The Social Partners and the Welfare State in Italy: Challenges and Opportunities*

Stefano Giubboni

* Previously published as WP C.S.D.L.E. "Massimo D'Antona".IT – 388/2019

1. Background history.

Similarly to other European countries, trade unions have played a very important role at the origins of modern forms of social security also in Italy, although with some delay compared to the continent's major countries due to the late start of industrialization and the consequent late development of the labour movement. Some might say that, also in Italy, social security originates as the expression of self-organization and mutual self-protection within the labour movement and the incipient industrial trade-unionism (let us consider the somehow founding role of labour solidarity experienced in Italy through mutualistic collective funds and cooperation)[326].

When the first form of compulsory social security was established with law n. 80 of 1898 on industrial injuries and accidents at work, the Italian legislator did not adopt the Bismarckian corporatist model, although taking inspiration from the German laws[327], as it preferred to attribute a distinctly public nature and character to the new social insurance fund. However, the 1898 law did not attribute any legal monopoly to the newly established national fund, thus allowing compulsory insurance to be fulfilled also through private insurance companies[328]. Such a legal monopoly was established only at the beginning of the Thirties, during the fascist regime.

In the years when the foundations of modern social security are being laid in Italy, at the turn of the Nineteenth and Twentieth century, the very same public intervention remains within the strong limits allowed by the predominant liberal ideology (the first form of compulsory pension insurance is dated 1919). Thus restricted, the State's role inevitably allows a significant amount of freedom for private-collective welfare and unions find plenty of places where they can strengthen their incipient role in ambits that had not yet been accessed by public intervention (as it typically occurs in regards to job placement, where Labour Chambers electively operate).

This framework is bound to change radically with the rise of fascism. Since its early days the fascist regime imparts a very strong public-authoritarian imprinting to the whole system of collective labour relations (already through law no. 563 of 1926) and, later on, to the organization of welfare and social security, conceived as founding elements for the development of the totalitarian nation-State. The comprehensive reform programme performed in the Thirties finalises a project of overall public-law re-organisation of the Italian social security system, conceived as a tool to be used through the social-economic policies of the fascist regime and as a fundamental element of building of a mass-consensus for the totalitarian State. Fascist corporatism denies freedom to the intermediate societal bodies in general by absorbing them within the state apparatus for the sake of corporative solidarity and the overcoming of class conflicts[329].

It is only through the Liberation and the establishing of a democratic Republic that free unions go back to having their – constitutionally guaranteed – role as main political trigger for the development of the social protection system, being an original self-constituting and self-legitimising social group (*formazione sociale*) aimed at the promotion of fundamental rights of the individual and as free and self-organized forms of workers' collective solidarity (Articles 2 and 3 of the Italian Constitution). This leading role played by the unions is mainly acknowledged by the Constitution in

---

326 Cf. A. Cherubini, *Storia della previdenza sociale*, Roma, 1977, p. 10 ff.

327 See G. Gozzi, *Modelli politici e questione sociale in Italia e in Germania fra Otto e Novecento*, Bologna, 1988, p. 11 ff.

328 Cf. A. Cherubini, *Dalla libertà all'obbligo. La previdenza sociale fra Giolitti e Mussolini*, Milano, 1998, p. 7 ff.

329 Cf. C. Giorgi, *La previdenza del regime. Storia dell'Inps durante il fascismo*, Bologna, 2004, p. 23 ff.

its typical capacity as negotiator in the realm of collective bargaining (Art. 39), by expressly introducing the principle of (individual and collective) freedom to self-organise welfare (Art. 38, par. 5: *L'assistenza privata è libera*).

2. Social partners and the institutional participation to the social security system.

As the predominant role envisioned by the Constitution itself is played on the field of collective bargaining, as we shall see shortly, nevertheless we shall not disregard one aspect that has characterized Italian social legislation mainly during the 1970's and at least up until the reform introduced between the Eighties and the early Nineties in a logic of retrenchment of the Italian welfare state. During the period of greatest historical expansion of the Italian welfare state (precisely between the 1970's and 1980's), unions – especially the most representative general confederations (CGIL, CISL and UIL) – were acknowledged the important role of institutional participation to the management of social security[330].

The Italian legislator progressively allowed unions' participation to the management of the country's major institutions of public social security, without strictly adopting the neo-corporative model typical of certain experiences in Northern-Europe. Such a form of institutional participation rather derives from a general inclination that characterizes that historical period, of co-opting the most representative unions in the management of welfare public administration, acknowledging a role that may be defined, broadly speaking, as political and administrative at the same time. The role attributed to the most representative trade unions is actually placed within a wider dynamic, underway in Italy in those days, definitely characterized by a movement for the expansion of participative democracy and the leading role played by major mass organizations (political parties and trade union confederations).

This model of institutional participation, however, has been widely outweighed starting from the reform adopted at the end of the 1980's and throughout the Nineties. Although strongly disempowered, this political-institutional participative dimension, however, has not been completely abandoned[331]. A significant institutional participation of the most representative unions, in fact, has been maintained in the current system through the supervisory councils (CIV – *Consigli di indirizzo e vigilanza*) belonging to the major public welfare institutions (INPS – National Social Security Institute and INAIL – National Institute for Insurance against Accidents at Work), the purpose of which is to define the programmes and identify the guidelines to be implemented by these social security institutions, while determining multi-annual strategic objectives whose implementation and management, however, is totally and autonomously assigned to the institutional governance and related technical structure of INPS and INAIL[332].

---

330 Cf. T. Treu, *Sicurezza sociale e partecipazione*, in *Rivista di diritto del lavoro*, 1970, I, p. 137 ff.; M. Persiani, *La partecipazione dei rappresentanti dei lavoratori alla gestione degli enti previdenziali*, in *Sicurezza sociale*, 1970, p. 332 ff. See, also, M. Cinelli, *Organizzazione amministrativa del lavoro*, in M. Dell'Olio (ed.), *Diritto del lavoro – 2 – Dizionari del diritto privato*, directed by N. Irti, Milano, 1981, p. 235 ff.

331 See M. Cinelli, *Diritto della previdenza sociale*, Torino, 2016, p. 134.

332 Cf. B.G. Mattarella, *Sindacati e pubblici poteri*, Milano, 2003, p. 75 ff.

3. Unions as qualified providers of welfare instrumental services.

The role that unions are authorized to carry out, by law, through the so called *patronati* differs from the participatory role, although it is somehow linked to an administrative-type function in the management of the welfare system. Although already foreseen in the liberal era and organically recognized by law since 1947, that model for union participation to the administration of public welfare is typical and peculiar of the Italian experience. After the reform of 2001, the *patronati* carry out assistance and protection functions in support of workers, retirees and more in general of all the citizens who turn to them to gain access to the benefits provided for by the Italian welfare state. By law, the *patronati* are acknowledged as legal entities governed by private law, whose purpose is social utility; at the same time they are a direct expression of union organisations and – through the public financing that they benefit from – they broadly contribute to the overall financial needs of the unions that they represent.

The *patronati* carry out an essential role in guaranteeing access of citizens and workers to social security benefits and, to some extent, they represent the privileged institutional interface to the public social security institutions. Therefore – through the *patronati* – unions act as qualified suppliers of instrumental services for the access to welfare and for exercising social citizenship rights. Thus, it is a matter of a role that is prevalently administrative and of consultancy nature which, however, has evident political implications as it confers on the union organizations the important functions of filtering and of institutional mediation between welfare public administration, on one hand, and citizens and workers, on the other[333].

4. The negotiating role of social partners in the Italian welfare mix.

Nevertheless, there is no doubt that the main role played by social partners in the Italian welfare system is the one that unions carry out in their typical capacity as bargaining players in the vast and diversified universe that may be called contractual social security (*previdenza contrattuale*)[334]. This – non-technical – expression is used to designate the complex and articulated series of measures and provisions of a broadly welfare and social security nature, whose primary or original source is collective bargaining and which, therefore, are an expression of the collective autonomy constitutionally given to union organizations (Art. 39, Italian Constitution, in conjunction with Art. 38, par. 5). The connotation that differentiates and unites these forms of welfare and contractual social security – which may have very different objectives and purposes (and, therefore, correspondingly different regulations, e.g. from the point of view of tax treatment) – is the collective bargaining source and their origin within the industrial relations system. In fact, this is a matter of forms of contractual welfare – that can be supplementary, integrative, additional and even alternative (i.e., substitutive) to the social protection provided for by the State – which are established by (national or decentralised) collective bargaining, and partly regulated by it in a rather complex and articulated relationship with the law. The ways in which these forms of contractual welfare interact with the public system of social security, and therefore with the legal sources, are significantly different and result in widely diversified forms of interrelation between

---

[333] Cf. M. Campedelli, P. Carrozza (a cura di), *Innovazioni nel welfare e nuovo patrocinio. Promuovere cittadinanza dopo il secolo breve*, Bologna, 2009.

[334] M. Squeglia, *La "previdenza contrattuale". Un modello di nuova generazione per la tutela dei bisogni previdenziali socialmente rilevanti*, Torino, 2014.

the law and collective agreements. Being unable to carry out a thorough analysis in this context, which would require a complex investigation, we may assert that within the framework of a broadly contractual welfare, law and contractual bargaining engage in a relationship in which the balance between public and private – that is between the variegated role of the law and the spaces left to freedom and collective autonomy – vary considerably according to the welfare sector considered[335].

Hereinafter I will provide the examples I consider to be most important of this different interaction between the law and collective agreements inherent to contractual welfare. We can briefly anticipate that with regard to the supplementary pension system (which is the most important expression of contractual social security in Italy to date), collective agreements, and primarily national sector and branch collective bargaining, are promoted by the law which, however, sets important limits to the autonomy of the social partners in order to pursue public interests, laying down a mandatory legal framework. With regard to bilateral solidarity funds (*fondi bilaterali di solidarietà*) – which are active in the vast field of social security safety nets and in the protection against unemployment – the role of the law is even stricter, so much to move towards an actual public regulation (and organic incorporation into the public welfare apparatus) of these forms deriving from collective autonomy. Lastly, a different case altogether is the so-called corporate welfare (*welfare aziendale*), where the role played by the law is primarily promotional – due to the vigorous fiscal and contributory incentives –, allowing social partners (this time mostly involved in collective bargaining at a company and decentralised level) to benefit from a broad freedom for the implementation of mainly private-collective interests.

The different forms of public-private interaction, between the law and collective agreements, that are generated by the three different forms of contractual welfare considered (supplementary pensions, bilateral solidarity funds and corporate welfare), therefore, require now a slightly extended analysis[336].

5. Social partners and supplementary pension provisions.

Although organically regulated by law only in 1993, supplementary pension schemes remain the primary expression of contractual welfare in Italy[337]. Albeit the legislative reform of 2005 shows a pluralistic source system, thus allowing the establishment of open pension funds (*fondi pensione aperti*) by companies in the banking and insurance sectors, collective agreements remain the privileged founding source. The legislator's support towards the collective pension funds actually leads to an indirect but nonetheless certain promotion of national sectorial collective bargaining, which, in fact, maintains the role of main establishing source for supplementary pension schemes in Italy.

The legal *favor* towards collective bargaining – especially at the branch and sector level – is traceable in significant aspects of the legal rules on supplementary provisions still today. For example, although in principle a worker is entitled to the free portability of his/her supplementary pension position from a closed collective pension fund to an open pension fund, the employer's obligation

---

[335] Cf. M. Cinelli, S. Giubboni, *Lineamenti di diritto della previdenza sociale*, Milano, 2018, p. 235 ff.

[336] See generally M. Cinelli, *"Pubblico", "privato" e Costituzione nelle attuali dinamiche della previdenza*, in *Rivista del diritto della sicurezza sociale*, 2017, p. 401 ff.

[337] Cf. S. Giubboni, *La previdenza complementare tra libertà individuale ed interesse collettivo*, Bari, 2009.

to contribute for the future to the new pension scheme chosen by the worker is made conditional on the provision laid down by the same collective agreement. This aspect of the legal framework on the portability of individual pension positions shows the legislator's persisting support of collective funds established by social partners on the assumption that only broad contractual categories of workers may enable those economies of scale that are necessary for an adequate financial development of complementary pension schemes.

And exactly on these terms, the law opted for a model of joint management by the social partners (namely workers' unions and employer associations who have signed the collective agreement establishing that pension scheme), although through the imposition upon the designated representatives of rigorous standards of expertise and good repute. Moreover, we must consider that – generally – the law imposes a professional management of the pension funds' financial assets, requiring that relevant managing conventions be signed by accredited financial intermediaries. Therefore, in terms of management we can assert that, for the safeguard of the pension savings of member workers, the principle of joint self-governance by social partners is tempered by conferring its professional management to qualified providers of the financial market (in compliance to European directives).

Collective bargaining, especially the sectorial/branch level type, is thus promoted by the law which, at the same time, imposes limitations upon the trade unions' collective autonomy in order to safeguard public interest and especially to ensure that the aim of supplementary pensions, although reflecting the union's contractual freedom, is to guarantee adequate levels of social security coverage along with mandatory public arrangements. The most debated limits which, however, for some time now, the Constitutional Court (e.g. through ruling no. 393 of 2000) has been considering to be compliant with the constitutional parameters (Arts. 38, 39 and 41 Italian Constitution), actually involve the relationship between mandatory public schemes and supplementary pension forms. Among other limits, in fact, the law states the rule according to which benefits of supplementary pension funds may be provided to member workers as long as these are at the same time entitled to access benefits from the public basic social protection scheme. This rule (and others having the same purpose) imposes a strict functional limitation upon collective autonomy, as it aims at guaranteeing that supplementary pensions ensure more adequate levels of social security coverage for workers, along with the benefits provided by the mandatory public pension schemes.

Nevertheless, we shouldn't ignore that in the Italian system, the adhesion of an individual worker to a supplementary pension scheme, even the one established by the collective agreement applicable to the employment relationship, is always a free choice of the individual, in the sense that it derives from a free personal decision. This is a very problematic aspect of the existing legal framework, that has been criticized by many and, nonetheless, it goes to show that supplementary pensions, even those deriving from collective bargaining, may be aimed at increasing workers' social protection only when their (potential) beneficiaries freely decide to adhere.

6. Social partners and bilateral solidarity funds.

A different role altogether is the one played by social partners in the establishment and management of bilateral solidarity funds, since in this case the Italian legislator resolutely opted in favour

of a more accentuated public-law connotation of the whole system[338]. The legal framework is quite complex, and for the limited purposes of this analysis we can see that bilateral funds – originally – are perhaps among the most authentic and significant expression of the cooperative-type dynamics of the Italian system of industrial relations, historically characterized by the prevalence of strongly dialectic and adversarial cultures and approaches to industrial conflict. At first, in fact, bilateral funds are entities founded by the social partners on an equal basis through (national or, in certain fields, local) collective bargaining in order for workers and companies to achieve certain mutual-type social benefits.

In particular, the establishment of bilateral mutual funds is required and regulated by the law in order to guarantee that workers are provided with protection whilst in employment in the event of reduction or suspension of the working activity for reasons provided for under the law on ordinary or extraordinary wage subsidies (*cassa integrazione guadagni*). The introduction of the funds is originally free, although in practice it has been made compulsory by the legislator (starting with the 2012 reform), through the establishment of a residual public fund that is precisely mandatory for all sectors not covered by the legal protection concerning wage subsidies (*cassa integrazione guadagni*) for all employers employing over five workers on average.

Besides the purpose of guaranteeing workers with protection whilst in employment, in the event of working time reduction or suspension, bilateral solidarity funds may have the following objectives: a) ensure that workers receive supplementary benefits, in terms of the amount or duration, compared to those provided for under the law in the event of termination of employment, or supplementary benefits in terms of the amount, with respect to general unemployment insurance; b) provide special allowances for income support, approved within the framework of early retirement facilitation processes, for those workers who are going to meet the necessary requirements for old-age or early retirement in the following five years (although, through various measures, the law has prolonged such period in certain cases and under certain circumstances); c) contribute to the financing of EU training programmes. In terms of the later objectives, these funds may also be established with respect to sectors and size classes of the employers that already act under the law on wage subsidies.

In this respect, the most representative union organizations and business associations at national level, comparatively speaking, stipulate collective agreements, including cross-sectorial ones, concerning the creation of bilateral solidarity funds. Once the union initiative has been achieved, though, the law takes action to frame bilateral solidarity funds within a logic that considerably privileges a dominating public-law dimension. In fact, once established by the social partners, bilateral solidarity funds consequently take on a public nature and function. In fact, following the establishing collective agreement, by a decree of the Ministry of Labour in conjunction with the Ministry of Economy and Finance, the fund is established as a special fund within the INPS. In this way, the fund is transformed into a public body and its budget – although typically entirely financed through the social security contributions paid by companies and workers – is taken up as a portion in the general budget of the INPS.

Alternatively to such ordinary public model, although only in relation to very specific sectors (e.g., temporary work agencies), the law allows bilateral solidarity funds to be deployed within a private

[338] See *e.g.* S. Renga, *Bilateralità e sostegno del reddito*, in *Rivista del diritto della sicurezza sociale*, 2018, p. 433 ff.

law framework. Outside this framework, however, the general rule has become to trace back any expression of collective bilateralism to the public system run by the major public social security institution in Italy (i.e., the INPS). Accordingly, the bilateral solidarity funds' management committees established at the INPS are fully-fledged internal entities of the public social security institute. The members of these entities are designated on an equal footing by the most representative trade union and employers' organizations who sign the collective agreement, but their actual appointment shall be made by a decree of the Ministry of Labour, as they are performing a public function. Accordingly, both the social benefits provided through these funds and the mandatory social security contributions that finances them are, in all intents and purposes, of a public legal nature.

In the case of bilateral solidarity funds, therefore, we are witnessing a very original phenomenon of fusion, so to say, between collective agreements, which maintain the role of establishing source, and regulations governed by public law[339]. The legislator's support to this form of collective mutual solidarity, which is specifically expressed through the bilateral funds, goes as far as to achieving an actual up-take of the management and of the very functions of social protection that these funds carry-out within the system of mandatory public social security.

7. Social partners and corporate welfare.

As stated above, a totally different case is represented by the so-called corporate welfare[340]. This term usually applies to the series of contractual or unilateral initiatives carried out by the employer and aimed at increasing the wellbeing of workers and their families through a different distribution of earnings, which may consist of compensation benefits, a direct provision of services, or a mixture of the two solutions.

It, obviously, involves a very broad definition that may potentially be suitable to cover a different and variegated universe of non-monetary services and benefits, going from supplementary health care to the same supplementary pensions, from economic support for families, to education and training. Therefore, a very wide range of benefits for the workers that results in a package of possibilities for the access to services that are a useful complement to traditional monetary remuneration.

In this field, the promotion of the role of collective bargaining is the result of a rather recent decision of the Italian legislator, which developed into the provision of a very considerable series of fiscal advantages in support of both the companies and the workers. Recent empirical researches show that company collective bargaining is making extensive use of the opportunities offered by the law and that – as expected – company welfare projects are undergoing their greatest development precisely at the decentralised (business or plant) level. However, more recently,

---

339 S. Giubboni, *I fondi bilaterali di solidarietà nel prisma della riforma degli ammortizzatori sociali*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2014, p. 715 ff.

340 Cf. T. Treu (ed.), *Welfare aziendale. Migliorare la produttività e il benessere dei dipendenti*, Milano, 2013.

forms of corporate welfare have been foreseen also by national sector collective bargaining (just like for the important case related to the metal industry)[341].

Corporate welfare raises very delicate issues and it lends itself to very problematic evaluations. On one hand, it certainly represents a new frontier of the Italian welfare mix where – thanks to the fiscal incentives granted by the law – collective bargaining is called upon to play an important role of social innovation, with positive implications on the wellbeing of workers and on companies' productivity[342]. However, on the other hand, the risk is to increase the many inequalities that afflict the Italian system (large companies vs. small employers, rich territories vs. economically depressed regions, standard employees vs. atypical workers etc.), by actually contradicting that purpose of social solidarity which should, conversely, always justify a strongly advantageous fiscal treatment. In other words, the risk is that, on the basis of the fiscal incentives granted by the law, corporate welfare may accentuate socioeconomic cleavages to the advantage of strong segments of the Italian labour market, with the result of increasing inequalities that are not followed by appropriate compensation in terms of growth of the general welfare of the country.

8. Concluding remarks.

The critical analysis just carried out on the ambiguous role of corporate welfare gives us in return an inevitably complex picture of the very same role that social partners carry out more in general – in the different contexts analysed in this paper – within the Italian social security system, broadly defined.

The comparative industrial relations analyses frequently stress the fundamental "resilience", as someone has said, of the role taken on by trade unions, especially as negotiating player[343]. The rate of coverage of national branch-collective agreements in Italy is still high. In fact, national collective agreements at sector level remain the centre of gravity of the Italian system of industrial relations and collective regulation. At the same time, no drift towards strong and unregulated decentralisation of collective bargaining has happened in Italy: the amount of workers covered by collective company agreements has not actually grown over these past years in Italy. It remains relatively low, mainly due to the structure of the country's economic system, largely formed by small and medium enterprises.

Obviously, this does not mean that the Italian system of industrial relations is not afflicted by major problems, which, to a certain extent, are similar to those suffered by other European countries. The fragmentation of the contractual system – presenting an abnormal number of national collective agreements – is perhaps the most evident among these problems, as it is a quite telling sign of an overall crisis of representativity suffered by the major trade union organizations, involving both the workers' and the employers' side; the strong wage compression and the remarkable increase of the working poor being its most disquieting result[344].

---

[341] Cf. D. Comande', *Il nuovo* welfare *contrattuale nei negoziati collettivi nazionali: stato dell'arte e criticità*, in *Rivista del diritto della sicurezza sociale*, 2017, p. 821 ff.

[342] See in this vein B. Caruso, *The bright side of the moon: politiche del lavoro personalizzate e promozione del welfare occupazionale*, in *Rivista italiana di diritto del lavoro*, 2016, I, p. 177 ff.

[343] M. Carrieri, T. Treu (eds.), *Verso nuove relazioni industriali*, Bologna, 2013.

[344] T. Treu, *La questione salariale: legislazione sui minimi e contrattazione collettiva*, WP CSDLE Massimo D'Antona, IT-386/2019.

In this scenario in *chiaroscuro*, the role taken on by the social partners in the Italian welfare system is considered a significant driving force for the development of collective bargaining at its different levels. Contractual social security is a dynamic and articulated reality in Italy, and it certainly contributes to the overall upkeep of the Italian system of industrial relations as much as to the qualitative and quantitative increase of the entire supply of social protection for workers. At the same time, the highly unequal spreading of access to forms of supplementary pensions and even more to corporate welfare, broadly speaking, with persistent discrepancies between strong or weak areas (or segments) of the labour market, highlights all the limits of a system, which is typically the Italian one, that is not rooted to a strong base of universal public social protection schemes.