New Frontiers for Citizenship at Work
2014 International CRIMT Conference

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Citizenship at work and legal constraints in Italy. Issues of effectiveness for people with disabilities and immigrants.

FIRST DRAFT

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1. The transformation of political and economic systems produced by globalization (Beck, 2003, 2009; Ferrarese, 2000; Stiglitz, 2002; Sassen, 2008) and, therefore, the neo-capitalist attitude have led to the downsizing of the importance of work and its contribution to the material and spiritual growth of society.

Work has changed and polarized, in the sense that the concept of stable, permanent and long-lasting life work is being progressively substituted by the awareness that the working experience has contours which are even less defined and certain (Sennett, 2001, 2006; Reyneri, 2005). The meaning of work has been gradually put at risk by "intermittent", "precarious", "temporary" jobs, so that it lost its role as instrument of social redemption.

The paradigm of post-modernity is in fact the flexibility, meant as the continuous search for an always increasing production efficiency, which has also resulted in a fragmentation of the legal regulation of labour relationships (Barbier and Nadel, 2003), which in turn has accentuated the segmentation of society and, therefore, of the labour market (Gallino, 2012, 2013). The quality of work has also suffered for it, to the advantage of an ever-narrower quota of highly skilled workers and at the expense of a mass of individuals who instead perform low specialized duties, which make them highly interchangeable.
The effects of globalization are the topic of many studies of a general nature; the more specific ones, regarding the socially vulnerable and/or relating to the labour market, are a little fewer. The contributions do not seem, for the most part, able to capture fully the structural contradictions generated by the new balance of power in the globalized world as it appears today.

In fact, the same national and supranational, as well as international, institutions do not seem to realize fully the consequences put in place by this globalization. In the world scene, there are critical proposals that aim to build "another globalization" and this view will be referred to in this work too; keeping in mind, however, that before touching on such a perspective it is necessary to reveal the current processes, and to do that it is equally necessary to deepen the aporias.

2. This globalization is in contrast to, as far as the Western European legal experience is concerned, the promises inherent in the Constitutions following the World War II that were based on the liberation from need and the recognition for everyone, male and female, of a personal dignity even based on work.

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

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

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

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

The commonality - apparently risky - among these subjects is understandable when you consider that in both cases we abstract the subject who works from his workforce (work as goods separated from the subject): in one case, believing that you can use to the point of exhaustion the workforce (the foreign); in the other one, considering it as waste products because not consistent with the standard efficiency parameters measured on able-bodied subjects.

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

3. The combination between work and social emancipation has worked and developed step by step until the State has succeeded in implementing an ordinary legislation that applies the constitutional principles, according to the model of the welfare state.

In fact, in particular with regard to the Italian Constitution, the social rights recognized in it are the result of the struggles of the organized - in union and political parties - working classes as well as their strong political legitimacy as a critical player in the opposition to the fascist dictatorship (Pepe, 2006). In the following years, the struggle for the effectiveness of those rights, in a context of modernization of the productive capitalist system, responded to the double challenge of
ensuring the capitalist accumulation and its very legitimacy through the support tools to social consent and connection (O’Connor, original edition 1973, Italian translation, 1977). Therefore, a large part of the redistribution of income (or rather an attenuation of the gap between the wealthiest individuals and workers) has gone through public policies whose costs were funded by general taxation. The price was a progressive fiscal crisis of the State (O'Connor), of many States. This crisis, in the current phase of global capitalism, seems untenable: in view of the EU (of which, as is well known, Italy is a component founder) ensuring a balanced budget for every State has become a top priority. Therefore, the space for the implementation of universalistic and inclusive social policies is increasingly narrow.

In this context, labour law has gradually lost one of its functions as an instrument of rebalancing the unequal bargaining power and, consequently, as an instrument of protection of the weaker party, thus merely meeting the needs of the productive system, helping to accentuate a dynamic of social exclusion.

Such evidence shows the most significant negative effects relating to the weakest working categories. In particular, we will focus our attention on migrant workers and people with disability, since the criticalities of the respective regulations in Italy have profiles of assimilability. In both cases, in fact, the socio-political notion of citizenship at work is put into crisis from a specific legislation, which, although formally implementing the constitutional design, in terms of effectiveness it’s either scarce or produces paradoxical effects.

4. Specifically, the integration of people with disabilities is regulated through the provision of a legal obligation for public and private employers to hire disabled people in a variable quota that depends on the total number of employees in production activities (Law no. 68/99).
However, the system of mandatory quotas of recruitment is weakened by the large possibility to derogate through mechanisms of exclusion, exemption and clearing, which allow the employer to avoid altogether the obligation or to fulfil it with the payment of a penalty.

The organizational investment that would be required to allow the integration at work of the disabled person - that would give them the possibility to play an active and productive role in society, through the opportunity to take a job able to exploit the specific residual capacity of each subject - does not produce a return for the company in terms of efficiency and productivity. Thus, the investment is not justifiable in the interests of flexibility as described above. In other words, there is no advantage for the employer in investing in this human capital. Therefore, in the practical application, the balance between freedom of economic initiative and the right to work is poured, respecting the principle of solidarity, on the public welfare system.

However, in this regard, changes to the regulatory framework should also be considered following the recent judgment of the European Court of Justice (4 July 2013, C-312/11), which condemned Italy for its failure to comply to the obligation held by Article 5 of Directive 2000/78/EC, that established a general framework for equal treatment in employment and working conditions. In fact, Italian law does not set for employers the obligation to plan reasonable solutions for the adaptation of the work environment to concrete situations, in order to make it suitable for the best exploitation of the qualities and working skills of the disabled. As the Court has held, this lack of legal duty cannot be compensated by the regulation of public measures of incentive and support.

5. Similarly, the legislation on migrant workers is particularly rigid and in stark contrast to today's Italian ordinary legislation of work which is based on the paradigm of flexibility. In fact, to allow the entry of a foreigner in
order to work in Italy, the prospective employer must obtain a permit demonstrating the unavailability of other unemployed workers to take the place offered. On top of that, every year a maximum quota of foreigners who can have access to the labour market is decided, therefore there must also be capacity within the quota. The employer also undertakes to ensuring suitable accommodation and the payment of the return journey, and must demonstrate to possess a certain economic capacity. It is evident that in order to undergo all this bureaucratic process and comply with all the requirements of the law, the employer must have a strong interest in hiring the foreign worker, and must be willing to wait for the completion of the entire procedure, that does not respect the rules of just-in-time at all. The employer must be able to postpone the achievement of the productive result - understood here in a broad sense, of course - for whose prosecution is seeking to recruit a foreigner, or, as often happens, resort to undeclared work (McBritton, 2007).

6. There are or there have been some alternative solutions in the Italian system.

6.1. With reference to the disabled, the types of employment that include forms of support to work on the part of organizations working in the social sector and/or public facilities are relevant in this respect; these manners of employment lead to better results in terms of adaptation of the disabled to the organization.

These are the conventions of inclusion and integration at work, which represent an alternative opportunity for public and private employers to comply with mandatory quotas. The conventions provide for a progressive planning on the insertion of disabled people in the work
context, or forms of support, advice and mentoring on part of regional departments, or even the involvement of social cooperatives that host the disabled in their organizational context, though acting on work orders assigned by compelled employers.

As evidenced by the latest report of the Ministry of Labour covering the years 2010-11 (which monitors the biennial application of the legislation on the inclusion of people with disabilities at work), in a general context of employment downsizing due to the current economic crisis, which evidently interested also these categories of workers, the job placements of people with disabilities that did took place have occurred mainly through the medium of conventions.

Other interesting experiences that deserve attention are the ones carried out by universities, to which the Italian legal system gives the authority to intermediate between supply and demand of labour (Legislative Decree no. 276/2003). In order to improve the mechanisms for transition to employment for disabled graduates, increasing the passage through formal and institutional channels, the public and private universities have been authorized to conduct intermediation activities between demand and supply of labour: universities, therefore, act with their job placement services as integrated entities in the network of employment services, featuring, alongside traditional training functions, new ones that are related to the "greater fluidity" of the labour market. The orientation activities and the organization of internships and placements in enterprises have represented for a long time a normal mode of relationship with the local business world, performed mostly on a discretionary basis by universities; but a framework capable of ensuring an integrated system and broad public visibility is still missing (Spinelli, Fondazione Pera research on right to work for disabled people, forthcoming).
6.2. For migrants, as in the past, the law contemplated one of the few provisions in a position to provide a response to the needs for protection of the regularity of the labour market and for control on the entries and the characteristics of the supply-demand relationship for immigrant labour. It was the so-called sponsorship, with which the foreigner was allowed to enter Italy for job search for one year. During this period, other authorized parties were guaranteeing his life needs. It was a realistic rule because it governed a recurrent and still very present phenomenon, i.e. the migration chain (Reyneri, 1979; Ambrosini, 2010). It should be also kept in mind that there were third sector organizations among the ones authorized, and this formula could have been an innovative solution. Unfortunately, the arrangement - which gave some positive fruit - remained in force only between 1998 and 2002, since it was repealed for strictly political reasons.

In Apulia, the regional law on welcoming immigrants provides for the region authority to draw up a plan for immigration. In this context, in order to counteract the phenomenon of severe exploitation of non-EU workers in the agricultural sector (in particular, for the harvest of tomatoes, watermelons, grapes and olives), together with poor housing and unsanitary conditions, the regional body has set up a pilot project involving the members of the regional Council for immigration. This body, that has an advisory role, is composed of representatives of institutions (e.g. universities), trade unions, voluntary and third sector associations both.

The project involves the construction of various structures (tents) to meet the needs of hospitality in the period of harvest - especially in the summer - when approximately 2500-3000 immigrants arrive. Each of these structures should accommodate about 300-350 immigrants and be equipped with toilets, water, health care and trade union branches. Guests will be involved in the management of the facility.
At the root of serious exploitation of foreign workers is the illicit brokering of labour: a few individuals - usually linked to organized crime - are often the ones that permit the meeting between employer and employee. In these cases, the hiring is not regular. The regional body, in order to counter this intermediation, aims to boost with a monetary contribution the regular hiring of workers enrolled in a special public register, balancing the amount of benefit to the days actually worked.

Some employers have shown interest in collaborating in the project. In fact, the image of agriculture in Apulia (but, to a certain extent, in Italy) as a place of exploitation and lack of respect for workers' fundamental rights is producing adverse effects on the placement of products on the European markets. The regional body aims to promote regular employment and establish an ethical certification of the product, also resorting to the so-called fairness indexes to select contractors who will be able to have access to public benefits. The fairness indexes are (standard) parameters of evaluation of the congruence between the work used and the productive results obtained.

7. The cases reported here present themselves as interventions of partial maintenance that are very limited compared to the complexity of the problem of bringing back the work to its centrality, for which it is necessary to think of a structural reform of the current paradigm.

As has been said, our time is a time of strong questions and weak answers (Boaventura dos Santos, 2006), especially if we consider the issue of fundamental rights as they were made positive law in the European Constitutions of the last century. The movement to which reference was made in § 1 is inscribed in this cultural tradition. It is a diverse, composite, and, in some respects, such as the economy, still very immature movement: think of the proposal Happy degrowth (Latouche) or the need to find indices that measure social well-being, e.g. BES (Benessere equo
sociale) - *fair social wellness* - proposed by ISTAT - Italian statistical institute - or the *Human Development Index* of the UN or, also, the *Canadian Index of Wellbeing*.

However, questions demand answers: according to what briefly illustrated here, a precondition is to avoid taking a position unhistorical and abstract, i.e. without taking into account the real and immediate conditions that may facilitate or hinder the effectiveness of the rights. Proclaiming the existence of rights and accepting their violation accentuate the gap between *law in books* and *law in action* and, consequently, contributes to the underestimation of the role of law. This is, firstly, a choice of values: if you assign to citizenship a meaning that is not merely formal, like a bond between an individual and a State, but stands for belonging to a community (Marshall), then the question is how to change the current political and economic structure that leads to exercising employment policies to the downside.