

## Editorial

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This book contains a selection of papers from the Twelfth International Conference in commemoration of Marco Biagi, held at the Marco Biagi Foundation in Modena, Italy on 18-19 March 2014, entitled *Labour and Social Rights: An Evolving Scenario*<sup>1</sup>.

The aim of the Conference was to promote a discussion on one of the most important effects of the global economic crisis, i.e. the redefinition of the link between labour relations and social protection, undermining the special status of labour law. In the present scenario, labour law scholars are facing a dilemma: on the one hand there are those who argue that labour and employment law should be merged into more extensive or neutral fields; on the other hand, there are those who defend the traditional framework, modified to reflect the changing nature of employment and the underlying interests and identities.

The analytical perspective proposed to tackle this issue was that of social rights. The use of this term, in the modern sense, not limited to rights deriving from public policy, was intended to highlight the main factors giving rise to changes at micro level in the balance of power and bargaining positions associated with the two sides of industry, and, at macro level, to the increasing asymmetry between the civil and social aspects of labour law regulation, deemed to be in conflict in the arguments put forward by policy-makers and the courts (in particular the Court of Justice of the European Union).

In keeping with the time-honoured tradition of the Marco Biagi Foundation, the Conference brought together international scholars from a range of disciplinary backgrounds, in an attempt to facilitate the analysis of technical, legal and political aspects of labour law and to clarify the nature of the matters to be regulated, from an economic, sociological and organisational point of view. As a result the selection of papers published in this volume provides an overview of the wide-ranging debate at the Conference.

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<sup>1</sup> The full Conference program can be read at: <http://www.fmb.unimore.it/on-line/Home/InternationalConference/XIIIInternationalConferenceinCommemorationofProfessorMarcoBiagi.html>.

In his introductory remarks, **Giovanni Solinas** discusses the epistemological consequences of the transformation of the modern economy, arguing for the need to move beyond traditional disciplinary domains. **Patrizio Bianchi**, on the other hand, underlines the need to translate research into real life, especially for researchers in the social sciences, whose only laboratory for the testing of hypotheses is the society in which they live.

The first section of the book is dedicated to an analysis of changing patterns of labour relations in respect of values and interests in the employment relationship, and to the implications for regulation. **Alice Belcher**, building on Ronald Coase's theory of the firm, analyses the legal concept of employment and the role played by management in this respect over the past century, in order to consider how well this idea maps onto the economic concept of the firm. Belcher identifies certain similarities between the situations in the 1930s and the 2010s as far as the legal categories are concerned. She also observes a change in the legal approach to the definition of the employment relationship, that in recent times has increasingly led courts to give greater importance to the substantial aspects of the relationship than to formal aspects.

In an organizational and HRM perspective, **Teresina Torre** investigates the evolution of reward strategies in enterprises, with a particular focus on recent trends towards increasing personalisation. In particular, she casts light on the concept of Total Reward Systems. Starting from the lack of a clear definition of the concept, she proposes a particular interpretative model made up of four components. According to Torre, the question about what really interests employees is central to the management of any total reward system.

Commenting on these two papers, **Giovanni Masino** stresses the problem of the dialectic between form and substance, or between ideology and experience, when discussing the forces driving change in the employment relationship. In Masino's view, a careful reflection on the goals, not just on the means, that guide policies and regulations is indispensable for an analysis of employment relations.

The paper by **Attila Kun** proposes a reflection on the changing character of labour law. Kun discusses the emergence of non-legal forces in employment relations and the consequences. He examines the relations between labour law and public procurement law, social reporting and subcontracting liability, and questions the extent to which these new regulatory instruments can contribute to overcoming the current limits of traditional labour law provisions.

**Carla Spinelli** concludes this section with an overview on the implementation of flexicurity measures in Italy in recent years, in the context of the economic recession. While commenting on earlier versions of the legislative provisions recently enacted by the Italian Parliament (the Jobs Act), Spinelli em-

phases the lack of coordination between the legal regulation of flexibility and security, advocating new economic and industrial policies favouring investment in research and development as a means to increase productivity.

The second section brings together contributions from different perspectives that address the issue of social rights, particularly with regard to vulnerable groups.

The first set of papers focuses on women workers. **Mies Westerveld** reports on the shortcomings of traditional social security policies based on the “male breadwinner” model, in relation to the protection of female workers, arguing that the social and economic background for this model has radically changed. Westerveld puts forward a critical assessment of EU policies, that were initially intended to do justice to the position of women in the labour market but have not succeeded in resolving the issue of gender and social protection. In this sense, the problem of the incompatibility between care-giving and work commitments is still largely unresolved.

**Susanne Burri** focuses on the topic of work-life balance, starting from an acknowledgement of its central role on the EU policy agenda. Burri draws a parallel between the EU and the Dutch policy frameworks, comparing statistical and economic data, sources of regulation and case law. She identifies in both cases the signs of a step-by-step process towards facilitating the reconciliation of work, private and family life. However, she also points out certain differences insofar as the Dutch model places greater emphasis on the concept of workers with care responsibilities in different periods of their lives. In this connection, according to Burri, the Dutch model could represent a benchmark for European legislation.

Discussing those contributions, **Jacques Rojot** notes that legal concepts touch only the surface of social realities, and the enduring disparities affecting women in the labour market highlight the limits of labour law. In this respect, Rojot returns to the issue of the collective representation of interests, asking whether this might be the way to ensure the protection for vulnerable workers that the law is failing to provide.

In her analysis, **Lina Gálvez-Muñoz** stresses the dramatic situation in terms of the economic crisis that is profoundly affecting labour legislations and employment conditions and examines some other factors contributing to the decline in the protection of vulnerable workers: among them, the increasing financialisation of the economy and the free circulation of capital, resulting in an increasing power imbalance between capital, labour and governments to the benefit of employers. According to Gálvez-Muñoz, the EU needs to address, both in its employment and macro-economic policies, the impact of individualisation and increasing flexibility on gender inequality.

The paper by **Marius Paul Olivier** and **Avinash Govindjee** widens the focus to the broader category of vulnerable workers, including unemployed workers. Olivier and Govindjee propose a comparison between two major emerging countries, India and South Africa, in respect of the constitutional, policy, legislative and jurisprudential frameworks concerning social protection. The authors argue that the problems of vulnerable workers and the unemployed are multifaceted in nature, requiring a flexible approach and a range of policy interventions. In this sense, the enactment of constitutional provisions has resulted in some advancement, though not of a conclusive kind, in the position of the most vulnerable persons in India and South Africa.

**Mimi Zou**'s contribution is focused on the situation of migrant workers, whose particular vulnerabilities are outlined and analysed by building on the two innovative concepts of 'hyper-dependence' and 'hyper-precarity'. According to Zou, those particular vulnerabilities are shaped by the intersection of precarious migrant status and other labour market regulation, with the effect that migrants have little or no recourse to voice or exit in employment relations. Zou proposes the application of these analytical tools to research into the dynamics and intersections between immigration law, labour law, and various fields of labour market regulation.

The discussion is wrapped up with some concluding remarks by **Janice Bellace**, who reflects on the changes in industrial relations brought about by globalisation, and on how the position of working people has been affected. She raises several issues about the predominance of economic forces and the limited role of the law, and the misleading use of certain concepts such as "freedom" and "flexibility" in this context. Bellace considers whether unions might be able to transcend national legal barriers and develop strategies on a scale corresponding to the global scope of employers, and to what extent the international regulatory framework, such as the ILO fundamental principles and core conventions, could support this process of empowerment on a transnational scale.

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