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Organization Theories and the Dilemmas of Contemporary Labour Law

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Abstract
The aim of this short paper is to enlighten some cultural premises of the transformation of legal regulation of labour relations, referring in particular to the organizational ideas and concepts adopted in the doctrinal labour law debate and assuming that the transformation of labour law is not an immediate consequence of an economic and organizational transformation, but a consequence of a cultural transition of legal operators.

Keywords: Labour law, Organization theories, Cultural fields.

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Introduction

The aim of this short paper is to enlighten some cultural premises of the transformation of legal regulation of labour relations, referring in particular to the organizational ideas and concepts adopted in the doctrinal labour law debate.
Following a sociological common sense, one would tend to think that the transformation of labour law is a consequence of the transformation of markets and enterprises. This deterministic conviction, indeed, is widely diffused among conservatives as well as among progressives. I think it could be maintained, on the contrary, that the transformation of labour law is not an immediate consequence of an economic and organizational transformation, but a consequence of a cultural transition of legal operators. From this point of view, we could say that organizational design is (potentially) bounded by legal regulation of labour relations, but – correspondently – the transformation of labour law is strongly influenced by organizational ideas and concepts.

The dilemmas of contemporary labour law

In the last two decades, National and European laws have followed the suggestions of neoclassical economics approach, adopted by economic international institutions and by mainstream economic and organizational literature.
Nowadays, the negative impact of this approach can be empirically observed, so that the demand of efficiency of the new capitalism is now suffering a lack of consensus among social sciences (see, f.i., Sennett 1999; Wilkinson and Pickett 2009). In labour law debate as well, the conviction has recently risen that the transformations of legal regulation in the last years – far from having updated labour law – have really reversed the sense of postwar labour law. Thus, an alternative between two different directions emerges in the debate on the regulation of work and enterprise. The first – defending the most recent reforms – assumes the market as a governing force. The latter – defending "traditional" labour law – identifies as the starting point the rights and dignity of workers. The contradiction between these two aspects stimulates today the doctrinal debate (see, f.i., Mariucci 2006).

First of all, it's useful to consider the fundamental themes which emerge in the debate. Three main questions are decisive:
1) The first question: Which is the space of dependent employment? Has the notion of subordination still any significance in the so-called post-fordist era? Which rights should be attributed to the so-called para-subordinate workers (which are self-employed, but dependent workers) and to independent self-employed workers?
2) The second question has to deal with the new forms of organization of enterprises: What about the fragmentation of enterprises, the off-shoring, the outsourcing? Should they be limited by law? How to distribute the legal responsibilities of employers in the networks of enterprises?
3) The third question has to deal with collective bargaining and the representation of workers: Which should be the future structure of industrial relations? Should the weight of national collective bargaining be reduced? Which should be the role of trade unions in the re-engineering of enterprises? In an age of precarious jobs, how can trade unions' action be guaranteed?
In this debate, most of theorists, however, express weak proposals, unable to show a direction of sense grounded upon a solid analysis of the market and labour relations.

Explaining the labour law paralysis

How could this sort of *paralysis* of labour law be explained?
In my opinion, it must be considered that, in the last two decades labour jurists have borrowed concepts and categories from managerial field, progressively abandoning sociological analysis of work and organizations. This means abandoning a relational conception and adopting a functional conception of organization. In this transition, two fundamental aspects emerge:
1) the first is the adoption, by jurists, of an objectivistic conception of organization. Organization is conceived as organized unit or context. It is less and less conceived as *organizational action*, namely as a normative action moved by interests. Power relations tend to become invisible to jurists (see, f.i., Ichino 1999).
2) The second relevant aspect is the adoption of the idea of *flexibility*. The concept of *flexibility* derives from functionalist theories of organization. It means the capability of individuals and groups of *adapting* their behaviour referring to the exigencies of production (which are the exigencies of the dominant coalition). In the jurists' reasoning, flexibility – which of course implies some discretion in the execution of jobs – is often regarded as a gain of autonomy for workers (see, f.i., Pedrazzoli 1996). This equivocal equation of flexibility and autonomy is one of the main devices for the legitimation of the changes in labour regulation: it can *apparently* justify new legal rules for labour on the basis of a pluralistic and individualistic ethics.
It can be said that managerial and organizational economics' thought has become more and more influential in legal theory, and it has progressively replaced the representation of work that labour law borrowed from sociology in the second half of

the Twentieth century. Labour law has thus encountered an epistemological transition. It could be said that labour law has been colonized by managerial thought.
Understanding this transition is an interesting matter for sociology. Adopting a Pierre Bourdieu's concept, it can be said that labour law has undergone a sort of colonization, deriving from a profound change in the *field of power* (Bourdieu 1994). In other words, the cultural transformations in labour law field – very similar to those observed in other cultural fields – have been driven by a general strengthening of economic power in relation to other species of power. In last decade, this colonization of labour law has been particularly strong in Italy. It should be considered, for instance, the influence of some management-oriented journals and newspapers on labour law culture. If we consider such circumstances, we can better understand why labour law, today, is not able to regulate and control social power in the enterprises and in labour market.
A new joint effort between legal, sociological and organizational studies could perhaps restore some cultural premises for a legal protection of workers. But this is an open question, of course.

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