

# **The reunification of the world of work: the role of collective labour relations for immigrants and disabled people (theme 1)**

DRAFT PAPER – WORK IN PROGRESS

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1. The transformation of political and economic systems produced by globalization (Beck 2000; Ferrarese 2000; Stiglitz 2002) and the related neo-capitalist attitude that has emerged in our time have led to the downsizing of the relevance of work and its contribution to the material and spiritual growth of society.

Work has changed and polarized, in the sense that the concept of stable, permanent and life-long work is being progressively substituted by the awareness that the working experience has aspects which are ever less defined and certain (Sennett 1998; Reyneri 2005). The meaning of work has been gradually undermined by "intermittent", "precarious", "temporary" jobs, so that it has lost its role as an instrument of social elevation.

The paradigm of post-modernity is in fact *flexibility*, understood as the continuous search for ever-increasing productive efficiency; this has also resulted in a fragmentation of the legal regulation of labour relationships (Nadel 2000), which in turn has accentuated the segmentation of society and, therefore, of the labour market (Gallino 2001, 2003). The quality of work has also suffered as a result, to the advantage of an ever smaller number of highly skilled workers and at the expense of a mass of individuals who instead perform less specialized tasks, which make them highly interchangeable.

The effects of globalization are the subject of many studies of a general nature; there are fewer more specific ones regarding the effects it has had on categories who are vulnerable, either socially or in relation to the labour market. These studies do not seem, for the most part, to capture fully the structural contradictions generated by the new distribution of power in the globalised world as it appears today.

Indeed, national as well as supranational and international institutions do not seem to take full account of the consequences of *this* globalization. On the world scene, there are critical proposals that aim to build "another globalization" (de Sousa Santos 2007), and this view will be referred to in this work too; before touching on such a perspective it is, however, necessary

to clarify the current processes, and to do that it is equally necessary to study more closely the aporias.

**2.** As far as Western European legal experience is concerned, the present globalization process is in contrast with the promises, inherent in the Constitutions adopted after the Second World War, of liberation from needs and recognition of personal dignity based on work for everyone, male and female.

The paradigm of citizenship at work developed in this context is based on work as a tool for social inclusion and social emancipation for all people.

The Italian Constitution of 1948 reflects this appreciation of work and at the same time reinforces it, since the labour principle is one of the pillars of the fundamental Charter (Articles 1, 3, 4, 35).

In fact, for the Italian Constitution any activity, whether manual or intellectual, which contributes to the material or spiritual growth of the country is considered work. In this sense, for instance, as the Constitutional Court has stated (28/1995), housework and caring are work too. Moreover, as a contribution to material or spiritual growth, work is also a form of participation in social life, an expression of social solidarity.

In this sense, not only is the contribution of foreigners who immigrate in order to work definitely part of this process, but so also is the contribution of vulnerable people such as those with disabilities. In fact, many of them are able to contribute to social growth and obtain from this contribution the recognition of their dignity, in a virtuous process from society to the person and from the person to society.

A certain commonality among these subjects is understandable considering that in both cases (non-EU immigrants and disabled people) the subject is abstracted from his work. In one case, this happens because of the exploitation of the worker (the non-EU foreigner) is practised; in the other one, the workforce is considered of inferior quality because not consistent with the standard efficiency measured on able-bodied subjects.

It is obvious that making such distinctions leads to the denial of social citizenship to these subjects.

**3.** The combination of work and social emancipation functioned and developed step by step until, according to the model of the welfare state, the State succeeded in implementing ordinary legislation applying the constitutional principles.

The social rights recognized by the Italian Constitution are the result of the struggles of the working classes organized in unions and political parties, as well as of their strong political legitimacy as a decisive element in the opposition to the fascist dictatorship (Pepe 2003). In the following years, in a context of modernization of the capitalist productive system, the struggle for the effectiveness of those rights responded to the double challenge of ensuring capital accumulation and its very legitimacy through the tools to support social consent and unity. Therefore, a large part of the redistribution of income (or rather an attenuation of the gap between the wealthiest individuals and the workers) was achieved through public policies whose costs were funded by general taxation. The price, for many countries, has been a progressive fiscal crisis of the State (O'Connor 1973). This crisis in the current phase of global capitalism seems untenable: in the view of the EU (of which, as is well known, Italy was a founder member) ensuring a balanced budget for every State has become a top priority<sup>1</sup>. Therefore, the space for the implementation of universal and inclusive social policies is becoming progressively narrower. The scarcity of resources requires a choice on their allocation. Ultimately, it is a question of political choices (to be taken at different levels) even more clearly than in the past, given the impossibility of postponing to a more or less indeterminate future the solution of the problem of finding "sources" of resources.

In this context, labour law has gradually lost one of its functions as an instrument for rebalancing the unequal bargaining power (between the employer and the employee) and, consequently, for the protection of the weaker party, and is now limited to meeting the needs of the productive system in a context of financial capitalism, helping to accentuate a dynamic of social exclusion. In fact, it is not a coincidence that the semantic axis has shifted from labour to employment.

**4.** In Italy, as in all EU Member States, the evolution described above also fits in with the broader process of building first the European (Economic) Community, and then the European Union. This process, developed to ensure peace in Europe, has been accomplished in the dimension of the free market, based on the principle of free competition and on the fundamental economic freedoms, whose predominance in the balance with fundamental social rights has recently been outlined by the EU Court of Justice in the so-called Laval quartet judgments<sup>2</sup>. In some points of these rulings the ECJ adopted a clearly neo-liberalist approach,

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<sup>1</sup> Art. 81 of the Italian Constitution has been amended by Art. 1, Constitutional Law, 20 April 2012, No. 1 to introduce this principle.

<sup>2</sup> ECJ, Case C-341/05, Laval; Case C-438/05, Viking; Case C-346/06, Ruffert; Case C-319/06, Luxembourg.

that led it to limit fundamental social rights on the grounds that that trade union actions have a negative impact on the labour market.

The crisis of 2008 initially seemed to be an opportunity for reconsideration of that approach, in the light of social market economy. In reality, the forecast contained in the Lisbon Treaty (art. 3 TFEU), which marks a sharp discontinuity with the previous draft, whereby the market no longer appears as an end in itself, but as a means to achieve other objectives (e.g. sustainable development), has remained a dead letter, ignored by the policies of austerity and the drastic measures in the field of work following those policies (Countouris, Freedland (eds.) 2013; Sciarra 2013)

Strong criticism of the entire system of EU policies adopted to deal with the crisis by the Troika (European Commission, European Central Bank, International Monetary Fund) has been put forward in the last few years, even by the European Parliament<sup>3</sup>, calling for a reform of the strategy and methods pursued until now, that have exacerbated poverty and unemployment. The austerity measures, far from solving the economic and financial crisis, represent a strong threat to the European social model (Deakin 2013; Schomann 2014).

**5.** To afford the complexity of the problem of restoring the centrality of work it is necessary to think of a structural reform of the current approach (Azzariti 2013). What is required, therefore, is a choice of political direction to counter the given social order, which is widely believed to be unfair.

To achieve this goal it is necessary to focus on the reconstruction of the world of work, based on the people who work, of whom the more vulnerable are only one among the weakest components.

Among the institutions that can become promoters of social justice objectives, an important role can be played by bodies representing the interests of the workers (unions, work councils) and/or forms of civil associations (social cooperatives, NGOs, etc.).

Indeed, the actions to contrast the processes of flexibility involving the evaluation of labour as a commodity cannot be effective if conducted on an individual level, even when they involve workers who are "not vulnerable". *A fortiori*, individual solutions cannot be considered suitable for the categories of workers - disabled people and non-EU immigrants - which we are dealing with here. This approach clearly inspires some unions' action, based on the awareness that "on the labour side, power is collective power" (Kahn Freund 1972).

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<sup>3</sup> European Parliament, 2014, *Resolution on employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries (2014/2007(INI)*, 13 March.

Nevertheless, it is worth to consider that among the deleterious effects that job insecurity has produced cannot be overlooked that, a further disruptive is represented by the risk of failure of the union's role as the subject of balanced redistribution of national wealth and an instrument of balance of economic powers, both within the company and outside of it, locally and at national level.

In this regard, the reduction of union members experienced in recent years is an irrefutable fact. This phenomenon is due not so much, or not only, to the unwillingness of precarious workers to join collective bodies, because of the frequent mobility to which these workers are subject (and the consequent difficulties to engage them into unions). It is also a consequence of the supervening distrust of the new generations of workers to trade unions, perceived as heavy bureaucratic structures, more ready to defend the interests of employees than those of temporary workers and the unemployed.

Indeed, this alleged contrast between defending the interests of insiders and outsiders is a slogan typical of a scientific culture and politics of neoliberal foundation, which looks with favour to a realignment of the employment protections between the various categories of workers as a race to the bottom.

The downsizing of the unions' role also derives from the attitude of rejecting the social dialogue with them by the political forces, practised in Italy at least since 2001, the year of the White Paper on the labour market of the Minister Maroni. This attitude, already shown through the rejection of the method of negotiation and coordination, has come now, during the Renzi Government, to the lack of consultation with social partners with respect to decisions crucial to the world of work.

**6.** To tackle the segmentation of the labour market a fundamental strategy to adopt should be (trying to) reunifying workers' interests: natives-foreigners; disabled-not disabled; precarious-stable, men-women, etc.

This strategy can be effective if it goes beyond the mere declaration of the existence of a common interest to decent work, to rebuild times and spaces of a joint action for all workers' categories. To achieve this goal it is first of all necessary to recognize and appreciate the differences between the groups of workers and, on these basis, promote an "interest to solidarity" (Cella 1989). It is a very complicated challenge that of pushing different groups of workers to be in solidarity with one another. A famous British sociologist, Anthony Giddens, wrote recently that the re-weaving of social solidarity is an issue of conservation but does not admit conservative solutions.

Obviously this requires re-weaving new cultural conditions, for example the construction of active trust between the parties based on the relationship with the other, and therefore an interaction and a certain degree of reciprocity.

By its nature collective bargaining is the place where this reunification can be achieved. Collective bargaining in the workplace is essential to a union that wants to control the concrete conditions of work and does not want to put simply abstract and general rules, which, once met by the employer, allow him to preserve all his unilateral powers. Nevertheless, the reunification as a method should be practiced also inside trade unions' organization. In Italy there are interesting experiences in both these fields, that could be promoted and developed.

**6.1.** In terms of collective relations, Italian unions have understood the risk that the fragmentation of the labour market in the long run also weakens the position of national workers. Moreover, the Webbs' lesson on the common rule has not been forgotten. The collective agreement, in fact, plays a key function for the regulation of economic competition. The Italian trade union confederations show full awareness of the need that the industrial action has to be developed so to include the interests of migrant workers in the construction of collective interests. Since the early 1980s' they have been fighting for legislation that does not isolate foreign workers, and they practice an inclusive trade union policy both at organizational level and in collective bargaining.

As concerns non-EU migrants, one of the most representative trade unions (CGIL) is developing a new process of integration between the categories of workers represented and, above all, has implemented a reform of its organization, involving immigrant workers in the leadership.

On the one hand, CGIL has boosted cross structures that maintain permanent contact between the various categories of workers for the development of joint strategies for union policy.

On the other hand, this trade union has further reinforced the process of integration of foreigners: in fact, it has long been involving non-EU workers in its executive bodies. Most recently the choice of co-opting them is not just for defending interests limited to the condition of migrants, but they are involved in pursuing the interests of the whole category.

Neoliberal globalization uses the construction of an "industrial reserve army" as a strategic tool. That concept – whose Marxist origin is well known - is effective to illustrate some attempts to weaken not only the immigrant workforce, but also the native one, using forms of repression of trade union activity held by foreigners, even within the trade unions.

The most striking case is that of Spain: the reform introduced by the Ley Orgánica 22.12.2000, No. 8, which amended the Ley Orgánica 01.11.2000, No. 4, forbade the irregular immigrant workers to join the union, denying them the ownership of the rights to freedom of association. That provision was declared unconstitutional by the Spanish Constitutional Court in a judgment (no. 236/2007) which recognized freedom of association as a fundamental and, therefore, universal right. Surprisingly this manifest attempt to divide the trade union front has taken place in Spain, while not new in the United States (eg, the Bracero Program)<sup>4</sup>.

Anyway, these cases demonstrate that although trade unions in the developed world today suffer a severe crisis of representativeness, their potential ability to aggregate the interests of workers and the subsequent construction of collective interests are still perceived as a threat by those who wish to earn through social dumping.

**6.2.** With reference to the integration of the disabled in the workplace, support to work on the part of organizations operating in the social sector and/or public facilities is of particular significance in helping the disabled to adapt to the organization.

They sign conventions to facilitate inclusion and integration at work, which represent an alternative opportunity for public and private employers to comply with mandatory quotas. These conventions provide for progressive planning for the integration of disabled people in the workplace, or forms of support, advice and mentoring on the part of regional departments, or even the involvement of social cooperatives. These cooperatives host the disabled in their organizational context, though they work on orders assigned by the compelled employers (Tursi 2006).

More in general, organizations representing the interests of disabled persons are mainly involved on the policy side. They can help to promote the cases of these disadvantaged groups, giving voice to their needs and intervening in the process of defining the rules and implementing them in accordance with the objectives of substantial equality (Ventegodt Liisberg 2014).

In the workplace a much more important role can be played by the unions, even if their action is not so much significant.

According to a recent Adapt study on collective bargaining in Italy during 2012-14, few national collective agreements have adopted measures to promote equal opportunities for people with disabilities. In particular, the main clauses concern sick leave, work-life balance

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<sup>4</sup> v. AKERS CHACÓN, J., *La persecuzione degli undocumented e la lotta per i diritti degli immigrati negli Stati Uniti*, in BASSO, P. (a cura di) – *Razzismo di stato- Stati Uniti, Europa, Italia*, F. Angeli, Milano, 2010, p. 61 s.

measures for the disabled or their caregivers, diversity management practices (Stefanovichj 2015).

Best practices in this respect can also be found at firm level, where collective bargaining could play a key role, allowing the parties to cooperate in the adoption of reasonable accommodation of the organization, taking due account of the positions and not delegating this issue to a mere individual bargaining between workers with disabilities and their employers.

Nowadays, this is the most interesting challenge for the Italian trade unions, considering that the Italian legislation was recently amended in this regard (Article 3 *bis* of Legislative Decree No. 216 of 2003) following the ECJ ruling. According to the European Court the national regulations could not be considered to respect fully the Employment Equality Directive because of the absence of any provisions of specific obligations of reasonable accommodation for employers (ECJ, 4 July 2013, C-312/11).

Collective bargaining could enhance the possibility to include among the "reasonable adjustments" also changes of the organization of work, otherwise difficult to introduce.

7. Historically, trade unions have done, also quite good, a constant interpretation of the social demands of individual groups and individual categories; but nowadays, if they want to represent the whole world of work, they must revise and redefine these questions, making the synthesis that produce something different from the interests of departure.

Looking ahead, in fact, it is to consider a new criticality, also evident in Italy in recent years, linked to the transition from a class solidarity to a wider solidarity.

According to an Italian sociologist (Carrieri 2014), at present time solidarity is not spontaneous, but must be built, through the unions' action that should move along three main paths: extension of the social dimension, territorial expansion and depth of the bonds.

The reference to solidarity is not, in this context, a mere slogan. As reminded by a number of judgments of the Italian Constitutional Court (the last is the recent ruling no. 119/2015), the solidarity, that has been made positive law by art. 2 of the Italian Constitution, is the duty of all the people who make up the national community.

The challenge for the future lies in the construction and articulation of this solidarity so to ensure social cohesion. In fact, although the modern state is in crisis because of the processes of globalization, as stated above (par. 1), the need to avoid the disintegration of social bonds remains strong and undiminished.