

Where is Italian domestic labor law moving toward

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WHAT LABOR LAW IS ABOUT, TODAY

Where is labor law moving toward nowadays? An expert in the field would shortly precise that is not possible to give any reply unless we firstly discern domestic labor law from international labor law. While there is no doubt that international labor law is fully centered upon the need for recognition of fundamental rights and is consequently moving toward a better implementation of such level of dignity by all the concerned States (and international institutions), not the same can be directly argued from a domestic law perspective, where liberal democracies have openly started to deal with labor issues by delivering workers rights just along a market oriented path for employment.

As for an international perspective, we need to move from the acceptance that labor relations have being considered, traditionally, as an issue for the exclusive management by States; labor as an issue to be managed also at the international level is a relatively new acquisition in the European integration process, and started formally in 1996 with the signing of the Amsterdam Treaty, which included employment policies amongst the Union competences (promoting the level of employment, improving life and working conditions, social protection, social dialogue, development of human resources and fight against social exclusion) which were previously limited to the creation of a single market for the free movement of capitals, goods, services, and European citizens¹. More precisely, policy for employment was already considered at a “soft law” level (not binding) since the 1989 European Charter for Fundamental Rights², but the process for its legal enforcement received the main opposition by the United Kingdom in the first place, and was achieved only in 2009, when the Lisbon Treaty entered into force, including the Charter and the U.K. ratification.

Both domestically and internationally, labor law has been shaped politically according to a view that necessary matches a capitalist with a proletarian approach, wherein fundamental labor rights comes out as a borderline for capitalist/employers not to cross over, and wherein it is implied that employment, as a political matter of distributing job opportunities and national richness, is dealt with at the national level. That reveals how the matter of matching capital and labor emerges domestically and repeats itself internationally; the issue finds concrete solutions in accordance with the will of the opposite parties (and their representatives), according to the state of labor laws and trade union agreements, according to intervention of the judiciary system eventually, and, increasingly, according to international standards in globalized societies, like those we are living in.

In a domestic social context labor is dealt with many other fundamental issues, where workers' basic rights are asked to give floor to different major concerns, not only the employers'

¹ Luisa Galantino, *Diritto Comunitario del Lavoro*, 3^{ed}. 2001, Giappichelli, p. 47.

² The Charter is disposing free movement of workers, right to employment and to a sufficient remuneration, freedom of association and freedom to collective bargaining, permanent professional learning, equality of opportunity and treatment between woman and man, workers' right to information, consultation and participation, healthcare protection, children and old workers protection, disable protection.

effective capability to be productive: family needs for caring or environmental risks impacting labor occupation might easily represent counterpart stakeholders other from workers' income and expectations. This understanding brings us to consider the labor matter not only as the adjustment of two parties opposing interests anymore – the employee's and the employer's – but an area of law wherein several different interests, domestically meant, are supposed to find their settlement as well.

In such a view the fight between classes is told to be turned into a fight amongst aristocracies³, where both labor and capitals are represented, but not necessarily being in opposition to each other, and where other instances are struggling, from religious issues to environment, from marketing determination to privacy concerns. In such a more complex scenario, distribution of income does not fit the only purpose of adjustment between capital and labor, it rather applies in terms of interpersonal distribution of richness, where the single citizen's income, more than his belonging class, is meant to be relevant. Therein, for example, regional disparities become a main parameter to count, and any group's political determination (the lobbies, according to an American literature) is actually shaping any public administration orientation to balance employment issues with other public and private concerns, from healthcare to social security, technical tools and procedures.

Labor law is better comprehended as an area of law wherein, as it happens in public administration law, many different substantial interests do melt, because of that fundamental Social Contract linking all the parties to the same legal system, the employing party and the employee, the administration and the citizens. Of course different are the instruments to enforce mutual obligations when labor law, rather than public administration law, are considered: it is permitted to the public authority only, and not to employers as well, the use of coercion. This is of paramount importance when studying the essence and the development of labor law institutions.

Now, to speak realistic, it must be said that not every single instance coming from workers, employers, citizens and other stakeholders can be directly and easily collected within the parliamentary representative and re-distributing process, just like the representative unions cannot always collect every single instance coming specifically from workers. This is one of the reasons why labor remains a core issue in composing any social compromise. Quantitatively speaking, it is rather common, actually, that the majority of voters, individually, gets a smaller size of the pie (let's here refer to the national income for a simplified explanation) than that they had before the distributing process took place⁴, but still, citizens and workers might prefer to opt in instead of opting out because to opt in means to rely upon benefit deriving anyhow from the re-distribution process, so they act like they wanted to rely upon a sort of insurance in case of future deterioration of individual conditions. Also, to opt in (by adhering to the decisional process) might be a way to rely upon benefits standing out from the income at stake, but nevertheless included in the mere fact of belonging the voter to a given society or to a given enterprise, for example free healthcare or free learning, access to digital services, served by the State or by the employer.

Among the main consequences of being aware about such an enlarged arena there are 1) the more explicit role played by public administrations in economy (not only the Republic of China

³ *Branko Milanovich*, *Chi ha e chi non ha*, 2012, p. 100.

⁴ *Branko Milanovich*, cit. p.82, we need to discern the difference between the income that is available – so the income received after tax deductions – and the income that is coming out from the market matching.

is a growing economy, based upon the achievement of socialistic purposes⁵) and 2) the increasing impact of artificial intelligence technologies⁶ for decisional processes (the accuse of interference by the Russian intelligence till inside the election process for the U.S. president is saying it at best ⁷).

Given such a rapidly moving scenario, looking at future (and future politics) with more uncertainty, it does not seem to be redundant to think about what labor law actually is, what is been meant to be, and what is not, for better arguing where it is about to move toward.

WHAT LABOR LAW IS

Firstly, we need to bear in mind that any approach to law can be philosophically “formal”, or philosophically “substantial”. The “formal approach”, on the one side, considers the law as the objective result of a reasoning process, that is, typically, the promulgated statute for the public ruling, the written contract for private relations, and it is also called “positive ruling” (*diritto positivo*). On the other side, the “substantial approach” means the law to be in accordance with real interests, rather than with formal terms and connections; in such a sense it is also called “natural ruling” (*diritto naturale*) since it expresses values just meant to be followed naturally, indeed, independently from them being formalized in a legal text. Modern jurists stopped to refer to “natural law”: they have rather opted for the concept of “civilization” to bear the burden of expressing substantial justice, implying that it is up to civilization to orient international law development and to establish hierarchies amongst societies, particularly on the ground of human values⁸. To use a philosopher’s phrase “*in present times, the final truth and the integral Being decline; juridically, it is the positive law that prevails. Nevertheless, justice continues to be meant as the will to give everyone what is right that they have (...) considering not natural law (...) but the positive law as established, time by time, by groups of human beings that succeed in prevailing over antagonists. Such laws are not stable, they are just established indeed*”⁹.

The evolution of any legal system can be told to be a continuous shifting from the formal approach to the substantial approach, and return to each other. The (interpreting) authority of any specific law, giving it its – relatively – binding nature, is historically flowed from groups

⁵ “A State’s external behavior and interaction with the outside world conform more quickly than its domestic culture and institution” says *Stephen, Matthew D.* The AIIB and China’s Relationship with the Liberal International Order: Insights from International Relations Theory, in *Chinese Journal of International Politics* 12.1 (2019): 61–91. Web. *Giovanni Barbieri*, Regionalism, globalism and complexity: IR under attack, https://www.academia.edu/38118400/Regionalism_globalism_and_complexity_IR_under_attack, last consulted 2020 February, the 7th.

⁶ *Remo Bodei*, *Dominio e sottomissione, schiavi, animali, macchine e intelligenza artificiale*, ed. Il Mulino, 2019, p. 297. Artificial intelligence is told to be the resulting of a millenary reflection over the confrontation between men and nature, where at the beginning, classical philosophers meant technologies basically to trick over nature, until Galileo Galilei started to show how, contrarily, technics might play a revolutionary role to improve society not contrarily to nature but in accordance to human needs for economic development. Modern artificial intelligence, used both for schooling purposes and professional learning, is now actually in position to psychologically orient the society entirely according to a given “problem solving” structure of meanings (the algorithm, acting on human needs and determination just like a “blinded thought”).

⁷ <https://en.m.wikipedia.org>, last consulted ***

⁸ *Remo Bodei*, cit., p. 135.

⁹ *Emanuele Severino*, *Il tramonto della politica*, Rizzoli, 2017, p. 188. His main thesis is that “*politics decline because, when it does not accept its dependence from capitalism, engage the illusion of being capable to lead capitalism, that is what is already condemned to finish*” and bases this idea upon the need of capitalism to rely upon technics: technics would bring capital itself outside its natural scope, that is to maintain as well as to increase itself.

of people adhering to a vision of substantial law, for example the anarchist movements, preaching the strict rejection of the established power (represented by modern States in the early vision of anarchism¹⁰); otherwise it came out from progressist theorists, as Marx or Engel could have been in the rise of communism (which had a major impact in the 1900 century by means of established universities worldwide); and of course, the binding authority of law came out from executives and conservative leaders adhering to a positive (mainly statutory) legal system, as it happened in times of nazi-ism or fascism in Europe.

Thereafter, we need to make a preliminary definition, by recalling that labor/employment law can be commonly described, formally and positively, as the whole of existed or existing (adopted already) regulations, statutory, administrative, contractual, as well as praxis in use and judicial decisions being applicable to future cases within a given social context, typically having territorial boundaries. Therein included are the outcomes of industrial relations, these deriving specifically from employers and employees confrontation, with mutual, implied or express recognition of each other, and agreements just meant as the positive compromise for future mutual obligations. Once taken a substantial approach, instead, we can also refer to labor law as the whole or regulations, or the specific ruling, just supposed to better fit a value that labor law is supposed to enrich, to enhance, to improve. Labor law so broadly considered is both a technical tool and the result of an ideological confrontation.

Industrial relations have represented, historically, speculative movements for the achievement of different state of regulation than that in force, and very often they have been considered as challenging the legal order¹¹, in other words, industrial relations might be read as having the purpose of legitimizing a revolutionary aim. Actually, that is how the narrative on real socialism (Soviet Union communism) has been translated in Western democracies, giving ground to the polarized global order (that is nowadays under discussion), with the conservative capitalist on the right side, led by the United States, and the progressivist socialist on the left side, led by Russia. The movement toward a united socialist purpose based many legal reforms, it is not aside from Europe aspiration to be united, and clearly represented the reforming groups in European societies till 1989, when the Berlin Wall has been definitely removed, giving rise to a capitalism that was rather akin to a liberal ideology.

It is of a major importance to be aware of the fact that the whole of normative materials that can be considered positively and formally as labor law in a given context can be used as a system to rule over social and economic relations, let's call this as the labor law original scope, but it can also be used as a tool to serve the achievement of different social and economic scopes, other from ruling over the mutual labor relation. This second usage is adopted for example when an administrative body organizes some cooperative work having the aim of

¹⁰ George Woodcock, Anarchismo, Enciclopedia del Novecento, http://www.treccani.it/enciclopedia/anarchismo_%28Enciclopedia-del-Novecento%29/ distinguishes different historical phases of the anarchist movements worldwide, starting from that led by the intellectual Pierre-Joseph Proudhon, defining himself as an anarchist for the first time, elected in the Constituent Assembly during the French Revolution in 1848 but voting against the adoption of the new Constitution, for considering the (state) system as based on coercion, thus against his idea of human liberty. In the following years anarchism has been considered both as moving labor movements, and in opposition to labor movements, once these latter were attracted by the communist vision grounding its achievement upon collaboration by states as a necessary step (although perhaps to be overcome once achieved the ideal society).

¹¹ Vincenzo Bavaro, Sul fondamento ideologico della libertà di sciopero, in RGL n. 3/2019, p. 370 explains how the ruling over strikes has its roots in collective actions for the revolution of the established order, and recalls *Gerard Lyon Caen* when considering that every new labor rule strives for being established, and it is finally established not because it is right – this condition is not sufficient – but because it is supported by some folks' will to collectively claim for it.

developing a depressed area, or when employers/employees are looking for new connections, like after a divorce or a transfer, or whenever the working relations are meant to achieve educational and formative purposes beyond what is needed to perform the working contract. In this second usage, the original scope of labor law is not lost: the ruling over the labor matter stands for what it is originally meant – the essential exchange between work and capital – notwithstanding the fact that who is involved and in charge for execution, might be pursuing, furthermore, something different.

The above clarifications remarks labor law for what it objectively was and still is: again, both a technical tool and the result of an ideological confrontation. Domestic labor law developed worldwide in accordance with basic values of workers unions' recognition together with other French Revolution derivations (*liberté, égalité, fraternité*¹²), and once the workers arrived to have voice before the State, they asked for their own recognition as well, particularly for those being more vulnerable¹³. There cannot be any effective and efficient political movement by a group of people for the achievement of a ruling, already existing as a praxis on a territory or to become a new order, if not upon a unity of intentions grounded on a common value, that can be said as existing according to a commonly recognized, commonly and individually considered as "binding", thus forcing, authority. In other words, a ruling can become what it is, once the values that it expresses have an authority for being considered so by the involved people.

The matter became actually (politically) complicated when not only social movements, but the States themselves, some of the already existing, recognized – let's call it here the basic – authority, started to act beyond the custody of the legal order and its rulings. When the States begun to act for the achievement of a better society, broadly meant, looking for the protection of human freedom both domestically and at the international level (which is an ideology brought forward by the United States still expressly), then rose a question for divergent legal interpretations over what is to be considered as a binding value. Significantly, the consideration for human rights, grounding or going beyond the ruling legal order, is told to be firstly occurred during the European colonization of the newly discovered American continent, when native Indians and ancient South American societies were violently forced to submit to the Europeans, who nevertheless were also trying to convert the locals (some of them still practicing cannibalism) to Christian message: the early European colonialists, having a catholic inspired legal system legitimizing their actions, encountered a theoretical collapsing between their search for increasing economic power and the need to recognize the human life of the locals¹⁴.

The recognition of a normatively binding authority – the law – what is interpreted to have value in a social context generally speaking, is what moves people. Laws move people not only in order to maintain a given state of living, considered in its very essential needs, like eating or sleeping, it also moves people whenever their own future living, or that of their beloved, is at

¹² Significantly from a unionist and progressive perspective point of observation, it has been noted that, while both liberty and equality are values that call for action (due according to deontology), fraternity is not something that one can fight for, it is rather something referring to ontology, so it can be there, or there can be not (*Erri De Luca, Impossibile, Feltrinelli, 2019*).

¹³ The first statutory intervention in Italy was approved to protect women and children at work while performing hard type of job or jobs to be performed during the night (Legge n. 242/1902 so called Legge Carcano).

¹⁴ Both the native Americans and the slaves just exported from Africa in that triangular commercial logic, gave the evidence about the European soldiers and conquistadores acting being opposite to the Christian respect for human beings. The philosophical debate started about how to treat the Indians and about that "right war" lasted for decades between the Catholic church and the Empire, presenting at stake, for the first time in history, those lately called "human rights" (*Remo Bodei, cit., p. 109 ss.*)

concern. Likely, the authority of (also labor) law can be used by modern democracies to affirm the need for maintaining a given state of order, as well as to affirm the need for a change (which is something that usually encourage young generations having experienced a strict regime of ruling at home to watch at politics like at an alternative); the same happens with workers, watching at labor law and industrial relations as tools for the better achievement of their professional aims.

In other words, by giving to the law, and to the “Rule of Law” in its binding effect, its own philosophical meaning (ontological and deontological), we mean that the law is what actually shapes one’s mind politically. Consequentially, the determination of social categories that can be transposed into the legal meaning, or having a legal meaning already, is part of the process constructing the labor law building. What happens is that, not only the classic social categories of “workers/proletarian” or “capitalists/employers” are used by legislators, but other social identities can be taken to build up important mediation and transaction in the economic scene, like the social categories of one’s personal “status” or the one’s personal “role”; categories belonging to the familiar structure, or other functional structures not less important to the social environment like the terms “master” and “servant”, in past time the term “slave”, the option for the term “subordinated worker” rather than “dependent worker” or “collaborator”, the term “agency” (very often used in relation to “banks” for commercial purposes), or the term “stager” or “trainee” to refer to inexpert workers, or the term “consumer”, rather than “professional”, or the term “officer” when dealing with public administration in modern States context, or the “data protection manager” in digitalized labor relations, the “riders” to mean workers performing via bike or motorbike, etc.; the introduction of foreign words to indicate any matter or concept in a domestic legal system is also meaningful to clarify the effective interaction amongst different countries and cultures. A focus over using and developing of the semantics highlights how easily is to connect social facts with politics, thus with the formal recognition by the legal order, and urge to possibly infinite new strategies for labor law adjustments.

What is problematic, once adopting a legal approach, that is the one connecting social facts to legal effects (binding effects to some extent), is the picking up of significative facts, before deciding over what type of ruling is supposed to apply. This is a fundamental preliminary issue when considering developments in society: new facts generally ask for a new consideration of ruling values insofar these are supposed to be affecting situations never happened before, new facts requires the process of objectivation of reality to be repeated, occasionally giving rise to a new ideological confrontation over values and their authority.

Artificial intelligence, largely applied in labor relations and working machines, is perhaps the more evident example of new factual phenomenon affecting labor law domestically (and internationally). A matter of social inquiry, before any legal reform eventually takes place, is that of considering the social/psychological influencing effects, occurring when a group of people is working with informatic tools moved by artificial intelligence programs¹⁵. Once we accept the principle of the consumer good faith when submitting to commercial transactions that can involve both private and public administrations, what about the automatic authority that users would recognize, rather than suffer? What about the actions, or the lack of action, that would singularly and collectively follow the algorithm mechanism? Politically, the issue is

¹⁵ It has been noted how differences between democracies and dictatorship is not in the hardware, like the dictators think, but in the software (<https://www.linkiesta.it/it/article/2020/01/11/aereo-ucraina-iran-morti/45020/>) last consulted **.

not very different from that rose with the introduction of public and private televisions into the ordinary life of citizens (as a matter of fact, the owner of the first private televisions in Italy, Silvio Berlusconi, begun to act as a politician in 1994, he became president of the Italian Government and still plays a part in politics at the national level).

Any political strategy needs to be moving along the way of recognized identities of individuals or groups linked together by shared values in order to achieve effectiveness. It has been clarified elsewhere already how liberal policy too, known as the one that recognizes any single man basic freedom to decide for himself, according to the Rule of Law, shows deficiencies whenever the immense variety of social options are at stake, broadly speaking, whenever human life is at stake: there are fundamental “contradictions” in human life that cannot be solved in the context of modern liberalism¹⁶. By the way, in the late twenty years, biological scientists and modern philosophers, have given arguments to attack the fundamental assumption of the human beings Free Will – the humans’ basic ground for personal liability – due to scientific evidence of human actions resulted performed by people having not consciousness, nor awareness about what they were doing: brain activity is told to begun, leading to actions or inactivity, before the mind realizes that such a behavior is wanted as well as before realizing its social consequences¹⁷. Once we would accept that human behavior is rigidly determined by neurological structures, those guilty of misconduct would not be guilty; but before arriving to such an extreme reasoning, we already know that, as a matter of fact, neuroscientific results do bring arguments into the judicial decisions already, according to a model of justice that can be utilitarian more than compensative¹⁸.

WHAT LABOR LAW IS NOT; TERRORISM IN THE NARRATIVE OF MODERN LABOR HISTORY

In past decades, known as the years of the Cold War at the international level, and called particularly in the Italian context “*Anni di Piombo*” (literally translated, Years of Lead), extreme activism in favor of worker’s rights just meant as in opposition to the capitalist system, run in parallel with times of social tension and terrorist attacks.

Capitalism can be personified by those many families having engaged a business project, being largely granted by the public order and legalized institutions, particularly by banks and insurance companies¹⁹. The active role played by the circle of bank’s credit in the rise (and future shaping) of capitalism is today out of discussion and it is very much concerning the

¹⁶ *Francis Fukuyama*, *The end of history and the last man*, 1992, Free Press, who, in synthesis, argued that the last man, politically meant, is probably been Napoleon, given that the legal structures of modern democracies do not allow the persistence of a man’s mind psychological attitude in managing with politics.

¹⁷ *Benjamin Libet* is the neuroscientist who is told to have firstly experimented the illusionary perspective of being the mind an immediate reflection of the brain, see *Marina Lalatta Costerbosa* (a cura di), *Lo spazio della responsabilità*, ed. Il Mulino, 2015.

¹⁸ *Diego Maria Papurello e Elena Gozzoli*, *Il neurologo clinico e le neuroscienze: la responsabilità del dato tra assunti teorici e realtà applicative*, in *Marina Lalatta Costerbosa*, *cit.*, p. 50; more skeptical about the contribution of neuroscience for development of justice are *Silvia Zullo*, *Quale teoria della responsabilità tra ipotesi naturalistiche e (nuovi) modelli normativi* (*ivi*, *cit.* p. 177) who stresses how juridic knowledge is still based upon the common sense, also called “folk psychology”, considering any individual as a consciousness one, capable to act according to rationals, *Valeria Marzocco* (*ivi*, *cit.* p. 195) who alerts on how the artificial nexus that neuroscience interposes between human intentions and human actions might brake the conceptual meaning of law, meant as a rule of conduct, and *Gabriele Scardovi*, *La responsabilità di sé al tempo delle neuroscienze* (*ivi*, *cit.* p. 127).

¹⁹ *Salvatore Pancari*, *La banca scende in piazza, nuove relazioni, nuovi soggetti*, Benvenuti e Cavaciocchi, Livorno, 1998.

psychology of the playing actors²⁰. Some terrorist attacks were directly moved against banks, bombed intentionally by criminals for political purposes²¹. The Marx-ism followers did concentrate on being the banks' acting not ethic and rather out from the real "material dialogue", which was supposed to deal with productive means, land, machines, management of workers, although having recognized bankers' contribution as intermediators; Marx-ism, indeed, missed to explain the importance of credit and finance over real economies. From here, the incapability of that political theory to explain the rise of the middle class in modern societies, which is quite of a distracting lack, considering that middle classes would have soon be representing a dominant range of voters, thus playing a major role in policy determinations for the coming times, and nowadays still.

Violence colored with "working class hero" paint was prevalently moved by the so called Red Brigades (*Brigate Rosse*) having had their top evidence in the 1978 murder of Parliament member Aldo Moro (five times president of the Government and representing the Christian party). But crimes and violence were also moved by some extremely conservative fighters, as in the case of the 1969 attack to the bank of agriculture in Milan, whose murders are still to be found, the happening of which initiate what the British journal the Observer defined the "strategy of tension"²². The Italian "strategy of tension" ended up, hopefully, in March 2002, when the last crime explicitly linked to labor relations happened in Italy, victimizing professor Marco Biagi, teaching labor law in Emilia Romagna, a north region of Italy (not being that an isolated case²³). Biagi was working upon the Government commission to adjust labor legal institutions to better fit not only enterprises' interests but individual labor rights generally as well.

Against such an historical context, in order to understand the more recent development of Italian labor law, it is necessary to explain why labor law and industrial relations are to be considered, instead, apart from terrorism.

Terrorism is not much about the ideological confrontation that, as we've just recalled above, takes place both at considering law formally and substantially, it is not about the authority rising up from values that are supposed to be shared amongst people, terrorism is rather about the use of power. Terrorism is thereafter apart from labor law, although significantly having crossed the political ideas that moved working people across the countries. Terrorism, to be meant as a violent abuse of power, actually can challenge forms and categories to be applied in societies, and shapes the civil institutions which stand therein, it attacks social conventions, it has affected and can affect the free determination of industrial relations worldwide. Terrorism is an intentional use of power to psychologically force people, not necessarily being them the

20 Salvatore Pancari, cit. (p. 60), reports the Werner Sombart's thesis affirming that modern capitalism has a psychological nature, being it developed in accordance with human being personal scopes, and particularly by human beings acting economically according to entrepreneurial projects.

21 1920, September the 16th, bomb attack to the J.P. Morgan site at Wall Street, New York, was determined by the Italian anarchist Mario Buda, killing 38 people and 143 injured; 1969, December 12th, bomb attack to the Bank of agriculture in Milan, killing 17 people and 87 were injured 87.

22 The Observer, 1969, December the 14th, reported by *Rosario Aitala*, *Il metodo della paura*, ed. Anticorpi La Terza, 2018, (p. 71).

23 Professor Ezio Tarantelli, who taught economy and labor, akin to trade unionism, was killed in Rome in the car park at La Sapienza University, in 1985 March the 27th, by hand of the Red Brigades (<https://ildubbio.news/ildubbio/2019/03/31/il-pensiero-di-ezio-tarantelli-rimane-sempre-attuale/>, last consulted **); professor Massimo D'Antona, who taught labor law and worked as a consultant for the Government, having studied deeply the statutory ruling regarding unfair dismissals, and the work within public bodies, was in 1999, May the 20th, in Rome (<https://www.google.com/amp/s/www.ilfattoquotidiano.it/2019/05/20/massimo-dantona-uomo-perbene-membro-dellelite-prima-che-venisse-delegittimata/5191385/amp/>, last consulted **).

political enemy, nor necessarily by direct violence, in order to achieve an ideological result. It is nowadays a controversial category, at the clearest recalled as “*a method just functional to the power, it is the use of fear to satisfy political and ideological interests, and its history is, essentially, a reportage over the abuse of humanity*”²⁴.

The category of terrorism as we now mean it, was firstly used in occasion of the French Revolution: it was invoked by those wanting the revolutionary movement to get rid of the old monarchical institutions, like the ruthless leader of the Jacobin party Maximilien Francois Isidore De Robespierre; some decades after it has been invoked in Great Britain by Jeremy Bentham, who dealt with parliamentary reforms and concluded by affirming that political voting can be not the outcome of a free choice, but obtained by way of terror and violence, “*by rejecting, repressing, submitting and excluding any other competitor*”²⁵, deriving that politics might be accused to be not the result of a positive art, but a method to exercise a public violence.

According to reported historical facts, terrorism is been registered worldwide for the achieving, or for the maintaining of a position of power as well; as a method inflicting fears, it has been used many times by way of established institutions, and many times these administration have covered explicit and evident crimes for the maintenance of their own power. At the international level, in 2001 started a new era for the meaning of terrorism domestically and geopolitically: the Twin Towers attack in New York showed up a conflict standing certainly out from the political struggle amongst classes (capitalist versus proletarian) and declaring itself to be grounded, as many times happened in ancient history, on (a deviated finalization of) religion, for the achievement of fanatic (ideological) purposes more than to directly get power, thus presenting the character of a war between civilized societies, and within society. That is something that makes stronger the argument of being labor law out of concern when facing such phenomenon of violence in countries and across countries.

Nevertheless, it would be a rather superficial explanation to argue that “labor itself” is nowadays out of concern from the spaces where terrorism keeps being exercised. As already said above, to understand how labor, and its ruling labor law is moving, in recent times, is better to separately analyze domestic issues from the international context.

Going back to past times of “*Anni di Piombo*” in Italy, it is reported that those revolutionary actions, acted under the name of *Brigate Rosse* or *Lotta Continua* etc. were largely “*determined by a very strong political fragmentation and by the polarization of positions grounding our immature democracy, and that not terrorism nor political violence were a direct derivation of poverty and inequality (...) while extreme ideology played an important attractive influence over marginalized individuals only*”²⁶. In other words, criminal actions were acted by vulnerable minds more than because of organized will to get rid of real problems.

Sticking to the Italian situation, there are peculiar terrorist attack which better explain the complexity of interests that stood behind their happening, to the specific purpose of highlighting that labor law and industrial relations, meant for what they are actually, formally

²⁴ *Rosario Aitala*, cit. (p. 26) the author clarify that the serial repetition of violence, regularly and systematically, is certainly something that rise up the terror, whenever the actions are concretely capable to rise it up, but violence is terroristic also when acted by way of a single action causing damage to someone, because other people might fall into despair imagining themselves or their relatives in the same situation.

²⁵ *Rosario Aitala*, cit. p. 30-32.

²⁶ *Rosario Aitala*, cit. p. 75.

or substantially, have been finalized for criminal purposes, just like it happens with religions in international terrorism nowadays, in order to mislabel an abuse of humanity.

Magistrate Rosario Aitala recalls how the “strategy of tension” that Italy experienced domestically since 1968-1969, came back in 1993, when terrorism expressed itself not anymore on the flow of socialism-communism, nor anarchism, as it happened in the couple of decades earlier, but because of the criminal intentions of Mafia. Mafia is an organization whose powers are historically structured upon the economic institution of the land-ownership (*il latifondo*) and which focuses its original roots in the regional territory of Sicily, in the south of the country. In 1993 Mafia terrorists bombed over two prosecuting magistrates, Giovanni Falcone and Paolo Borsellino, killing eleven persons. But we cannot comprehend entirely that wicked actions without doing some steps back in the Italian Republican history, and particularly back to 1947, when the Republican Constitution was adopted after the Second World War.

In 1947 there was a political struggle going on amongst the newly established parties, supposed to be going to rule over the country, but there was not an actual perspective that communists would have take the lead over more moderate political representatives. What is reported to be underneath that struggling, is a sort of play amongst three players: Mafia, institutional-economical-political power and the neo-fascists. Uneducated bandits were isolated, instead, also because of the 1923 fascist reform of the school, that was based on classic literature, focused on developing the future classes of administrators. In 1947, May the first, precisely at Portella della Ginestra, Sicily, while the Republican Constitution was being written in Rome (it was approved precisely in December 1947), a terrorist attack took place over a folk just celebrating the worker’s day, which was praxis in use anymore during the fascist period.

Land owners and Mafia associated are defined to be naturally conservative, considering that country labor as therein involved was organized within a land-feudal type of society that, once the Republic was established, began to connect to that central (and regional) administration. What then was perceived as scaring from those owning economic power (land owners, capitalist and their political representatives) was the spectrum of the communist society. In other words, what Mafia and the neo-fascists wanted to avoid was the future victory of those representing workers withing the public administration. This is what stood behind the shooting at Portella della Ginestra, provoking the murder of eleven persons and several injured. The then Minister of domestic affairs Mario Scelba, rapidly defined the attack as a territorial crime to be related to famous bandit Giuliano. But many similar attacks followed in the next years, having the same matrix and very often none was found to be guilty.

Thereafter, the communist ascendancy to the power within the State is being opposed, notwithstanding the effort of many militants, in and out from the public assemblies, like Enrico Berlinguer and Aldo Moro, who tried to articulate what is called the “historical compromise” between the communist party and the governing once (essentially the democratic Christian party that Moro was leading). Communism has been contrasted till the huge sacrifice of Aldo Moro, who was open to a communist participation in the Government, while the Red Brigades on their part wanted the State to set out of prison some of their activists, and reacted to the State resistance and strictness by raping and murdering those men speaking for the State indeed, like Moro. It was 1978.

Eloquently on the theme of communism as an ideal when facing the authority of the State, it can be reported the visionary dialogue between a magistrate, speaking for the public order and

representing the bourgeois legal system, and an ex pro-communism fighter: the magistrate argues that communism is against an instinctive and natural character of every human being from his birth (“*that’s mine!*” says the baby) while the ex fighter keeps on replying from a rational point of observation and concludes by saying that communism is not something that one needs to query about, communism is rather an answer²⁷.

Investigations found that while the crimes at Portella la Ginestra were moved by the will to stop a political process²⁸, the 1993 murders were meant to cope with a more strategical and collective interest of Mafia, in times when the Cold War was ended and capitalism had won: the State started to set in place the first proceeding considering it as a unique phenomenon, and Mafia wanted to stop it by way of inflicting violence and fears. Nevertheless, because the 1993 terrorists were moved by irrational considerations and single opinions more than by a shared understanding, they did not success in their ideological and criminal purpose.

After the decline of the strategy of tension amongst capitalists and communists as a massive social phenomenon determining politics worldwide, after the decline of Mafia, as a massive phenomenon as well, being struck down by the State, that arrested those responsible for the 1993 criminal offences, times seem to have come for a clearer understanding of Italian historical reality and for the general “Rule of Law” to apply, considering labor law and beyond.

ITALIAN RECENT DEVELOPMENT OF DOMESTIC LABOR LAW

The main overall Reform for labor/industrial relations in Italy was approved in 2014 (*Legge n. 183*) and was gradually implemented in 2015: it deals particularly with the whole of collaborative work being performed personally on a continuous base, to be ruled as a subordinated type of employment any time the work is organized by established working time and working places. Such latter legal presumption over subordination does not apply to intellectual workers, administrators and sports players generally, nor in case where a national collective agreement is applicable; later amendments essentially removed it, reporting on judges the ascertainment over facts that actually evidence the collaborator’s state of subordination in case of dispute²⁹. Moreover, in 2017 the legislator approved an explicit regulation (*Legge n. 81*) covering self employment lacking of entrepreneurial nature; together it has been approved an explicit regulation over subordinated workers performing agreements that, pursuing the balancing of life and working times, permit to employees to do the job not necessarily inside the employers’ premises and not necessarily in accordance to a time sheet, particularly by means of technical equipment (it is called “*lavoro agile*”, a sort of Italian translation from the English term “smart work” as previously in use). Significantly, the 2017 statute considers an abuse from the committing party to a self employed the fact of not releasing a written contract or the fact to unilaterally change the working conditions; important deductions for tax purposes are provided for continuous learning and connected needs to travel for self employed, while a technical supervision by the public administration

²⁷ *Erri De Luca*, cit. p. 116.

²⁸ Investigations proved that bandit Giuliano was actually asked to attack the communists at Portella, but the name of those who asked for action remains unknown.

²⁹ Among later amendments, it has been the 2019 *Legge n. 129* to eliminate the legal presumption over the fact of the collaborator’s duty to perform “exclusively by him/herself”, as well as to perform at established time and places – following that it is going to be a matter to prove in tribunal the fact of being the worker obliged to perform not by means of others, when and where. The statute also provides a special treatment for platform workers, defined as those delivering goods in behalf of the seller in urban areas by bike or motorbike, according to digitalized applications.

and the involved representative bodies is set up regarding social security, welfare, and professional learning.

Both the Reform for subordinated work and self employment look at a remarked role for the central State in the basic management of the employment issue; they equally stress the need to balance workers treatments with family needs, to balance welfare and social security equilibrium and the pursuing of productive goals; the 2014 Reform recognizes the need for a statutory hourly wage and confirms the policy to stress the fight against discriminatory treatments.

The 2014 and 2017 legislators changed the functioning of public offices which provides employment opportunities, by reducing the role of the regional administrative once, and by introducing a new national agency (ANPAL) working along them and eventually taking the lead. About this amendments, it is important to recall that employment offices were ruled since 1949 (and till 1996) in order to exercise a monopolistic power over the supply and demand of job opportunities. Such a system was found to be in contrast with the European Union Treaty, and particularly with article 86 containing the order not to abuse of a dominant position; particularly, in the case brought before the European Court of Justice³⁰, Italian offices for employment were exercising an abuse directly impacting the claiming cooperative, that was trying to offer the kind of intermediating service just monopolized by the public offices. According to *Legge 276/2003* (so called *Legge Biagi*), which expressly abrogated the 1949 law, the intermediation in employing workers is not anymore conceived as a public function, just uniquely managed by the public administration, rather it must be thought as a service to be offered both by private and public bodies.

When dealing with intermediation in delivering employment opportunities, the main news about the 2014 Reform is that the legislator, followed by the 2017 legislation, gave back to the State the central power to coordinate local agencies operating on the regional territory: the *D.lgs n. 150/2015* established the national agency for employment (ANPAL), meant to coordinate the action of the Ministry of Labor, the action of Regions, the action of INPS (the national institute for pensions and social security), INAIL (the national institute for injuries and sickness provoked by labor) and ISFOL (now called INAPP, the national institute for public policy innovation) in order to control over the supply of labor opportunities, as well as for watching over the so called L.E.P. (essential level of – public agency – services), taking on the liability to act in place of the Region whenever L.E.P. are not respected.

It comes out that the Italian State is nowadays exercising a governance over the labor market that, by means of both the private and the public sector, is empowered to essentially verify and certificate the status of employment and the status of employability of workers all over the national territory. The ANPAL is now liable for delivering also the public benefit against unemployment (called *reddito di cittadinanza*) introduced in 2018 in order to let anyone who is effectively unemployed to pass toward a situation of employment by means of the State intervention. The mechanism should work for distributing the minimum benefit to the unemployed (who is supposed to be not a reach person) who must in return engage him/her self to be trained according to existing supplies from employers coming from all the national territory³¹, thus being “actively” helped for entering back into the labor market.

³⁰ Case 55/1996, decision released by the ECJ on 1997, November the 11th, so called Job Centre decision.

³¹ *Legge n. 26/2019*; the economic assistance is conditioned not only to training; the worker is supposed to accepts supplies of jobs that can fit his/her skills or potential skills, also by moving from place of residence.

What above recalled can be taken as arguments to verify that Italian domestic labor law is tending towards increasing occupation, in other words, increasing the employment supply: recognizing labor rights to atypical workers like collaborators, enlarging the scope of the ruling protecting subordinated work, recognizing self employment protections, actively introducing unemployed citizens to labor via the *reddito di cittadinanza*, etc.. This is coherent with classic economy theory supposing that work is created by private enterprises and not by public bodies as well (as in reality it happens to be). On the other side, the recognition and the implementation of labor fundamental rights, increasingly balanced with familiar needs, result to be less evident at the statutory level and rather left to the judiciary determination (it has not being reached a statutory determination for the hourly minimum wage, the new norms against unjust dismissal increase the judiciary powers, as well as the dealing with discrimination matters); as an exception to this can be recalled the introduction, in 2011, of a specific criminal sanction for those taking advantage from workers in need, remarked in 2016 (*Legge 199*) with a norm that extends the sanction to those (public bodies or private intermediators acting both individually or upon an organized base) having taken advantage from denial of workers fundamental rights.