

## The Constitution and social and labour rights in a changing Italy\*

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*Starting from a re-reading of the Constitution and the Fordist-Bismarckian ethos and foundations of Italian welfare, the author draws attention to some aspects being affected by the crisis and by change. In particular he identifies in some sectors of welfare a trend – in line with the principles of the Constitution – towards a universalist vision founded on the principle of social citizenship that is making the system more «mixed» than its original «pure» employment type. In the light of this the article describes the development of ordinary legislation in the early decades of the Republic and the changes in labour and social law; it then focuses on the process of change, which has always been fairly continuous, but in the 1970s and 1980s it set off a process of social*

*and institutional modernisation and a long season of reforms that in the last two decades has developed in a new direction, designed to base intervention on the principle of social citizenship. However, this development has many ambiguities and contradictions, and cannot be seen as complete, above all in a country that still has to come to terms with the project of modernity and fully acquire, culturally and politically, the secular and republican ideals of the universal rights of citizenship. The essay's contribution is to show the importance of the framework of fundamental principles and social rights provided by its Constitution, showing how it constitutes an indispensable basis for a social reform of this importance.*

### 1. The principles of the Constitution and the welfare state

The Italian Constitution can be seen as based on certain fundamental principles, among which, in the view of various writers, the «labour principle» occupies an important position. For example, Livio Paladin (1997, pp. 135ff) distinguishes, in order: the democratic principle, the «labour» principle, the pluralist principle and the principle of unity balanced by the principle of autonomy, as fundamental and concurrent principles of the Constitution. More recently, Amos Andreoni (2006, p. 92) observed: «We can agree on the fact that “the Republic’s face” [...] is identifiable in the democratic and pluralist principles,

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and, still more, in the principles of the person and of labour». (Interestingly, the «labour» principle is linked with that of the person, i.e. with the one that guarantees the inviolability of the personal, physical and moral sphere and the equal social dignity of the individual).

If we now look at the modern welfare states as systems designed to guarantee social and labour rights, we can see that they actually fall into two main welfare models (Ferrera, 2006, p. 19): «[...] one based on employment (adopted by the great majority of the countries of continental Europe) in which the protection schemes are for workers, who are covered by various employment schemes, each with different rules, and the other “universalistic” model (adopted by the Anglo-Scandinavian countries), in which the protection schemes cover all citizens quite apart from their working position».

In these pages I shall be dealing essentially with the former model (which we can also call «Fordist-Bismarckian»), as the Italian welfare system is usually included in this group (Esping-Andersen, 1990, p. 27). Besides, our Constitution assumes the «labour principle» as one of its main defining principles and seems to come down in favour of the employment model of the welfare state, rather than the universalistic model.

It should be said, however, that today we can recognise a trend to develop sectors of universalistic welfare in many employment welfare states too, which are often «mixed» in character rather than the «purely» employment one they began as. This trend is encouraged by the development of decentred health and social services, open to all citizens, and the growing role of the European Union in the social field in promoting a «European social citizenship» (Paci, 2008). This process is ongoing in Italy too, even though the universalistic principles of welfare have struggled to established themselves there, as a result of the weakness of State action and the lack of a deep-rooted culture of citizens' rights in Italian society. From this point of view, a «re-reading» of the parts of the Constitution concerning work and social protection might be useful for understanding what the original principles were behind the construction of the welfare state in Italy (a welfare inspired by the employment or «Fordist-Bismarckian» model), and what those are that might support today development towards a universalistic model of welfare, founded on the principle of social citizenship.

Re-reading the Constitution in this way seems legitimate as it was regarded from the first not as a «static» set of rules, laying the foundations of the new Republic once and for all, but also as a project or «a promise» for the further development of Italian society (Calamandrei, 1950). We can distinguish, then, two sets of constitutional provisions on work and social protection: those of a general or «universalistic» character, which, for that reason, can be a guide in the present changing phase of Italian society, and those that seem more

closely linked to the period when the Constitution was approved and the years immediately following (that is to say, the years of national industrialisation)<sup>1</sup>. The first group of constitutional provisions, articles 1, 3, 4 and 35, allow a reading of labour and social protection in more abstract or non-historically-determined terms. In them the right to work seems to be a universal right of the citizen, alongside other fundamental rights (of freedom, thought, association, etc.). Work here seems less marked by the social and cultural climate of the period, and more the expression of a vision, which does not see the workers so much as a collective fact, a category or social class, but as individual citizens requiring social rights and protection. In these provisions too, in short, work is important, but as an integrated part of a wider concept of social citizenship, and so inseparable from all the other fundamental rights of man (and for that very reason, perhaps, useful to guide us in the difficult task of founding the «post-industrial» society we are now part of on constitutional bases. The second group, by contrast, contains regulations that reflect more closely the «labour-industrial» ethos of the period, and that see employees (factory and office workers) essentially as a central category or social class in modern industrial society. Of course, in 1948, when the Constitution was promulgated, the industrial workers in Italy were no more than a substantial minority. One need only recall that in the 1950s 30% of the active population in Italy still consisted of agricultural workers (and that in many parts of the South this figure was more than 50%) (Pugliese, 2008). Nevertheless, under the impetus of national reconstruction, one can easily understand how the vision of the founding fathers corresponded to widespread expectations in Italian society, typical of a country that was a latecomer to industrial development, but that for this very reason had developed an «ideology of the sprint» towards the model of industrial society to be found in the most advanced countries, anticipating the reality (Pizzorno, 1974).

## 2. *The main constitutional provisions on labour and social protection*

As we know, art. 1 of the Constitution, which opens the part of it devoted to *Fundamental Principles*, declares that «Italy is a democratic Republic founded

<sup>1</sup> Edoardo Ghera (2006, pp. 13-14) has indicated an identical distinction of the articles of the Constitution on social and labour matters to the one we are proposing here, when he identifies a first series of articles (articles 1, 3, 4 and 35) of more general character and a second series of «more specific» articles (36, 37, 38, 39 and 40) designed to protect the worker «[...] as belonging to a given category or social class» and «[...] guaranteeing the particular institutions of labour law».

on work». So work is immediately recognised as having a fundamental place in the country's constitutional order<sup>2</sup>. But how should we interpret this general formulation? The term, «work», as it is used in this article, is clearly not equivalent to the term «workers», which appears in many other articles of the Constitution. Here we should recall that in the Constituent Assembly there was a wide-ranging debate on this point: should art. 1 refer to workers or to work *tout court*. That is to say, there was an attempt to have a vision of the Republic accepted in which the workers as a historically determined social class occupied a hegemonic position. But the Assembly then rejected (by 239 votes to 217) the formulation of art. 1 by which Italy was a «Republic of workers» (Ambrosini, 2005, p. 30). In this way, even though by only a few votes, «[...] the reductive idea of a Republic of workers, if not indeed a Republic of factory and farm workers, as in some of the Constitutions of socialist Europe» (Paladin, 1997) was defeated<sup>3</sup>.

So the reference in art. 1 to work as a foundation of the Republic should be taken as an affirmation of a universal value that leaves aside any historical definition of the workers and completes a vision of man as having sacred and inviolable rights, including that of self-fulfilment in work. That is the natural way to read not only art. 1, but also art. 3 (in the second paragraph of which the Republic commits itself to remove any obstacles that impede the involvement of workers in the economic, political and social organization of the country, immediately after affirming in the first paragraph the equal social dignity and the equality of all citizens under the law) and art. 35 (by which work is to be protected in all its forms and applications), articles that can also be read in conjunction with the other constitutional provisions designed to protect individual civil rights in general, which certainly have an impact on the working conditions and the legal status of labour: we might consider here the articles guaranteeing citizens' equality before the law, the right to personal freedom, the right of association, the right to manifest one's thought, the freedom to take legal action, etc.

We can now examine the second group of constitutional provisions concerning

<sup>2</sup> This emphasis on the concept of work was widespread in the post-war period, not only in Italy, but throughout Europe. It can also be found in the *Preamble* to the 1946 French Constitution, which affirms: «Everyone has the right to work and to have employment». Beveridge's Report on *Full Employment in a Free Society* was published in the same period, and the Italian translation was published by Einaudi in 1948.

<sup>3</sup> Paladin adds (*ivi*, 165), «Nor was there any support for Mortati's proposal that it would be in keeping with the premise of art. 1 to withdraw the vote from the idle, arguing that only workers should be able fully to enjoy all the rights of citizenship».

work which more directly reflect the dominant vision of the period of post-war reconstruction and economic revival. They are provisions mainly aimed at guaranteeing rights and social protection for workers and, in particular, for employees in the private sector, whose contractual power in labour relations was weak<sup>4</sup>. This is so, for example, for articles 35 and 36, designed to guarantee professional training for workers, retribution proportional to the quantity and quality of their work, a working day fixed by law, weekly rest and annual paid holidays. But it is also so for art. 38, which provides for insurance cover for accidents, illness, old age and involuntary unemployment; and for articles 39 and 40 which provide for the extension *erga omnes* of collective contracts and guarantee the right to strike<sup>5</sup>. There are essentially three levels of constitutional protection for the social category of workers: the level of working conditions (qualification, salary, hours and holidays), the level of welfare insurance against the risks of life (illness, accident, unemployment and old age) and the level of representation and collective action (collective bargaining and strike action).

Here it is important to recall that the Italian Constitution distinguishes work proper from individual «activities» or «functions» (like art, science, the profession of a religious faith, etc.) that, in the words of art. 4, «contribute to the material and spiritual progress of the nation». In particular, the Constitution draws attention to the tasks that the family must perform and that are in the first instance (in art. 31) attributed to both parents, but are later, in art. 37, mentioned specifically as «[...] the essential role in the family that female workers must be allowed to perform». What we now call «care work» carried out in the family is thus given specific attention in the Constitution, even though it seems to allow for two possible family models: a «sexist model» expressing a traditional vision of the family, and a «non-sexist model» expressing a more modern vision (on this, see most recently, Ales, 2008).

In this connection one notices rather an important lacuna in the Constitution in the lack of any provisions for the right to public assistance in case of need as a universal right of citizens. Art. 38, in conformity with the labour-industrial ethos of the period, envisages the right to economic assistance only for those unfit for work, and not for those fit for work but in a state of need. One might

<sup>4</sup> Public sector employees, however, both then and for long after, had a distinct legal position, as can be seen, for example, in art. 20 of the Constitution on the responsibility for acts performed by public sector officials and employees in the exercise of their duties.

<sup>5</sup> On the «collectivist» connotation of the function of trade union representation as it appears from art. 39 of the Constitution, see section 4.2 below.

say the same about medical and health care: though art. 32 provides for the right to health as a right of citizens, it guarantees free care only for the «indigent». Overall, in the articles cited there is clearly a prevailing vision of assistance as entrusted largely to women's work inside the family, instead as rights guaranteed to needy citizens.

Overall, we can say that the vision emerging from the second group of constitutional norms that we have just examined corresponds to that of the «employment» or «Fordist-Bismarckian» model of social regulation (Esping-Andersen, 1999; Paci, 2005; Sennett, 2006), which took hold in Europe in the thirty «glorious» years of almost uninterrupted economic development in the post-war period. Its main «pillars» were large-scale Fordist industry, the Bismarckian welfare state, and the traditional family founded on marriage. It had its basic nucleus in large-scale industry, which guaranteed job stability for the breadwinners, but was significantly complemented by public insurance cover against the risks of life and by the provision of assistance and care by the family. It was the complementary effect of these three institutions that allows us to describe it as a «system» or a stable and integrated form of social regulation.

But few authors have underlined the role of a fourth institution or «pillar» of the system: the role of the trade unions. Actually, in Europe anyway, the trade unions were an essential element of stabilisation in the system, representing different categories of workers, defending and extending their rights and social protection, as well as often «co-managing» programmes of insurance and social assistance.

To conclude this section, while we can recognise a series of provisions in the Constitution guaranteeing the rights of work and essential social protection in the historical phase of Italy's transition to an industrial society, with its typical «Fordist-Bismarckian» (and «family») organisation, we can also recognise another series of provisions aimed at guaranteeing work *tout court* as a universal right of citizens, which – as we have already said – could prove useful for guiding the reform of social and labour legislation in the present «post-industrial» transition of our society.

### *3. The development of ordinary legislation in the first decades of the Republic (1945-1975 circa)*

#### *3.1 Labour protection*

In the first decades of the Republic, the right to work and social legislation developed significantly, drawing strength from the approval of the Constitution. Labour law, which had previously been part of private law, «now acquired

autonomous importance and enjoyed a phase of development and consolidation parallel to the phase of implementing the Constitution» (Ghera, 2006, p. 18). It was a development aimed at defending employees, who were seen as having weak contractual powers in the labour relation and so needing protection, which was entrusted to the trade unions and their role of collective representation of the workers.

We can quickly sum up the main labour institutions introduced in this period. The *Cassa integrazione guadagni* (Cig), for example, was set up immediately after the end of the war (1945) and was designed to guarantee employees of large and medium-sized factories in the event of dismissal. A little later (1949) the reaffirmation of the public monopoly on job-finding, based on numerical recruitment, placed serious limits on factories' powers of selection. We should note that both in the commissions set up for the concession of the Cig and in the local and central commissions of the job-finding system, there were representatives of the trade unions. Other important laws in this period designed to strengthen the position of employees were those regulating apprenticeships (l. 25/1955), forbidding the sub-contraction and intermediation of labour (l. 1369/1960) and placing limits on the recourse to temporary labour (which was allowed only for cases strictly indicated) (l. 230/1962). Other very important laws were those introducing the principle of «good reason» to limit employers' powers in withdrawing from a labour contract (l. 604/1966) and introducing an extraordinary redundancy fund (l. 164/1975), which was conceived for cases of company reorganisation, and in the course of time became a form of protection against even long-term unemployment (here too the trade unions played an important intermediary role).

This phase of legislation culminated in 1970 with Parliament approving the Workers' Statute, aimed at protecting the freedom and dignity of workers in the workplace. In effect, the Republic's early years were characterised, according to Crainz (2003, *passim*) by «traditional forms of subordination and anachronistic distinctions» and «lack of rights» in the workplace; many factories «were more like prisons than workplaces», so that union battles «demanded greater dignity for the worker and the right to meet in the factory, equality between white and blue-collar workers, and between men and women» even before higher salaries. These battles, which reached their climax in the 1960s, were «[...] an extremely important lesson in citizenship». They were followed by the student battles of 1968, with the discovery of the authoritarian nature of the school, the family, the barracks, and the psychiatric hospitals, etc. But already the workers' battles of the early 1960s had been «a movement of irrepressible modernity» (*ivi*).

It was on the wave of these battles that the Workers' Statute was approved.

RPS

Massimo Paci

This certainly led to an improvement in working conditions in the factories, but its main effect was to strengthen the unions. As Edoardo Ghera has commented (2006, p. 19): «The Workers' Statute certainly protected the freedom and dignity of the workers [...], but it did it essentially by demanding and guaranteeing trade union activity in the workplace, and by that providing, not so much the individual worker, as the collective force that represented him, with the tools for achieving labour protection».

### 3.2 Insurance protection

If we look now at the legislation for national insurance, in which the Bismarckian component of the Fordist-Bismarckian model of social regulation takes form, we should say that the advent of the Republic and the promulgation of the new Constitution did not cancel some important pre-existing institutions in this field either created by Fascism or that Fascism had inherited from the Italy of Giolitti, when the first forms of obligatory social insurance for the workers had been introduced. In the post-war period some of these institutions, like the large national insurance bodies, centralised but with a large number of regional and local offices, that the Fascist regime had filled with its own placemen, resisted any change, and almost all of them ended up being accepted in the new system by simply renewing the union representatives in the central and local bodies. However, when in April 1947 the D'Aragona Commission (named after the socialist deputy who chaired it) tried to restructure the Italian system along Beveridgean or «universalistic» lines, it partly failed because of its delay in concluding its work (in Spring 1948, when the Constitution was already approved), but above all because the change in the political balance of power after the elections that year made any large-scale reform of the national welfare system impossible (Ferrera, 1984, p. 37).

So, in the space of 10-20 years there was a gradual extension of insurance cover to a series of categories outside the perimeter of salaried industrial work, with Christian-Democrat-led governments increasing the number of special insurance schemes for both pensions and health insurance, each with different systems of contributions and services (Paci, 1975, pp. 516ff). Taking over Robert Castel's analysis (1995, pp. 413ff) of the metamorphosis in post-war French society, we might say that during those decades there was a transition in Italy from a situation in which the working class was the element of «attraction» for the whole workforce, to a more complex situation, with different points of aggregation along a continuum of union and professional categories, each determined to maintain its place in relation to its neighbours.

In this way there was a proliferation of new publicly run insurance funds alongside the general system for employees in the private sector. To mention only the most important cases, in 1956 health insurance was introduced for tenant farmers; in 1957 for artisans and pensions for tenant farmers; in 1959 pensions for artisans; in 1960 health insurance for tradesmen; in 1963 accident insurance for artisans; in 1966 pensions for tradesman, and so on with pensions and health insurance for journalists, doctors, lawyers, engineers, architects, etc. We should remember in this case too that the trade unions of the various categories concerned were represented on all the managing bodies at both central and decentralised level. This situation culminated with the 1968-69 pension reform confirming the apotheosis of the corporative-Bismarckian national insurance system in Italy, with the concession of relatively generous treatment and the extension of the fragmentation of the inequalities in the various systems.

At this point we should also mention disability pensions, which were more a form of welfare than insurance, and were extremely important in the years of Italy's industrial development, when millions of workers left the countryside to seek work in the factories. It was a «pseudo-insurance» system (partly financed by workers' contributions but mainly by the State), which for a long time was managed by the national insurance body Inps, but which never guaranteed a right to the invalid or unemployed worker, as any entitlement was at the discretion of the provincial and regional commissions created for that end, on which union representatives also sat. In short, the government and the unions had an important role in the development of the Italian national insurance system in the first two or three decades of the Republic. The result was a welfare organisation with elements of bureaucratic centralisation and «paternalism» in the concession of specific favourable conditions in contributions, eligibility for services, and the size of pension. Underlining these aspects of bureaucratic centralisation and «paternalism», however, might lead to misunderstanding. I am well aware of the importance of what has been achieved, not only by the unions, but also by the workers, the construction of a vast public system of social insurance and the development of collective bargaining in defence of workers' wages. The restrictions on the worker's individual autonomy (evident in the obligatory nature and the centralised management of social insurance) was, all told, a small price to pay for creating a system of employment guarantees and protection of living standards for the large mass of the workers.

### *3.3 Protection of the family*

At this point, to complete the picture of social legislation in the first decades of

RPS

Massimo Paci

the Republic we must dwell briefly on the legislation in those years concerning the «third pillar» of the system of Fordist-Bismarckian regulation in Italy – the family and the condition of women. In effect – as has been noted (Ales, 2008, p. 538) – legislation in this field in that period was «[...] profoundly steeped in archaic androcentric assumptions and a social insurance law that was still inspired by a corporative vision of the reproductive role of women», which, as we have seen, was partly justified by art. 37 of the Constitution. One need only think of the regulations (which partly confirmed those of the Fascist period) containing a legal presumption of women's exclusive role in care work (survivorship annuities conceived as a reward for the woman's marital fidelity; different pensionable ages for men and women and the penalisation for insurance purposes of care work within the family). In effect, d.p.r. no. 1124 of 1965 reconfirming the regulations of 1939 did not set any limit on survivorship annuities for widows (presuming that she would have cared for her husband) but allowed them for widowers on condition that they were permanently invalid for work and also excluded any possibility of making up lost contributions due to pregnancy or care work in the family (Ales, 2008, p. 541). We should also recall the institution (in 1963) of a health insurance and pension scheme exclusively «for persons of the female sex who perform housework» and the exclusion of men (law 850/1950, confirmed in 1971) from the right to voluntary non-paid absence and paid leave during a child's first year of life. They were all clearly «gender biased» measures, or ones confirming the traditional separation and social exclusion of women.

In conclusion, Italian social and labour legislation in the early decades of the Republic not only followed the dictates of the Constitution (and particularly articles 36-40 mentioned above), but were also absolutely in conformity with the Fordist-Bismarckian (and family) model of social regulation.

#### *4. The change in contemporary society*

##### *4.1 The crisis of the «Fordist-Bismarckian» model*

Before proceeding with an analysis of the development of ordinary legislation we should dwell briefly on the change that has taken place since the mid 1970s, which has affected the Fordist-Bismarckian model of social regulation, putting it in serious difficulty, if not in crisis (Paci, 2005).

Very broadly we can say that, as regards jobs and employment, where once there was a situation in which large numbers of employees were organised in the large factories with an often minute sub-division of duties but with stan-

dard or typical labour relations and contracts, there has now been a transition to a situation where most of the labour force are middle or lower-middle class, employees or economically, but not legally, dependent, working mainly in the service industries, with growing numbers of atypical, non-standard, or short-term contracts.

As for the national insurance system, this is now in difficulty, not only in Italy but everywhere in Europe, due to the reduction in income from contributions and the increase in costs for social services, given the emergence of new risks (short-term jobs, chronic unemployment, new diseases requiring extended hospitalisation, the ageing of the population, etc.), and the social insurance system seems unprepared or helpless to deal with this.

On the other hand, the traditional model of the family, based on the income of a male breadwinner, is also giving way, however slowly and reluctantly in Italy, to the two-income family model with gender equality in care work. In this case, the factors of change are essentially linked to the mobilisation of the new generations of women, their access to higher levels of education, their search for a job as an essential part of their identity, and the cultural change that all this has brought with it.

These changes in the family and in social needs are behind the expansion of the health and social services providing family support in many European countries, as well as employment, training and job-finding services, all of which are typically universalistic in approach (in that they are directed to everyone), but are also often personalised (because they are based on individual demand).

Overall, then, the change in contemporary society is of great significance. The context for it in many analyses is the conceptual dichotomy of the «industrial society/post-industrial society» pairing or by more or less similar dichotomies, in which the terminus *a quo* remains the industrial society and the terminus *ad quem* becomes variously a «service society», «a knowledge society», «a flexible society», «a risk society», «a liquid society», etc. As we know, behind this change many writers see the globalisation of the markets, intensifying competition between companies, as well as the increasing flexibility of production techniques made possible by new information and communications technologies: a series of economic and technological factors.

This account of the present «great transformation» (to use Karl Polanyi's expression) is not wholly satisfactory. Of course, the reference to the upheaval of the productive base, as Marx would say, is important and so it is quite obvious to refer to moments of great economic and technological innovation, such as the rise of national markets and the industrial revolution at the end of the eighteenth century, to mark the transition from a rural to an industrial society,

RPS

Massimo Paci

and the globalisation of markets and greater flexibility of the productive framework to mark the transition to a post-industrial society. Yet, there is another way of looking at the present great transformation. Rather than referring only to changes in the «hard» economic and technological framework of society, identifying caesuras or breaks with the past, I find it useful to also look at the change as a relatively continuous process of social and institutional modernisation, originating in the Enlightenment, the French Revolution and the great American and French Declarations of the sacred and inviolable rights of man and of the citizen (Paci, 2005, chap. 1).

If we look at the question from this angle, which is also the most congenial for reflecting on the Italian Constitution, then the change in European society will seem a historical process that has certainly had pauses and regressions, but that, in Habermas' words (1987), is consistent with the «promise of modernity», as a gradual development «of self-awareness, self-determination and self-fulfilment of the individual». This means being open to quite an important cultural and interpretative operation, accepting the idea that change also needs to be sought in the social and cultural thrust coming from the historical process of individualisation (Giddens, 1994; Beck, 2000; Andersen et al., 2005; Paci, 2005) or «de-institutionalisation» (Castel, 1995) of European society, as a process of emancipating the individual from traditional or pre-established institutions of belonging that «intermediate» and limit the enjoyment of fundamental rights, even when they are legally and constitutionally recognised for him.

With reference to the Fordist-Bismarckian model of social regulation, this means tracing its present-day crisis in the emancipation of the individual from the hierarchical and limiting forms of individual freedom that are typical of the model. In effect, all three of the model's central institutions (large-scale Fordist industry, the Bismarckian system of social protection and the traditional family) typically have strong elements of centralised authority, paternalism and restriction of individual freedom. So alongside the factors of economic and technological change mentioned earlier, we need to place social and cultural factors connected with the secular drive of western modernisation<sup>6</sup>.

Italy moved fairly late along this road, but the last thirty years or so were an important period in this process, which, however, remains to a significant extent still incomplete. There lies the importance of a relevant re-reading of the

<sup>6</sup> We should be more cautious in interpreting the unions as another institution of the Fordist-Bismarckian model. This essay (see section 4.2) contains some reflections on the function of trade union representation, which seems to develop from collective representation of the workers as a «class» or «category» to one more aware of the workers *uti singuli*, paralleling a similar development in labour law.

Constitution, placing it not only in the moment of transition to an industrial society, but also in the present later phase with our hopes of progress towards a society leading to the concrete achievement of social rights as the universal rights of man promised by modernity.

#### 4.2 *Going beyond the collectivist connotation of trade union representation and the right to work*

The unions too, in their function of representing the workers, have been affected by the change in the Fordist-Bismarckian system. In effect, more or less since the 1970s one can see in Italy a transition from a «class» ideology of the trade unions to a vision of the unions as associations (Pizzorno, 1976). The former view aims to represent all the workers and to pursue aims that might be outside its membership but are seen as in the general interest of workers as a whole; the latter concentrates on its members and on representing its specific membership<sup>7</sup>.

The «collectivist» approach in the vision of the unions, prevalent in the early post-war decades, corresponds to art. 39, paragraph three of the Constitution, which sees the representative function of the unions as having a role in public law and affirms the validity *erga omnes* (i.e. also towards non-union workers) of collective labour contracts stipulated by the most representative unions. In the early 1990s Gino Giugni (1994, p. 111) regarded this formulation as outdated and «destined to fill out a slender chapter in treatises on labour law». (On the other hand, as is well-known, art. 39 remained a dead letter in ordinary legislation and the extension to all workers of agreements underwritten by the unions was first a *fait accompli* that was later supported in law, apart from some exceptions).

«Once», continues Giugni, «the mass worker was a reality. Today labour conditions are different, as is the organisation, which is much more centred on different aspects of the individualisation of labour. What before was obscured by the idea of the mass workers is once again functional in labour law too, where there was excessive pressure in a collectivist direction [...] German writers at the time of the Weimar Republic used the word «*Kollektivismus*» constantly.

<sup>7</sup> This transition in the function of trade union representation can be related to a similar one in social solidarity. Here Jacques Donzelot (2007, p. 98) has spoken of a historical transition from an «objective solidarity», based on job belonging: «[...] deriving, quite apart from the will of the subjects, from rational activity through the division of labour», to a more individually aware «subjective solidarity», the expression «[...] of the active or “political” mobilisation of civil society» (see also: Paci, 2008, pp. 4-6).

Nowadays it is never mentioned» (*ivi*, pp. 42-43). Here we touch on a new and delicate aspect of present-day thinking in Italy on labour law: it recognises the need now to come to terms with a theoretical and interpretative tradition which for a long time supported the collective nature of many institutions of labour law. See, for example, what Guido Balandi wrote recently (2008, p. 220) on the subject of labour market law: «In the past individuals on the labour market were practically an exception: they were workers with individual contractual strength, linked to their professional expertise [...]. Now, on the one hand we have fragments of legislation encouraging individual contracts at the expense of or as an exception to collective contracts [...]. On the other, there is no doubt that active measures in support of the labour market are mainly or significantly individual-based, in the sense that they are trying out individual ways of job-seeking [... So there is] a loss or at least a weakening of the collective dimension [...]».

In this connection, Umberto Romagnoli refers specifically to this individualisation process, in the sense of a process of increasing self-determination on the part of the worker. «Post-modernity», writes Romagnoli (2008, p. 211), «has given rise to the need to gear our legal system to the new anthropological and cultural changes, redesigning the image of the individual with his aspiration to decide his own destiny in the face of all forms of power, however protective and beneficial [...]. The law should no longer contain only provisions modelled on a potential “collective worker” but also a series of guidelines for the self-determination of the individual as a legal subject [...]. That is to say, rather than seeking a presumed common good for indefinite and undifferentiated communities, trade unions should be giving priority to seeking more widespread agreement and showing more responsibility towards each worker»<sup>8</sup>.

In this sense, it seems that the ever more frequent recourse to referenda among workers to approve agreements endorsed by the unions is a valid indicator of this development towards trade unions that are more anchored to the explicit desires of individuals. It also seems that the growth of the «service» function of the unions, evident not only in the consolidation of the unions' function as benevolent societies, but also – as we shall see later (section 5.5) – in the development of «bilateral bodies» supplying services «outsourced» by the State to the social partners (Ciarini, 2008) also goes in this direction.

<sup>8</sup> Massimo D'Antona too (in Romagnoli, 2007, p. 164) thought that «[...] labour law should develop on a human scale, in the sense of the citizen in full possession of his prerogatives» and that the unions should change to represent this new subject because «[...] the general emphasis on salaried jobs, around which industrial civilisation has been built, belongs to the past».

## 5. *The season of the modernising reforms*

There remain to be examined some developments in social legislation that seem designed to introduce more modern elements in the Italian welfare system, inspired by new logics, some of which spill out of the Fordist-Bismarckian model of social protection and introduce us to a new order, characterised by the reference to citizens' equality on the level of social rights, without any discretionary power of the State or intermediation from the unions.

### 5.1 *The reform of services for the family and of women's rights*

As regards family law, the 1970s were a turning point. That decade opened with the approval of the law on divorce, later confirmed by the 1974 referendum, and continued with the 1977 laws on the voluntary interruption of pregnancy and on male-female equality. The latter, in particular (l. 903/77), not only affirmed the general principle of equality of treatment between man and woman, but specifically extended it to labour relations, national insurance and the right of services for the family, with a very clear formulation by which all these services were to be enjoyed on the same conditions by both male and female workers, eliminating any gender differentiation.

In later years this law led not only to various sentences of the Constitutional Court and some European directives in this field, but also to some new regulations strengthening and completing the principle of gender equality. There was, for example, law 53 of 2000 (and the later legislative decree 151 of 2001), designed to deny any legal presumption of the woman's role as family carer, even in the event of maternity (apart, obviously, from her indispensable biological role) (Ales, 2008). These reforms laid the bases for a clear modification of the Fordist-Bismarckian role of social protection in the fields of the family and women's rights.

Actually, despite these undoubted advances in social legislation for the family, there continues to be marked gender discrimination in Italy in the division of roles in the family and female presence in the labour market. The woman's right to work still seems to be suppressed, sometimes quite illegally, both socially and culturally, particularly in some parts of the country. Care work, while taking up less time than in the past, still remains the almost exclusive prerogative of the woman; the male partner's contribution has increased, but only very modestly (Carriero, 2008). This work, however, is hardly recognised either legally or economically in Italy, unlike many European countries (Sandulli, 2003; Paci, 2007). Vouchers or «service tokens» for the family caregiver are still isolated experiments on the part of some local bodies and Regions. The only ex-

RPS

Massimo Paci

isting national measure is the attendance allowance, which is used mainly for reimbursing medical and pharmaceutical costs (Gori, 2001). Caring for the increasing number of non-self-sufficient old people is mainly in the hands of often illegal immigrants. Services for minors under 3 years old are absolutely inadequate to the demand, and the rate of female employment in Italy is one of the lowest in Europe.

Paradoxically, then, the drive for change from the women's movement of the 1970s and 1980s, but also from the wider historical process of individualisation in society, has been most successful on the formal level of family law and social legislation, rather than on the social and cultural level. The problem of allowing an effective empowerment of women, as an effective possibility for enjoying rights that have been given them on the formal legal level, still remains open.

### 5.2 Health service reform

As regards the health services, after many years of political debate and union struggles, Italian welfare has moved towards a reform explicitly inspired by the universalistic model of social citizenship. In 1979 the debt-ridden, category-based health insurance funds were eliminated and replaced with a National Health Service, basically following the northern European model. It was an important innovation which had few precedents in the country and went far beyond the constitutional provisions on the subject, which allowed for free medical treatment only for the indigent. The transition to health protection as a right of citizenship was to be gradual, however. For many years the Health Service would continue to be financed with contributions from workers and their employers, and, when its financing became wholly tax-based, many services were delegated to private bodies through conventions or sub-contracting, introducing selective elements based on income for access to particular specialist or hospital treatment. The universality of nationwide health care, on the other hand, was weakened by the diversification of organisational models and standards adopted by the Regions, which now had responsibility for it (on all this see Vicarelli, 2005).

Nor can we ignore the fact that the Health Services in Italy too are faced with delicate problems of an ethical or «bio-ethical» kind, connected both with the development of degenerative diseases and the lengthening of the «terminal» state of the sick person, as well as the new possibilities of «medically assisted» pregnancy and procreation, problems that have not yet been faced on the level of regulations in such a way as to respect the right of the citizen to make free and responsible choices<sup>9</sup>.

<sup>9</sup> As is shown by the need for infertile Italian couples who can afford it to have recourse

### 5.3 Pensions reform

Another important reform was that of law 335/1995 on pensions. It set off a gradual reduction of the fragmentation and disparities between categories of workers (including one which is untouchable in many European countries: that between public and private employees). It also replaced the formula for calculating a pension from one based on the worker's retribution and the number of years worked to one calculating the actual sum of the contributions made by an individual over his whole working life, with no more category discounts or privileges. This new formula guarantees parity in estimating pensions by using a coefficient based on demographic and economic data related to life expectancy and the state of the Gdp. This coefficient must by law be revised every three years, this objective criterion replacing any bargaining with categories with strong union representation. This law has also given workers choice as to the age at which to retire (between 57 and 65) and the possibility of using their severance pay (Tfr) to set up an additional pension. The interest of this reform, then, is that it links the pension more directly to the individual's working history and the worker's own choice: on the one hand it directly links the pension to the contributions made, and, on the other, it allows the worker to choose the age of retirement and whether or not to set up an additional pension fund. In other words, after this reform the State and the individual are more directly related to each other.

More than 13 years after this law was approved, however, it has been very slow in coming into force. The three-year updating of the coefficient for calculating pensions, by which the State can control its expenditure, has been impossible because of union hostility. Governments have intervened various times, in conflict with the contributory basis of the new pension and with individual freedom of choice, to impose a raising of the pensionable age<sup>10</sup>. Nor can one pass over in silence this reform's evasion of the question of pension protection for short-term and occasional workers, who have very little chance of making

to so-called «procreative tourism» towards more modern and civilised countries, and, in the case of the terminally ill, to what could be called «euthanasian tourism».

<sup>10</sup> In addition, the free choice of creating a supplementary pension fund out of severance pay was contradicted by the principle of «silence-assent» for the funds negotiated by the unions when the worker had not decided in a prescribed time. On the other hand, the present regulations do not even give the workers freedom to decide how to use their pensions savings, which would be desirable: although the possibility was discussed in the 2007 Budget, they cannot use their severance pay to increase their contribution to the pay-as-you go public system, which has proved to be much more reliable than the private pension funds in recent years (Pizzuti, 2008, 24).

sufficient contributions in the course of their working life (see section 5.5). In short, this confirms a distinctive feature of Italian welfare, in which legal innovations remain incomplete and even disregarded by the government itself.

#### 5.4 *Welfare reform*

As regards law 328 of 2000 reforming welfare, it finally introduced to Italy (last but one of the 15-nation Eu) the right to economic and social assistance for all citizens in a state of need, going beyond the Constitution, whose art. 38, as we have seen, extends this right only to those unable to work through disability. This reform in particular gave an important role to local autonomy and to listening to the citizenry and the various associations that represent it. For the first time there was a vast planning process for the social services, one extending across the whole country, founded on additional public financial resources. In a general framework of policies for the family, minors, the young, the elderly non-self-sufficient, etc., that left much to be desired (and on which the Italian State spends paltry sums) approval of this law certainly marked a turning point (Mirabile, 2005).

This reform is also important culturally, because it questions the prevalent orientation in Italy of considering insurance more important than welfare. However, in this case too, there are great problems in implementing it, with the risk of the reform remaining incomplete. For welfare, as for the health service, legislative competence had been devolved to the Regions, and already we can see strong territorial differences in implementing the reform, added to the not insignificant differences there have always been in this sector (Pavolini, 2008). In addition, so far minimum levels of assistance that must be guaranteed across the country have never been defined. Important measures such as the setting up of a minimum starting wage, provided for in art. 23 of the law, have so far been disregarded. So, in this sector too we are faced with continuing serious lacunae: despite the innovative law, its implementation has been patchy, and there is still a long way to go before the rights of citizenship in this field are fully implemented.

#### 5.5 *Job protection*

As regards labour legislation, since the 1990s there has been a sharp change towards greater flexibility in job offers. This new orientation potentially contains a positive aspect, in the sense that it might overcome the repression of the worker's personal and professional autonomy, intrinsic to the hierarchical and Taylor-Fordist system of organising labour. But this may have, and is actu-

ally having, negative effects of non-permanent labour relations, as it is not accompanied by protections guaranteeing income in periods of unemployment and active policies for training and job-finding.

In Italy the first important breach in the supremacy of the classic job with permanent contract happened in 1995 with the creation of a separate pension system for the so-called «ongoing collaborators» (known since 2003 as «workers on projects»), those who work in the form of a collaboration that is legally autonomous, but economically dependent on others. As for the system of job-finding, already in 1991 the so-called «numerical recruitment» of workers had been eliminated, replaced first with «recruitment by name» and then with «direct recruitment» by the firms. Then in 1997 the whole system was reformed, moving from a public monopoly to a mixed public/private system, with the introduction of private agencies of temporary jobs.

In 2001 the centre-left government, following an Eu directive, reassessed fixed-term contracts, but obliging firms to make use of them only as part of collective contracts stipulated with the unions. Shortly after, however, with the advent of a centre-right government, a decree was passed totally deregulating the recourse to fixed-term contracts. Another centre-left government later set a limit of 36 months on the repetition of this type of contract (with the possibility, in exceptional cases, of a special procedure at the local Labour Board, certified by the union). But the regulation of fixed-term contracts was again modified for the worse (from the point of view of the worker) by the centre-right government presently in power.

But the most important law in this field is law 30 of 2003, which introduced a notable range of flexible contacts. The employer could now have recourse to job on call, job sharing, work on projects, staff leasing, etc. The already remarkable number of existing job contracts were thus flanked by many other types of contract making the labour relation more flexible, temporary or intermittent. (Job on call was later eliminated by the Prodi Government, but reintroduced immediately after in January 2008 by the Berlusconi Government).

This increase in atypical and flexible contracts without most forms of social protection has significantly weakened the system that had been built up over a number of decades in the last century by social and labour legislation guaranteeing the workers. This is serious above all because in case of unemployment Italy, unlike many European countries, has no system of benefits that covers, in however limited a form, workers with fixed-term contracts who have not acquired the requisites to obtain the standard unemployment benefit. It should also be borne in mind that flexible workers face serious difficulties in acquiring

RPS

Massimo Paci

a pension too<sup>11</sup>. From this point of view, one might say that the various governments of the last fifteen years have encouraged the development of a flexible labour market, but have not at the same time provided a modern system of income support for fixed-term or intermittent jobs, which ought, on the level of security, to be the necessary complement of the measures introduced on the level of flexibility.

In recent years an interesting novelty has emerged in this field: it is the «service» role that the unions could perform. During the 1990s a series of inter-professional agreements recognised them (along with their counterparts, the employers) as subjects that can take part in the construction of a system of active labour policies. In particular the «bilateral bodies» set up by these agreements were directly involved in developing continual training for workers. The 2007 Welfare Protocol also attributed these bodies a role in additional income support in sectors not covered by unemployment benefit. Finally, the Ministry of Labour, Health and Social Policies' *Green Paper on the Future Social Model* (2008) envisaged the bilateral bodies having additional responsibilities for services linked to the functioning of the labour market, training, certifying job contracts, supplementary insurance and health assistance. It seems fairly clear here that «an idea is emerging of the unions concentrating on the supply of services that have been, so to speak, outsourced by the State to the social partners» (Ciarini, 2008, p. 253).

In short, if it is true that ordinary legislation on social and labour matters has evolved in a modern direction, it is also true that it has not modified coherently and organically the Italian welfare system in the direction of a model founded on the principle of social citizenship. The Fordist-Bismarckian system has been only partially and uncertainly abandoned, because of the lack of a rooted culture of citizens' rights and because of the slowness of the «democratisation» of the family, but above all because of the weakness of public intervention, which seems to lack an organic reform strategy<sup>12</sup>.

<sup>11</sup> For example, it is thought that, given the low level of their present contributions and the discontinuity in their work, the so-called «ongoing collaborators» or «workers for projects» are very unlikely to receive more than 30% of their average wages when they retire (Inpdap, 2002).

<sup>12</sup> The weakness of public intervention and the lack of «stateness» are some of the distinctive features of the «Mediterranean model» of welfare in which many authors (Ferrera, 1996; Mingione, 2001; Pugliese, 2008) place Italy's.

## 6. Conclusions

We are today witnessing the «dislocation» of labour from the traditional systems of risk coverage. As Sennett says (2007), the old organisation of industrial society in collective structures, founded on an interaction between labour categories and insurance systems is becoming obsolete. The proliferation of atypical and flexible jobs is supplanting the paradigm of a stable job. Short-term contracts and unemployment are becoming structural, even more so as a result of the present financial crisis and the world economic recession. In some respects the present situation is not very different from that in which European countries found themselves at the end of the second world war, when, at a time of national disaster, Beveridge posed the question in England of full employment and the reform of the social state.

On the other hand, we need also to bear in mind the drive coming from the individualisation of society and the new generations' claiming of their rights. Young people today, after emancipating themselves from the traditional frame work of family life, are entering the labour market wanting to be able to fulfil themselves in work too, and a polarisation is forming between those whose individuality can make them independent because their position is protected, and those who bear their individuality as a burden because they are without social protection.

So we need to make an effort to think about what social protections might be in a society that is becoming more and more a society of individuals. We need to build a bridge between individuality and social protection. As Robert Castel says (1995), «We need a renewed social state whose interventions respect the nervous system of the process of individualisation».

Italy too is facing this new frontier of welfare, but its central authorities seem completely without an overall plan of reform. Of course, ordinary legislation on social and labour matters has developed in a modern direction over the last two decades, whose characteristics in some sectors are a new orientation designed to base interventions on the principle of social citizenship. But this development is full of ambiguities and contradictions, and it certainly cannot be thought of as complete, above all in a country like Italy that must still fully come to terms with the project of modernity and acquire, culturally and politically, the secular and republican ideals of the universal rights of the citizen. That is why I have tried to bring out the importance of the frame work of fundamental principles and social rights provided by its Constitution, showing how it constitutes an indispensable basis for a social reform of this importance.

RPS

Massimo Paci

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RPS

Massimo Paci

