Labour Law and Industrial Relations in Recessionary Times
ADAPT LABOUR STUDIES BOOK-SERIES

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Labour Law and Industrial Relations in Recessionary Times: The Italian Labour Relations in a Global Economy

By

Michele Tiraboschi
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FOREWORD

In the last fifteen years, and as a result of the passing of the Treu Reform (1997) and the Biagi Reform (2001-2003), Italian Labour Law has undergone a substantial overhaul. The reform process was a fragmentary and turbulent one and was marked by sudden changes of direction and social turmoil, which brought about the assassination of Prof Marco Biagi, immediately after the presentation of the White Paper on the Labour Market that he drafted.

Today, low rates of employment and labour market dynamism mostly affect young people and women. Major inequalities in terms of job opportunities are still prevalent between northern and southern Italy, and traditional phenomena such as precarious employment, over qualification, and graduate unemployment are more pronounced.

Low productivity—coupled with major differences between the labour costs borne by employers and workers’ net income—furthers the improper use of contractual schemes in atypical and temporary work, quasi-salaried employment, joint ventures as well as the recourse to contractual arrangements to ease integration between learning and working, most notably training and apprenticeship contracts.

Shortcomings in employment services—alongside a failing educational system which is far from meeting the employers’ needs—produced an attitude on the part of workers and trade unions towards employment aimed at safeguarding individual jobs, rather than guaranteeing overall occupational levels. In turn, this state of play results in increasing levels of dependence on the government—by way of income support measures which are provided on a permanent basis—thus discouraging processes such as restructuring, redundancies, and vocational training. The system of safety-net measures is not designed to promote access to employment of workers made redundant and their participation in training or retraining schemes.

Undeclared work in Italy, which is reported to be twice or three times higher than in other European countries, is indicative of two aspects which are intimately intertwined. While acknowledging considerable levels of backwardness and illegality, one might also note the dynamic nature of an ever-growing society which strives to adapt to sudden changes in the world of work. Yet such attempts prove unsuccessful, for—as the recent
reforms exhibit—extant legislation fails to keep pace with these changes and clings onto traditional contractual arrangements—e.g. permanent and salaried employment.

Accordingly, the fact that today Italian Labour Law is faced with much uncertainty should come as no surprise, as labour legislation is devoid of an underlying approach and fails to keep up with real production processes. Compounding the picture is the crisis of the industrial relations system at a national level. The reform issued by the Monti’s Government in 2012 did not provide a solution to unravel some major knots in the Italian labour market, the consequence of certain historical events that took place at a national level.

Indeed, the parties to the employment relationship are not satisfied with the watered-down and fragmentary nature of labour legislation. Workers feel more insecure and precarious. Employers reckon that the regulation of the employment relationship is not in line with the challenges posed by globalization and the emerging markets. Such profound dissatisfaction with labour laws is apparent even in the aftermath of recent reforms, as labour legislation is regarded as complex and consisting of too many provisions, thus not providing safeguards to workers and disregarding current production processes and work organization.

We are of the opinion that some of the major issues in the recent reforms of labour laws in Italy are to be explained by the nature of the debate among lawmakers and trade unions, which is still parochial and self-referential. This is what emerges—yet partly—from the debate among legal scholars, which is still dominated by excessive attention to the formal aspects of the legal process resulting from high levels of state regulation, for central government still plays a major role in regulating the employment relationship.

The present volume includes a number of papers written in English and published in the last fifteen years in which the Italian labour market underwent many changes. The intent here is not only to provide the international readership with a frame of reference—in both conceptual and legal terms—that helps to appreciate the Italian Labour Law currently in force. The real goal of this volume is to contribute to move beyond the self-referential nature of the Italian debate on the reform of labour laws. This would supply the reform process of the Italian labour market with an international and comparative dimension which—in accordance with the programmatic approach of Marco Biagi—should also feed the debate at a national level.
PART I

ECONOMIC CRISIS
AND LABOUR LAW REFORMS:
MODELS AND SCENARIOS
CHAPTER ONE

YOUNG WORKERS IN RECESSIONARY TIMES: A CAVEAT TO (CONTINENTAL) EUROPE TO RECONSTRUCT ITS LABOUR LAW

1. Introductory Remarks

Policy makers, social partners, and the public opinion monitor with interest and growing concern the steep increase in youth unemployment, in Europe more than elsewhere. Indeed, all the main international institutions—supported by the analysis of labour market experts—seem to uphold that young people have been hit the hardest by the “great crisis” that began in 2007 with the collapse of financial markets.

1 The present contribution was previously published in 2012 in the E-Journal of International and Comparative Labour Studies 1, No. 1-2.

2 In other areas of the world, especially in developing countries, the cultural lens through which the problem of youth unemployment is explored might be different. See on the issue Senatori, I., and M. Tiraboschi. “Productivity, Investment in Human Capital and the Challenge of Youth Employment in the Global Market. Comparative Developments and Global Responses in the Perspective of School-to-Work Transition,” 5th IIRA African Regional Congress, IIRA Cape Town, South Africa 2008.


It is only natural then that in a time of ongoing recession and many sacrifices demanded of workers, \(^5\) feelings of apprehension and hope arise with regard to the future, therefore involving younger generations and their employment prospects in the years ahead.

The notion of "unemployment" has long become less and less appropriate to frame the critical aspects of the interplay between young people and employment. \(^6\) Of equal importance, as well as extensively discussed and highly controversial, are those phenomena accompanying young people in their school-to-work transitions, particularly inactivity, precarious employment and low wages. \(^7\)

Nevertheless, unemployment still remains a main indicator, as it supplies clear and immediate evidence of the vulnerability of young people in the labour market, also for those who are not experts in the field. According to relevant data, \(^8\) in most countries—whether industrialised or non-industrialised ones—high levels of youth unemployment have been reported long before the onset of the recent economic and financial crisis, to the extent that many specialists made use of the term *déjà vu* to refer to the phenomenon. \(^9\)

Accordingly, the concern resulting from high youth unemployment rates is not a novelty. What appears to be new here, at least within the political and institutional public debate taking place in recent years, is the emphasis placed by Europe on the future of younger generations and how this issue is taken as an excuse to justify—or perhaps to impose—major labour market reforms and deregulation on nation States overseen by central institutions, which will also limit their sovereignty. \(^10\)

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\(^5\) Particularly relevant in this respect is the study presented in the *World of Work Report 2012* of the ILO (*op. cit.*, note 2) on the measures that affected workers in terms of protection reduction.


\(^7\) This issue has been extensively discussed in Tiraboschi, T. 2006. “Young People and Employment in Italy: The (Difficult) Transition from Education and Training to the Labour Market,” *IJCLLIR*, 81 ff.

\(^8\) See, among others, N. O’Higgins, *op. cit*.


\(^10\) In this respect, see Baylos, A. 2012. “Crisi del diritto del lavoro o diritto del lavoro in crisi? La riforma del lavoro spagnola del 2012”, *Diritto delle Relazioni Industriali*, No. 2.
Put differently, labour law rules—chiefly concerning high levels of protection against termination of employment—would explain high youth unemployment rates as well as the increasing recourse to atypical, non-standard or temporary employment arrangements.

Indeed, there is little wonder about this issue, save for the fact that—in a time of severe crisis and ongoing recession—fathers are now called to make a lot of sacrifices that are deemed to be “acceptable”, for they contribute to provide their sons with better employment prospects. In this sense, the “great crisis” has acted as a catalyst for long-awaited labour market reforms and liberalisation processes, which however have never been fully implemented so far due to a lack of adequate political and social consensus.

Of particular significance in this respect is an interview with the President of the European Central Bank, Mr. Mario Draghi, which appeared in the *Wall Street Journal*. In the midst of the international crisis and in the name of younger generations, Mr. Draghi questioned the future sustainability of the “European Social Model”, urging a major overhaul of national labour regulations in Europe, which are currently more favourable to labour market insiders, i.e. adult workers.

This is what occurred in many European countries between 2008 and 2012 with the introduction of a number of unpopular measures aimed at reducing workers’ protection that have been imposed on increasingly disoriented and helpless citizens, and presented as an unavoidable sacrifice required by the current macro-economic situation with a view to improving employment and retirement prospects (also) of younger generations.

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14 As far as Italy is concerned, see Prime Minister Monti’s Inaugural Speech to Parliament on http://www.governo.it/. Reference to future opportunities of younger generations is a *leitmotiv* of Government discourse. See, in particular, Monti, M. 2012. “Italy’s Labor Reforms Are Serious and Will Be Effective”, *The Wall Street Journal*, 6 April 2012, also in the *Adapt International Special Bulletin*, No. 1.
Young Workers in Recessionary Times

This trend has not been witnessed only in Europe, since 40 out of 131 countries—as are the Members of the International Labour Organization (ILO)—have reduced their standard employment protection levels.\(^{15}\) This aspect is particularly apparent in industrialised countries, and chiefly in central and southern Europe, where 83% of anti-crisis reforms focused on employment protection, with particular reference to the regulation on dismissal for economic reasons.\(^{16}\)

In view of the above, and in the context of a dramatic deterioration of the economy and lack of public resources for subsidies, this paper sets out to understand whether job-creation policies, employment incentives,\(^{17}\) and deregulation of labour laws in Europe—in particular in relation to unfair dismissal—could really provide a possible (if not the only) solution to cope with the issue of youth unemployment.

2. The Issue of Youth Unemployment: The New Perspective Provided to Labour Lawyers by a Comparative Study

Intuitively, it could be argued that high protection levels provided to labour market insiders may discourage or pose an obstacle to outsiders, thus including young people. Drawing on this assumption, at the end of the last century, the OECD started implementing a set of measures collected in the well-known _Jobs Study_.\(^{18}\) The studies that followed have

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Limited data reveal increased youth employment prospects in countries with a deregulated or flexible labour market. To the contrary, many studies show that higher workers’ protection actually favoured, at least in the medium term, youth employment during the “great crisis”.

Likewise, straightforward is that in deregulated labour markets with higher flexibility in hiring and dismissals, youth can be discouraged or find themselves in a less favourable position compared to adults, due to a lack of work experience, no well-established connections or relations helping them in the job search, lower productivity, lack of expertise and skills, and competition with migrant workers, who are more inclined to take up jobs and withstand employment arrangements deemed unacceptable by the local population.\footnote{With reference to internal and external labour market, see Bell, D.N.F., and D. G. Blanchflower, \textit{op. cit.}, 2. In the same vein, see also ILO. 2010. \textit{Global Employment Trends for Youth}, cit.}

Labour lawyers, like the author of the present paper, have limited knowledge of technical and conceptual instruments to take part in a debate—that is also very controversial among labour economists—on the effects of the regulatory framework on the labour market organisation and regulation. Because of the thorough knowledge of the regulatory and institutional framework, labour lawyers can however present economists with a different interpretation of the potential impact of protection measures on youth unemployment rates.

This is the real challenge to take on, as pointed out also by the International Labour Organization over the last decade. According to the ILO, the current available indicators are perfectly suitable to afford an analytical framework through which detailed information about the condition of young workers in the labour market in the different areas of the world might be given. It is still the ILO, which stresses that the real
difficulty is rather to identify the tools to improve employment conditions by means of existing indicators.\textsuperscript{21}

Fig. 1-1. Relative Youth Unemployment Rate (2008 and 2010)

Note: The relative youth unemployment rate is the youth to adult unemployment ratio.
Source: Own Elaboration on OECD data

What labour economists may interpret by simple facts empirically proven—if not even the outcome of their investigation—is seen by labour

law experts, especially if a comparative perspective is taken, as some useful insights to better assess the efficiency of labour market institutions and, in particular, the impact of protection measures on youth unemployment.

Fig. 1-2. Youth Unemployment Rate 2010

From a comparative analysis of the labour market indicators—before and after the “great crisis”—what emerges is the different ratio between youth and overall unemployment rates (see Fig. 1-1). Of particular interest to a labour lawyer is that in some countries youth unemployment is broadly in line with that of adult workers (Germany, Switzerland), whereas in other countries, regardless of its level, youth unemployment is about twice (Portugal, Denmark, Spain, the United States) or three times as high as that of their adult counterparts (Italy, Greece, the United Kingdom, Sweden).

At first glance, a “geographical” representation of the different youth unemployment rates intuitively shows that youth unemployment is not much of a problem in those countries (or in those legal systems, as a labour lawyer would put it) which make extensive use of apprenticeship, and which consider this tool not merely as a temporary contractual
scheme, but rather as a lever for placement\textsuperscript{22} to achieve better integration between education and training and labour market (Fig. 1-2).

The same holds true for inactivity, most notably the issue of the NEETs (not in employment, nor education or training), which is less serious in countries where apprenticeship is resorted to as a means to obtain secondary education (Fig. 1-3). However, there is more. The best performing countries in terms of youth employment, such as Austria and Germany report high levels of workers’ protection, especially against unfair dismissals (see Fig. 1-4). By contrast, countries with more liberal legislation on dismissals, such as Denmark, the United Kingdom and the United States, account for high levels of youth unemployment. Evidently, they do not fall within the European countries with the worst youth employment outcomes, such as France, Italy and Spain, but youth unemployment is still twice as high as that recorded in the best performing countries.

This simple and straightforward empirical observation seems therefore to uphold the assumption that major difficulties for the youth entering the labour market are not caused by inadequate regulations, but rather by inefficient school-to-work transition processes as well as by the failure to properly match labour demand and supply. A good match between labour demand and supply is, however, not to be intended in static terms as merely dependent on more or less effective employment services—be they public or private—but rather in relation to the devising of academic careers which are consistent with current and future labour market needs in terms of training and skills acquisition.

\textsuperscript{22} See in this connection the article by Ryan, P. 2011. “Apprendistato: tra teoria e pratica, scuola e luogo di lavoro”, \emph{Diritto delle Relazioni Industriali}, No. 4, analysing the German “ideal” model, as opposed to the lack of transparency of market-oriented systems and to Italy and the United Kingdom, where apprenticeship is an employment contract.
Fig. 1-3. NEET Rates 2010

Source: Eurostat data
Fig. 1-4. Overall Work Protection and Work Protection against Individual Dismissal (0 = less restrictive; 4 = more restrictive)

Source: Own Elaboration on OECD data
3. Flexicurity and Apprenticeship: the Limits of the Proposal for the so-called “Single Employment Contract”

Countries embracing the flexicurity model as strongly recommended by the European institutions\(^{23}\) report positive outcomes in terms of youth employment, with high employment rates and low unemployment levels (see Fig. 1-5).

Fig. 1-5. Youth Employment and Unemployment Rates 2010

![Diagram showing youth employment and unemployment rates for various countries]

Source: Own Elaboration on OECD data

This led many experts to put forward the introduction of a “single employment contract” both in central and southern European countries. In some of these, including France, Italy and Spain attempts have been made to adopt new legislative provisions favouring a “single”—or at least a “prevailing”—contract for salaried workers, generally open-ended and with significantly reduced workers’ protection against unfair dismissal, to be offset by a higher degree of protection in the labour market, no longer provided by the contract itself, but rather by a more generous universal system of unemployment benefits, that can support workers during unavoidable and increasingly frequent occupational transitions.

The misleading charm and the limits of the proposal for a “single employment contract”—rest on the irrational belief, not even put forward in Fordism, with standardised production and work organisation models, that the duality of European labour markets can be overcome by reducing the multifaceted and diverse reality of modern work and production to fixed contractual arrangements, through one single contract of employment, abolishing self-employment and coordinated and continuative collaborations (quasi-subordinate work) also in their most genuine forms. This is achieved by reducing to a limited number of cases the scope to lawfully resort to temporary work, by prohibiting it also when

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plausible technical, organisational and productive reasons are in place, by
disregarding the educational value of access-to-work contracts directed to
disadvantaged groups as well as of apprenticeship contracts for youth,
with a view to favouring a pure and poorly balanced type of flexibility,
where freedom of dismissal is easily granted upon payment of severance
pay.

On close inspection, a solution of this kind would damage not only
employers, but also the workers themselves, most notably young people
and those forced out of the labour market, who, in all likelihood, would
bear the heaviest brunt of the reform, as they would no longer be doomed
to “precarious”, but rather to “illegal” employment in the shadow
economy. Not only would they have no access to internships, job-training
contracts and project work, but they would also be denied protection
resulting from employment stability, at least during their first years of
work for the same employer or client.

This explains why the proposal for a “single employment contract”
was soon dismissed in all the countries where it had been put forward,
replaced—at least in France\textsuperscript{27} and Italy\textsuperscript{28}—by a major overhaul of the
apprenticeship system, as well as of those schemes (of contractual of non-
contractual nature) promoting labour market access for entrants, including
internships, training and guidance. This can be seen as a reasonable trade-
off based on the need to reduce the mismatch between labour demand and
supply. A solution that is supported, in the author’s view, by the evidence
that apprenticeship countries (as defined in par. 1) coped better with the
crisis,\textsuperscript{29} reporting a significantly lower increase in unemployment (see Fig.
1-6), and in some cases, a reduction in the unemployment rates (see Fig. 1-
7). This aspect can be appreciated in comparison with flexicurity countries,
which, by contrast, proved to be more vulnerable in the recession.\textsuperscript{30}

\textsuperscript{27} Law No. 2011-893, so-called “Cherpion Reform”.

\textsuperscript{28} Legislative Decree No. 167/2011. See in this connection Tiraboschi, M., ed.

\textsuperscript{29} See Simms, M. \textit{op. cit.}, in particular 24 ff.

\textsuperscript{30} See Andersen, T. M. 2011. “A Flexicurity Labour Market in the Great
Recession: The Case of Denmark”, IZA Discussion Paper, No. 5710, Bonn: IZA.
Market Measures in the Crisis and the Convergence of Social Models”, \textit{W. E.
Upjohn Institute for Employment Research}, 2012.
Fig. 1-6. Youth Employment Rate in 2010 and Percentage Variation between 2007 and 2010

Source: Own Elaboration on Eurostat data
Fig. 1-7. Youth Unemployment Rate 2007 e 2010

Source: Own Elaboration on Eurostat data