility” assisted by specific training is essential to prevent the professional obsolescence of those employees who are faced with rapid organizational and technological change.

Such a practice is important also to reduce the risk that employees whose position have been modified or abolished, be hit by economic dismissals. Quite a few examples of socially responsible enterprises confirm that a similar finalization of mobility may contribute to make dismissals an “extrema ratio”. On the other hand employing a mobile and multiskilled work force increases the capacity of enterprises to face the shocks of the markets using their permanent employees instead of temporary and fixed term contracts.

It is up to the law to fix the basic principles concerning mobility. These principles might on one side recognize the possibility to assign workers to different jobs also outside the boundaries of the traditional classifications, which have often become anachronistic. On the other hand the law should demand that employers provide adequate training to their employees.

⁷⁹⁵ One guiding principle often followed is to tailor the legal regulation to the different positions and needs of these employees; see in general D. Adams, S. Deakin, *Institutional solutions to precariousness and inequality in labor markets*, BJIR, 2014, p. 779-809; the General Report by Judy Fudge to the 21th World Congress of the ISLSSL, Cape Town, Sept. 17, 2015, *Equality and citizenship at work as conceptual foundations for Labor Law*, now published with the title of *Challenging the borders of labor rights*, in Bulletin of Comparative, quoted, p. 73 ff., explores this variety of work patterns and in particular the need to extend the focus of our discipline also to personal work relations. See the comparative analysis in selected countries of Latin America, of Africa, of Europe, the Caribbeans, in G. Casale, ed., *The employment relationship in the Asia-Pacific region, Canada, the USA and Mexico*, ILO, Geneva, 2011.

⁷⁹⁶ F. Berton, M. Richiardi, S. Sacchi, *The political economy of work security and flexibility. Italy in comparative perspective*, in Policy Press, 2012, p. 150.

⁷⁹⁷ A similar provisions has recently been approved in Italy by decree 81/2015: see T. Treu, *Labour law in Italy*, 5thed., Wolter Kluwer, 2016, p. 78 ff. The importance of continuous training finalized to adapt the skills of workers is commonly stressed, but not always followed by consistent practices: see in general K. Hoeckel, *Cost and benefits in vocational education and training*, OECD, EDU/EDPC/CERI, (2008), 3.

The actual implementation of these principles and the management of mobility are better left to the practice of labor management relations in the workplace, through consultation and agreement between employers and workers representatives. Similar principles could be followed also to promote a virtuous use of flexibility of working time, finalized to improve personal work-time balance.

The protection of employees against unfair dismissals has been a basic tenet of labor law. Some countries have introduced legislation directed not to contradict the principle but to reduce the sanctions for its violation. In order not to nullify the legal protection, the reduction of sanctions should not deprive them of their dissuasive effectiveness; a principle endorsed by decisions of the European Court of Justice (ECJ).⁷⁹⁸

A more profound adaptation of law labor is necessary to cope with economic dismissals. Sanctions against abuses are necessary here too. But the most urgent need is to provide legal and economic instrument to prevent these dismissals and to protect the employees from the loss of employment.

Some countries have introduced innovative policies in two directions. In the first place employers have been obliged to include in their business plans the expected trends of employment including the impact of possible downturns. The plans are also requested to implement in due time the measures necessary to reduce this impact: training and retraining programs for the employees most at risk of unemployment, mobility and reorganization of work finalized to adapt the use of workforce to the new business needs. In addition the law has often provided forms of temporary suspension of work and of short time, duly subsidized, to allow time for business adjustments.⁷⁹⁹ When dismissals cannot be avoided, the law and collective agreements usually provide for procedures to regulate the order and the consequences of these dismissals, with the aim of guaranteeing a fair selection of workers to be dismissed, and the possible remedies. The best national practices indicate that the support should include not only guarantees of income, but personalized assistance in the search of work opportunities, including the opportunity to enrich and update their skills according to their personal capacities and the trends of the labor market.⁸⁰⁰

5. Employment support in transitional markets.

The impact of economic crisis but also the recurrent business and labor market changes have increased the pressure on the national systems of employment protection and security. Monetary indemnization and assistance have become often an unbearable burden on the public budget. In any case they are insufficient to support the employees in the periods of transition which are becoming a normal feature of modern labor markets. For this reason more resources and organizational efforts should be devoted to active labor policies and specifically to the re-training and replacement of displaced employees.

⁷⁹⁸ See eg. ECJ, October 12, 2004, *Commission vs. Rep. of Portugal*, c.55/02; ECJ, December 10, 2009, c. 233/08, *Rodriguez Mayor*.

⁷⁹⁹ The German case is particularly significant, K. Brenke, U. Rinne, K. Zimmermann, *Short time work. The German answer to the great recession*, *Int. lab. Review*, 2013, 2. See also the Italian experience, T. Treu, *Labor law in Italy* quoted

⁸⁰⁰ French legislation has provided extensive measures to safeguard employment, and to avoid or limit collective dismissals: see J.R. Emanuel Ray. *Droit du travail*, 2014/2015, Wolter Kluwers, p. 330 ff.

The capacity to implement effective policies of this kind is a major testing ground for labor law and social welfare. The success of these policies is necessary to balance the flexibility required from the employees and to justify the much proclaimed idea of “flexicurity”⁸⁰¹

It is equally important to reduce the risks linked to precarious employment, because precariousness does not depend only on the type of labor contract of the workers but on the protections and services available on the labor market.

The results so far obtained are uneven also in those European countries which have greatly invested in flexicurity. Keeping this balance is difficult because it is not simply a matter of resources and of efficient organization of employment services. It requires first of all a balance between labor demand and supply; when labor demand is scarce the impact of active labor policies is reduced. In fact these policies are only one element in a comprehensive strategy whose positive effects need to be supported by macroeconomic policies aimed at promoting job rich growth.

This is an important caveat to be addressed to policy makers, particularly in developing countries, but now also in advanced economies hit by a long lasting economic crisis. Still effective labor market policies are a major instrument to ensure people against the increased risks linked to globalization and indeed a 'major plank of the social dimension of globalization'.

Implementing a comprehensive system of labor policies requires a widespread consensus on the need and on the ways to promote good employment opportunities for workers and indeed a new labor market governance based on the active participation of public institutions and of social parties. Such a tripartite approach has been experimented in a few countries with success in the past.⁸⁰² Now it needs to be enriched by more personalized services and by increased social investments in order to meet the needs of a diversified working population and to promote their active presence in the “transitional markets” of modern economies.⁸⁰³ Employment and welfare services should follow individual workers rather than being tied to specific jobs and industries.

Such demanding task requires even more than in the past lasting commitment of public powers and a full recognition of the role of trade unions in labor market governance: both conditions which are far from being fulfilled in many countries.

Some comparative studies, indicate that the impact of active labor market policies is linked to the type of program rather than to general economic and institutional conditions.

⁸⁰¹ The debate on this issue has been going on in Europe since 1997 when flexicurity was endorsed by the Commission as the major guideline for labor market policies: see among others, T. Wiltshagen ed., 2007, *Flexicurity Practices. Expert report for European Commission*; Eurofound, *The second phase of flexicurity*, Dublin, 2013; P. Auer, *Security in labour markets: combining flexicurity with security for decent work*, ILO, Geneva, 2007; C. Crouch, *Making capitalism*, quoted, p 76; F. Berton, M. Richiardi, S. Sacchi, *The political economy*, quoted, p. 142. P. Auer, U. Efendioglu, J. Leschke, *Active labor market policies around the world: coping with the consequences of globalization*, ILO, Geneva, 2008.

⁸⁰² See M. Freeland, P. Craig, C. Jacqueson, N. Kountouris, *Public employment services and European law*, Oxford 2007; L. Bordogna, R. Pedersini, *The EMU*, quoted; P. Auer, *Security in labor market*, quoted; S. Sturn, *Are corporatist labour markets different? Labour market regimes and unemployment in OECD countries*, Int. Lab. Review, 2013, 2.

⁸⁰³ P. Auer, S. Cazes, *Transitional markets and employment stability*, Ch. 14, in *Labor market, gender and institutional change*, M. Mosley, J. O'Reilley (eds.), Edward Elgar, 2002; F. Leroy, L. Sruyven, G. Schmid, *Building bridges. Shaping the future of public employment services towards 2020*, Bruxelles, 2014.

In particular private sector incentive programs and personal employment services with conditionality, show a significantly better performance than traditional training programs, while direct employment programs in the public sector are rarely effective. Young people appear to be particularly hard to assist.

An essential value of active labour policies and of employment services, even apart from the specific contributions to employment, consists in their capacity to activate and involve people in search of work opportunities. This is a basic reason why investing in these policies should have priority with respect to subsidizing non work.

The ILO has repeatedly held that implementing effective and inclusive labor policies is a priority in developing countries, in addition or even before reforming regulations.⁸⁰⁴

6. Innovations in welfare policies: costs and investments.

A redefinition of scope is equally necessary for the law of employment and for welfare policies. The institutions of social security have played a major role in protecting the workers against the risks of economic life. So they have contributed not only to social cohesion but also to promoting equality among the different groups of population and the inclusion of workers in the formal labor markets. Hence indirectly then have favoured societal well-being and economic growth.

The hystorical dimensions of social security adopted mainly in European countries are now being threatened by many adverse factors: financial cointstraints, demographic transformations such as the aging of population, the pressure of global migrations and, on a different level, the decline of solidaristic institutions and ethics. Mature welfare systems have reacted differently to these constraints, mainly adapting their institutions and changing the targets and the distribution of welfare measures rather than simply cutting the costs.⁸⁰⁵ On the other hand welfare measures capable of protecting and reassuring individuals and communities in front of these transformations are mostly in need.

Public institutions will be called to compensate for the lack of protection provided by traditional labor law, particularly to employees so far mostly excluded, informal workers and migrants. This raises a critical issue; namely how and to what extent grant social protection to groups of employees who cannot support the system with their contributions as required in traditional social security. Proceeding in this direction would imply a shift of financing from social contribution to general taxation; and indeed a change in the objective of welfare from protection against specific risks mostly related to employment to response to basic needs. At the same time a more com-

⁸⁰⁴ ILO, Employment working paper, n. 67, S. Cazes, S. Verick, *What role for labor market policies and institutions in development*, 2016, p. 19.

⁸⁰⁵ Indeed the social expenditures in Europe have remained rather stable until recently. Indeed according to the OECD in the countries analyzed major social expenditures in social services have increased apart from expenditures for old age pensions. See A. Hemerijck, *Changing welfare states*, chap. 7, p. 225 ff.; OECD, *Employment Outlook 2008*; B. Chantillon, H. Verschueren, P. Ploscar, ed., *Social inclusion and social protection in the EU. Interactions between Law and policy*, *inter-setia*, Cambridge, Antwerp Portland, 2012, p. 14 ff., and in particular for pension policies, D. Natali, *EU coordination of pension policy*, *ivi*, p. 131 ff.

mitting task requested to our discipline is to reinforce the legal protections with measures promoting equal opportunities and social inclusion also of standards workers. Because equal opportunities and social inclusion are essential components of human development.

In this perspective the transformation of labour law will have to go hand in hand with the search for new welfare measures shaped not as passive costs but as social investments in the personal qualities of their beneficiary useful to maximize their capacities, or “capabilities”. This approach has been widely explored by scholars and to some extent endorsed by the European Union.⁸⁰⁶ But it has to find the ways to exploit the potentials of individuals and of groups to support personal trajectories in the various life cycles and also to shape a new welfare mix based on private collective initiative capable of mobilize resources in addition to those provided by public contributions. How to proceed in these directions is an open issue debated among the policy makers of both developed and emerging countries. Another critical issue is how to activate the beneficiaries of welfare measures with personal initiatives useful to their employment or re-employment.⁸⁰⁷

The latter needs not reproduce the patterns adopted by the historically industrialized countries. Possibly the experience of mature systems should teach how to avoid the increase of costs and of bureaucracy which have burdened traditional welfare states. Some initiatives of emerging countries indicate the importance of group support and of micro finance to promote and spread new experiments of community welfare. Mutualism assisted by public support and incremental improvements will probably be a way to build institutions of social security in these countries,⁸⁰⁸ more appropriate than top down legislation. Public interventions might concentrate the available resources to provide minimum standards of protection and of welfare for the citizens, first and foremost directed to contrast the most serious cases of poverty and deprivation.

7. Insurance based schemes and fiscal support.

The possibility to establish pension schemes like those adopted in some developed countries based on contributions by the social parties (workers and employers) in the unionized sectors, will have to be tested on the basis of the economic evolution of the various contexts and of the economic options open to the parties. Even in OECD countries this type of sectional welfare based

⁸⁰⁶ See the *Social investment package*, Communication of the Commission (COM 2013); A. Hemerijck, Changing welfare states, quoted, p. 130 ff.; M. Ferrera, A. Hemerijck, *Recalibration Europe's welfare regimes*, in J. Zeitkin, D. Treubeck (ed), *Governing work and welfare in new economy*, OUP, 2003, p. 88 ff.; A. Hemerijck, *Changing welfare state*, quoted, p.133 ss.; M. Ferrera, *The boundaries of welfare: European integration and the spatial policies of social protection*, Oxford Univ. Press; E.B. Cantillon, *The paradox of social investment: growth, employment and poverty in the Lisbon era*, Journal of European Social Policy (JESP), 2011, p. 432 ss., quoted.

⁸⁰⁷ A matter of discussion is the application of the principle of “conditionality”, specially the conditions required from the unemployed to receive welfare benefits and the sanctions for non compliance. See for different positions, various essays in E. Sol, W. Westerweld, (eds), *Contractualism in Employment services, a new form of Welfare State governance*, Kluwer, 2005 p. 123 ff., 130 ff.; P. Auer, *Protected mobility for employment and decent work. Labor market security in a globalized world*, JIR, 2006; J. B. Barbier, W. Ludwig Mayerhorfer *The many worlds of activations, Introduction to the special issue of European Societies*, 2004, vol. 6; F. Leroy, L. Struyven, G. Schmid, *Building bridges. Shaping the future of public employment services toward 2020*, Bruxelles, 2014.

⁸⁰⁸ See the general report by prof. M. Asher to the 21th World Congress of ISLSSL, Cape Town, Sept. 17, 2015, *Social Security: which way forward?*; and *Setting an ILO agenda for fair migration*, 2014. Report of the director general to the 104th session of the International Labor Conference, Geneva.

on insurance schemes is being weakened by the changed market and political conditions: increased unemployment, low growth and declining incomes of the working population. These new conditions are suggesting a new direction of policy in quite a few developed countries, namely - as indicated above - the need to combined the existing insurance schemes with welfare provisions financed by the general fiscal budget and directed to provide income and services to workers and citizens in need.

It is worth noticing that some of these countries are introducing different measures in this direction: special adjustment funds to support workers hit by mass redundancies and/or displaced by foreign competition; various forms of basic income, usually conditioned on means testing, to poor citizens and low-paid workers, who are now among the “losers” of global competition.⁸⁰⁹

As mentioned above, globalization is affecting most aspects of our economic life and of the world of labor. One of the most dramatic impact has been the increase of inequalities among nations, among groups of people and among individuals.⁸¹⁰ The traditional economic and social policies of the world are challenged to react. In fact these inequalities represent a major obstacle not only to growth and development but also to political stability,⁸¹¹ as is proved by the pressure exerted by popular reactions on many national governments. The existing welfare systems including the Europeans which are considered to be “universal”, have not been able to redress the new types of poverty nor to reduce the risk of impoverishment which is increasing among the once secure middle class.

Recent research indicates some critical areas for reform, but few answers. How to change the financing and selection of welfare benefits to make them capable at facing the risk of poverty and of emargination. How to target the groups mostly at risk and to redistribute the resources and services accordingly. Would it be possible and to what extent to differentiate the contributions of the various groups of workers to social security. How important could it be the role and participation of private organizations in shaping and administering certain areas of welfare.

The young generations are among the most seriously hit by unemployment. A reorientation of active labor policies, training, and welfare protections is urgent to give them equal opportunities. The changing demography, with the rapidly aging of population is posing an unprecedented pressure to even to the most entrenched systems of health care and of personal assistance. Most of these risks will hardly be faced by the traditional social insurance schemes.⁸¹²

This is a further reason why different policy mix between insurance- based benefits and welfare measures financed by the national budget will be needed to provide income support and basic

⁸⁰⁹ T. Marx, K. Nelson, *Minimum income protection*, Palgrave Macmillan, 2013, cap. 1, *A new dawn for minimum income protection*; in the EU, S. Dullien, *A European Unemployment benefits scheme as an automatic stabilizer. Who benefits and who pays*. European Commission Social Europe, Office of Publication of EU, Luxemburg, 2013; ID, *A European unemployment benefits scheme*, Bertelsmann Stiftung, Gutesloh, 2014.

⁸¹⁰ While income inequalities have been growing in nearly all countries, the Gini coefficient is broadly correlated with levels of development, with the Nordic systems and Japan at one (more equal) end of the spectrum and Latin American and southern Africa at the other (more unequal) end: S. Deakin, *The contribution*, quoted, p. 28.

⁸¹¹ Arguments and evidence in this respect have been presented by quite a few economists: see in particular, J. Stiglitz, *The price of inequality*, London, Allen Lane, 2012; ID, *Globalization and its discontents*, London, Allen Lane, 2002; A. Atkinson, *Inequality. What can be done?*, 2015, Harvard Univ. Press, p. 11 ff.; T. Piketty, *Capital in the twenty first Century*, trans. Cambridge, Harvard University Press, 2014.

⁸¹² Asher, *Social security: which way forward?*, quoted.

services to all citizens.

8. Education and the accumulation of human capital.

Protection and equitable income redistribution remain essential functions of present welfare. But labor law and welfare systems are called to develop new functions if they want to be not only compatible but functional to sustainable growth and to human development. The contribution of our discipline to this end depends on the capacity to intercept and sustain the general strategies mentioned above which can promote human development.

The measures which are specific to our discipline are first of all those which can promote among workers and citizens the human and social capital. In the present “knowledge society” the accumulation of human capital is based on education and continuous education. Education and training are essential not only to support the quality of work and competitiveness, but also to enable individual workers to fully realize their capacities, to contribute to the common development and to have access to the benefits of growth.⁸¹³ Income distribution itself is greatly influenced by the education and by the skills of workers. Those highly skilled benefit most from new technologies, while the poorly educated are the losers.

The education and professional skills necessary to be in line with the needs of present society, are greatly superior to those sufficient in the past industrial era.⁸¹⁴ New employment and training services are required to meet the needs of an increasingly variable workforce, often quite distant from the traditional users: the young NEET, the increasing number of women and of old aged, the multitude of immigrants and the educated knowledge workers, which may be semi autonomous but still in need of help. Moreover the provision of these services is not occasional as it was in the past, but may be recurrent in the life of the individuals due to the volatility of the markets and also to the variable personal and family needs.

The private and public investments in the education and training will have to grow accordingly, in parallel with the equally decisive investments in research and productive innovation. For the same reasons education and training should become the very basis of an active welfare and the same time an essential part of the public policy of growth. Quite a few emerging countries seem to have adopted such a strategy more clearly than some developed nations.⁸¹⁵

9. Social cohesion and collective actions.

Individual capacities or capabilities are essential for human development, but they don't exist not function in a social vacuum. For this reason personal capacities and their development by the

⁸¹³ A. Supiot, *Which social justice*, quoted. The importance of enhanced investments in skills, combined with selective regulation to attract investment is stressed by A. Verma, *Labor regulation*, quoted.

⁸¹⁴ See in general the ILO recommendation n. 195, 2004 Labor Conference International; ILO Report for G20, *A skilled workforce for strong sustainable and balanced growth*, feb. 22, 2011; CEDEFOP, 2010, *Skills supply and demand in Europe. Medium term forecast up to 2020*; ID, *The shift to learning outcomes*, 2008; M. Young, *Alternative educational futures for a Knowledge Society*, in *European education Research Journal*, 2010, 9, n. 1. W. Heichorst, N. Rodriguez- Planas, R. Schmidl, K. Zimmermann, *A road map to vocational Education and training system around the world*, IZA, Discussion paper n. 7110, 2012, particularly on education and training focused to face the problem of youth joblessness. J. Fien, R. McLean, Man.Go Park (eds), *Work, learning and sustainable development*, Unevoc Springer, 2008.

⁸¹⁵ D. Ashton, F. Green, J. Sung, D. Tames, *The evolution of education and training strategies in Singapore, Taiwan and Korea: a development model of skill formation*, *Journal of education and work*, 2002, vol. 15, 1.

instruments of labor law, cannot be pursued in isolation. They need to be supported by a wide set of public and collective policies and by the intervention of public institutions finalized to promote sustainable economic and employment growth and social welfare.

Indeed social cohesion is necessary not only for the accumulation of social capital but also for promoting the capacities and the opportunities of the individuals. The welfare of the XX Century resulting from a comprehensive social and political compromise, has been decisive in sustaining social cohesion in many developed countries. The transformations of the last years have altered the very basis of this compromise, because they have changed the balance of power between social actors to the detriment of organized labor. Even more in depth the individualization of working life and of personal identities is favouring a decline of collective experiences. I firmly believe that social cohesion is a common good conducive not only to the well being of people but also to sustainable development. It is a major responsibility of policy makers to create the conditions to keep our society cohesed even in the present turbulent environment.

The collective actors - unions and employers - which have supported the social compromise of the past are responsible for adapting their strategies in order to reaffirm their role to this end. The revitalization of collective actions and of labor unions is a difficult and indeed uncertain objective.⁸¹⁶ But I am convinced that this is still a major social and political target to be pursued for the cause of social justice. Research findings confirm that legislative support to collective employee representation and the growth of collective action are correlated with more equalitarian wage bargaining and with an increased labor share in national income.⁸¹⁷ Here again there is no ready-made and uniform model to follow. Creativity and innovations are necessary conditions for collective bargaining and industrial relation to avoid a destiny of decline.⁸¹⁸ I suggest two major directions of policy which have been developed in previous research.

One: innovative initiatives in industrial relations might require not only changes in the contents and in the structure of collective bargaining, but the search for forms of collective action based on new motivations of the variable workforce of today. This might require a multidimensional approach - bilateral and trilateral - to the regulation of individual and collective relations of the various groups, possibly involving not only working condition but also other aspects of working life.⁸¹⁹

Two: I believe that the adverse factors which are weakening collective actions both in developed

⁸¹⁶ This is a widely shared opinion among scholars, although their conclusions on the future of industrial relations vary considerably. A rather pessimistic analysis is presented in the paper by L. Baccaro and C. Howell, *A common Neoliberal trajectory: the transformation of Industrial Relations in advanced capitalism*, quoted, p. 521-563; a more nuanced vision can be found in M. Keune, *Decentralized wage setting in time of crisis*, European Labour Law Journal, n.2, 2011; J. Visser, *Recent trends and persistent variations in Europe's Industrial Relations*, Dutch Social and economic council, 2004, www.ser.nl. M. Taipa, C.L. Ibsen, T. Kochan, 2015, *Mapping the frontier of theory in industrial relation. The contested role of worker representation*, Soc. Ec. Review, p. 157 ff.

⁸¹⁷ S. Deakin, *The contribution*, quoted; S. Deakin, Malmberg, Sakar, 2014, Int. Rel. Review.

⁸¹⁸ T. Kochan, 2012, *Collective bargaining: crisis and its consequences for American society*, IRJ, p. 302 ff.

⁸¹⁹ See the Report by Judy Fudge to the Capetown Congress, *Equality and citizenship at work as conceptual foundations for labor law*, now in Bulletin, quoted, p. 73 ff. The volume by R. Freeman, J. Mersch, L. Mighel (eds), *Emerging labor Market institutions for the twenty first Century*, Univ. of Chicago Press., 2005, presents significant examples of new union initiatives, of the intervention of non workers organizations, and of new work place institutions. The growing importance of civil society organization and action in shaping labor regulations and policies is stressed by B. Hepple, *Factory influencing the making and transformation of labor Law in Europe*, in G. Davidov and Langille, *The idea of Labour Law*, quoted, p. 100 ff., 127 ff.

and developing countries, can be opposed only by the concurrent action of public institutions and of social actors. The full recognition by national legislators of individual and collective rights - freedom of association, right to bargain and to strike - remains an essential condition to legitimize and promote collective action in democratic societies.

The experience of some countries indicates that the effectiveness and quality of collective action can be facilitated by promoting workers participation within the enterprises and in the public institutions, national and local, which are active in employment and welfare services.⁸²⁰ In the countries where this kind of participation has been widely adopted, it has contributed to improving labor management relations and to increasing both the welfare of employees and the productivity of the system.⁸²¹ Indeed the involvement and the empowerment of workers in the relevant areas of their life are important factors of human development.

10. The role of national States in a globalized world.

Most areas of policy innovations indicated in this paper involve the responsibility of national legislators and social parties. Certainly in a globalized world these actors have to face unprecedented constraints, not only financial but coming from the increased productive and regulatory competition among nations.⁸²²

In spite of this, national states and actors maintain a major role particularly in shaping labor policies. This is confirmed by the persistent diversity in the various regulations which reflect the specific conditions of each country. Some national legislators and governments have recently reasserted their authority on these issues, responding to the growing pressures of their constituencies who are resisting to restrictive supranational directives.

The reasons for these national reactions are different and not always socially oriented. But even international experts who are not biased against globalization recognize that global trades should be subject to some limits and scrutiny taking into account the fundamental national interest. Such a scrutiny would be useful to counterbalance global pressures and make for a more "intelligent" globalization.⁸²³ In many international trade negotiation and agreements the national negotiators have in fact requested the respect of basic standards, mainly in labor and environmental issues which they consider of paramount importance for the economy, the quality of life and even for the cultural identity of their countries.⁸²⁴

⁸²⁰ Extensive and diversified forms of workers participation have developed particularly in Europe throughout the XX Century, at the initiative of national States and lately of the European Union. The participation of social parties in public institutions is also diffused in many European countries (see the so called Ghent system) and also in some mediterranean states: see M. Weiss, *Employee involvement in the European countries*, in M. Weiss, M. Severinsky, *Handbook on employees involvement in Europe*, Kluwer, 2005, p. 1 ff.

⁸²¹ See S. Deakin, J. Malmberg, P. Sarkar, 2014, *How do labor law effect unemployment and the labor share of national income? The experience of six OECD countries, 1970-2010*, Int. Lab. Review, vol. 153, n. 1; S. Deakin, C. Fenwick, P. Sarkar, *Labour law and inclusive development: the economic effect of industrial relations laws in middle income countries*, Univ. of Cambridge, Faculty of law, Research paper, 13/2014. The positive impact of employer worker cooperation is recognized also by recent positions of the World Bank, Doing Business Report, 2014, p. 231.

⁸²² The impact of global trade on labor law has been widely discussed since the seminal work of B. Hepple, *Labor laws and global trade*, Hart publishing, 2005.

⁸²³ D. Rodrik, *The globalization paradox. Democracy and the future of the world economy*, W. Norton & Company, New York-London, 2011.

⁸²⁴ The contents and the quality of social clauses now inserted in many trade agreement, are widely debated M. Faioli, *The quest for*

The recent Transpacific Trade agreement (TPP) and the present negotiations aimed at signing a Transatlantic Trade agreement (TTIP) are significant examples.

The European Parliament has posed to the negotiators of TTIP strict conditions to be respected particularly in labor and environmental matters. It has declared non negotiable the safeguard of the existing European and national labor standards, and has requested a periodical “sustainability impact assessment” (SIA) of the social and environmental effects of the treaty.⁸²⁵

The national negotiators of the Transpacific partnership (TPP) have included in the agreement a social chapter more assertive than the clauses of previous treaties, committing the parties to “adopt and maintain basic social rights in regulations and practices”, and to guarantee “acceptable conditions of work with respect to minimum wage, hours of work, occupational safety and health (acceptable as determined by each national signing party).

The existing differences of national regimes in the major issues of labor law, including the protection of employment and the regulation of labor management relations, confirm that the convergence among different legal systems envisaged by some scholars still meets many obstacles.

Some countries are reluctant to fully to recognize the fundamental collective rights, particularly the rights to strike, as requested by the ILO conventions. Signs of regression in this area are present in some African countries as commented during the Capetown Congress, but also in a few eastern European states whose policies are hardly respectful of the principles of social Europe.

On the other hand emerging Asian nations, including India and China, have introduced widely debated reforms of their labor legislation. Labor legislation in Latin America has a long history, influenced by particular by European and North America examples. It has undergone recurrent changes often correlated with the evolution of democratic political institutions. In recent years quite a few countries have introduced major reforms in individual and collective labor law which have favoured an increase in the coverage rate.⁸²⁶

The persistent importance of State action is confirmed by the fact that the necessary international projection of labor policies and the strengthening of the international organization, ILO in the first place, cannot proceed without the support of the national governments, beginning with those most influential in the international economic scenario.

11. The instruments of transnational labor regulations: commercial and investment treaties.

The development of transnational regulations, in spite of many attempts, is still at an infant stage. The recent experience of the European Union, which is a relatively homogeneous area, indicates the difficulties to harmonize even the basic traits of national legislations, particularly in the most

a new generation of labor chapter in the TTIP, *Economia Lavoro*, 2015, 49, p. 103 ff.; see among others, L. Compa, *Labor rights and labor standards in transnational trade*, 25 *law and Pol.*, Y. Int. Bus., 165/1993; ID, *Labor rights and labor standards in transnational trade and investment negotiation. An American perspective*, Transatlantic stakeholders forum, W. Papers series, John Hopkins Univ., 2014; J. Bellace, *Human rights at work: the need for definitional coherence in the global governance system*, *Int. Journal of Comparative Labour Law and Ind. Rel.*, 2014, p. 175 ss.; J.M. Sirohen, *Labour provisions in preferential trade agreements: current practice and outlook*, *Inter. Labor review*, 152 (2013), 1, p. 85 ss.; *Social dimensions of free trade agreements*, International Institute for Labour Studies, Geneva, 2013.

⁸²⁵ Resolution of the European Parliament, 8 July 2015, Prov. (2015) 0252; European Parliament, Commission for International Commerce, *Lange Report*, 2014/2228.

⁸²⁶ See the different cases presented by S. Deakin, *The contribution of labor law to economic*, quoted, p. 269 ff.

sensitive social issues. The so called “European model” is suffering from the pressure of the restrictive austerity measures imposed by the monetary authorities, which indeed do not correspond to the official commitments to promote stability and growth. The measures advocated by the major international organizations (ILO, OECD, World Bank) and by the repeated summits of the governments finalized to promote sustainable development have been partially implemented if not totally disregarded.

The possibility to proceed along the path of transnational labor regulations and social policies depends on many variables and on a myriad of public and private decisions. A multiplicity of actors are involved and different instruments may be combined according to the specific issues and areas concerned.

Commercial and investment treaties in different forms are a major vehicle of transnationalism. The social chapters which are now regularly inserted in these treaties have contributed to promote in international trade at least the basic social principle recognized by the ILO core conventions. Some recent agreements – including the TTP - have strengthened the language of these social clauses and the commitment of the signing states.

But the procedures for the enforcement of these commitments are usually weak and the implementation of even the fundamental right has proved uneven. On the other hand, hardly any attempt has been made to insert in the treaties promotional clauses which might commit the parties to improve their social policies according to the best national and international practices. Multiple strategies have been proposed to increase the effectiveness of social clauses: promote and extend the ratification of core ILO conventions, provide direct access of social organizations, trade unions and workers to dispute- settlement procedures, introduce more effective instruments of enforcement and sanctions, promote innovative forms of litigation in national courts and in front of international bodies.

12. Multinational enterprises and company agreements.

Multinational enterprises have become a key vector of global development and also a decisive player capable of promoting the transnational regulation of employment. They are already using different instruments to perform their supranational role, hereby contributing to the innovation also of legal techniques: unilateral ad hoc initiatives, stable programs in economic and social domains, guidelines of corporate social responsibility of variable content and impact, collective agreements with representative organizations of their employees (works councils, national and international unions).⁸²⁷

Transnational company -wide agreements can be an important vector of regulation across the borders in many labor and social issues.⁸²⁸ This type of agreements may have an impact on employment conditions more direct than transnational agreements concluded between the national or territorial organizations of employees and of employers in specific productive sectors. These latter agreements, according to the present legal regimes, have no legally binding effects on the

⁸²⁷ ILO, *Tripartite declaration of principles concerning multinational enterprises and social policy*, 4th ed., Geneva, 2006. P. Tergeist, *Multinational enterprises and codes of conduct: the OEDC guidelines for MNEs in perspective*, in R. Blanpain (ed), *Comparative labor law and industrial relations in industrial market economies*, 2014, W. Kluwer, p. 213 ss.

⁸²⁸ L. da Costa, U. Rehfeld, *Transnational collective bargaining at company level. Historical developments*, in K. Papadakis (ed), *Cross borders social dialogue and agreements. An emergency global Industrial Relations. framework?*, Geneva, ILO, ILLS, 2008.

individual companies and on their employees. Transnational company agreements, like national company agreements, have a “comparative advantage” in this respect, because their regulatory impact on employment conditions depends on the power of the employer to determine these conditions; power which the employer may exercise at his discretion or according to the terms of the agreement that he has signed with the legitimate representatives of his employees.

The agreements signed by transnational companies with the European works councils (EWC) have provided uneven evidence of their impact and contents. But they have proved to be an effective vehicle of transnational regulation in many issues of employment and of welfare. In some cases they have promoted good innovative practices of work organization and of workers participation. Often they have managed to regulate matters which have proved intractable at sectional or territorial levels, in spite of the support given by the European Union to collective bargaining and to social dialogue.

This is the case e.g. of issues concerning the restructuring and reorganization of firms or of groups of enterprises, the consequent redundancies, and in general the various processes of outsourcing of work, subcontracting and organizations of supply chains.⁸²⁹

13. Regional regulations and regional Funds.

Different and more direct forms of supranational projection of labor law and social policies have been introduced within some regional areas, in Europe, in the Americas, and more recently in Asia, which have set up common institutions and legal regimes.

The European Union has proceeded most in the direction of creating a common social sphere, through a variety of legal techniques. The resulting social model includes some traits inspired to the objectives of sustainable growth and human development. The pursuance of this model has produced positive results in many countries but also set backs due to various obstacles: weak recognition and legitimation of the European initiatives in these matters, specially vis a vis the commitments to financial integration, increasing pressures of centrifugal forces and forms of re-surgent nationalism.

The instruments of hard law such as the directives have given way to the open method of coordination (OMC) and to loose guidelines, which share the value and the limits of other forms of soft law.

In spite of the obstacles so far experienced, the continental regions seem to be a manageable dimension and a possible intermediate step on the road to global policy making.

It is also worth noticing that some regional institutions have endorsed direct forms of transnational action aimed at promoting innovative social policies and at sustaining common goals of development. The European Union is a case in point. Their authorities have set up a series of Funds to be used by member states and by social actors for common social and economic targets.

⁸²⁹ M. Carley, M. Hall, *European works councils and transnational restructuring*, Dublin, Eurofound, 2006; J. Weddington, V. Pulignano, J. Turk, T. Swerts, *Managers, Business Europe and the development of European work*, Council ETUI, Working papers, 2016.06.

Among the most important are the social fund for education, training and promotion of employment; the fund for regional development; more recently the fund for the 'adjustment to globalization', which is a first transnational measure to counteract the negative effects of globalization on national enterprises and on their employees.⁸³⁰

A major investment program directly financed by Union resources have been recently announced by the president of the European Union with the aim of improving the weak performance of the European economies.⁸³¹

Finally, proposals have been advanced to establish a common system of unemployment benefits for the European workers financed with European funds. Such a fund would be an important sign of cross-border solidarity and would function as an automatic economic stabilizer for the recurrent periods of crisis.⁸³²

Similar funds could be experimented in other regional areas by way of bilateral or multilateral agreements with the aim of extending across the borders selected forms of welfare, and of sustaining national welfare systems. Welfare systems need transnational solidarity, particularly when they are in an early phase of development and in the fields where they mostly suffer the consequences of economic crisis and underdevelopment: fight against poverty, guarantee of minimum levels of income, promotion of young employment, special programs to support basic and professional education.

Short of interventions of supranational forms of government which are not in sight, the internationalization of labor law and of social policies will proceed by the extension and improvement of the different instruments mentioned here (social clauses transnational company agreements, codes of conduct, regional directives and direct interventions): not ready-made global regulations, but a web of rules gradually created by different national and international actors.

14. Some policy priorities.

The present although partial analysis provides sufficient evidence of the challenges that the great transformations of present times pose to our discipline. As we indicated lately in Capetown, common research is necessary to deepen our understanding of the future of work and to contribute to new policy-making in employment and social security matters.

Some legal and social instruments adopted by national practices have proved to be particularly useful.

Our discipline have a major role in promoting the well being of workers, their individual capacities and sustainable development, provided that it does not limit itself to react to external economic pressure and to defend its glorious traditions, but it dares to use in a innovative way the specific tools of the law and collective action.

⁸³⁰ On the use of European Fund, see the *Social investment package*, Communication of the Commission (COM 2913), 83, M. Heidenreich, 2009, quoted, p. 22.

⁸³¹ *An investment plan for Europe*, Communication from the Commission, Com/2014/0903 final.

⁸³² S. Dullien, *A euro-area wide unemployment insurance as an automatic stabilizer: Who benefits and who pays?*, quoted, *A problematic analysis*, in G. Claey, R. Darvas, G. Wolff, *Benefits and drawbacks of European Unemployment insurance*, Policy Briefs Bruegel, 2014, Economic papers.

Our common discussions have given significant, even though tentative, indications on how labor law and industrial relations can contribute to this goal.

A few policy priorities need to be stressed again; the protection of workers from old and new social risks; the promotion of decent employment and of the quality of work which are the basis of sustainable development; the diffusion of investments in education and personal capacities, which are an essential road to equal opportunities; an active use of public and private welfare institutions, finalized to increase personal opportunities and to fight inequality and poverty; the promotion of collective voice and of employee participation in the working place and in the public scene; the endorsement of work place flexibility and productivity combined with measures to guarantee security in the labor markets; the support of labor friendly use of organizational and technological innovations.

For the reason already indicated, national states and social actors maintain the major responsibility for the implementation of these policies. But their responsibility includes an increased commitment to promote the social dimension and the democratic character of globalization.