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WHAT PREVENTS WORKERS FROM CHOOSING THEIR EMPLOYER

New labour policies frontiers in the globalization era

January 2008

Summary – 1. Reversing the Marshall-Hicks rule. – 2. Where workers have an interest in competition between entrepreneurs in the labour market - 3. A new key to the interpretation of the labour market: the workers, too, choose and hire their employer. – 4. The objections to the idea of workers hiring the employer. The limit of the prohibition of competition. The sunset of the prohibition of approaching and hiring the competitor's employees – 5. The great contradiction between the discontent with domestic entrepreneurs and the refusal of the alternatives available on a global scale. – 6. Alpha and Omega: two models of trade-union and of labour policies. – 7. When workers prevent themselves from hiring the best employer: the cases of Italian railways and of Alitalia. The case of Alfa Romeo and some other Italian cases. – 8. The importance of the attitude to evaluating the industrial plan and, if suitable, to betting on it. – 9. Bargaining at the plant level, without limits and boundaries, as an indispensable means for the hiring of the best employer by workers and their benefiting from innovation. – 10. The logic of the centralizing strategy and the fences protecting the old national standard pattern against new enterprise models. – 11. A new way to look at the development of regular employment in depressed areas. – 12. The main problem: the huge increase in workers' income and productivity inequality. – 13. Why the idea of a subordinate worker's legal incapacity can be harmful.

1. Reversing the Marshall-Hicks rule

Let us consider the so-called Marshall-Hicks rule:

A. *“The less the replaceability of workers as a factor of production, the greater their bargaining power”*;

and let us consider its converse, the other side of the coin:

B. *“The less the replaceability of the entrepreneur as a factor of production, the greater his/her bargaining power”*; and, the opposite, *“the greater his/her replaceability, the greater the bargaining power of the workers”*.

The *labour policies* mainly followed in Italy in the last century, and also in recent years, have tended to prevent or make more difficult the substitution of the worker in his/her workplace, to reinforce his/her position vis-à-vis the entrepreneur. We may impute to these policies the defect of only reinforcing the position of those who already have work; but we cannot deny their solid foundation in the mechanism summarised in Rule A.

In parallel to these labour policies, the *industrial policies* mainly followed in Italy in the last century, and also in recent years (some examples will be given in § 7), have tended, on the other hand, to prevent or make more difficult the substitution of the Italian entrepreneur with a foreign one. By the effect of Rule B cited above, in this way the position of the entrepreneurs in Italian

companies has been reinforced with regard to their employees and to the group of unions which represents them.

2. Where workers have an interest in competition between entrepreneurs in the labour market

Here we must clarify one thing. The economists teach us that the increase in competition among enterprises *in the market for goods and services* can only cause a compression of profits for entrepreneurs and earnings for workers; in other words: the only ones to gain are the consumers. Here we are, however, discussing the competition among entrepreneurs in the *labour* market. There is more than one situation that can come about; those which interest us here can be schematically represented thus:

MM – *monopoly* in the market for the good or service produced by the company and *monopsony* in the labour market: it is the situation typical of the productive fabric immediately following the industrial revolution, in which monopsonistic distortion allowed the brutal exploitation of workers described by Marx, but it can be corrected by the trade unions, whose strength can even bring workers to succeed in appropriating the monopoly earnings of the entrepreneur;

MC – *monopoly* in the market for the good or service produced by the company and *competition among entrepreneurs* in the labour market: consider, for example, the municipal services for garbage collection, or transport, in which a body which represents to some extent also the interests of the workers can choose between various entrepreneurs interested in performing these; once the entrepreneur is chosen, however, he operates in the market for that service in a monopolistic position;

CM – *competition* in the market for the good or service produced by the company and *monopsony* in the labour market; it is the situation which typically comes about when rather immobile workers, in their area of residence, face a single enterprise interested in their work (or, in any case, they only succeed in dealing with one), which happens to suffer from the competition of enterprises located elsewhere;

CC – *competition* in the market for the good or service produced by the company and *competition among entrepreneurs* in the labour market; it is the pattern which, it would seem, should come about naturally in a mature economic fabric (but its establishment is often hindered, also in areas where a large number of enterprises operate, by mechanisms typical of the labour market: these produce a limitation of the effective possibility of choice of the workers⁽¹⁾, taking the situation from CC to CM).

⁽¹⁾

$C^M M$ and $C^M C$ – situations CM and CC can be changed by the fact that at least one other entrepreneur, capable of product or process *innovation*, operates in the same market for a good or service: since the other entrepreneurs have not the same innovation capacity, the former has won a temporary competitive advantage, in which aspect he enjoys a more or less substantial and lasting *monopolistic niche* and gains a corresponding rent, which may be shared between him and his/her employees.

Table1 – Where workers have an interest in competition between entrepreneurs in the labour market

	MONOPSONY in LABOUR MARKET	COMPETITION BETWEEN ENTREPRENEURS in the L.M.
MONOPOLY in the market for the PRODUCT or SERVICE	MM after Marxian exploitation, the subsequent phase with workers in contention with the employer for the monopoly rent	MC* e.g. the local authority services under a monopoly regime: choosing the best contractor means increasing the earnings for workers
COMPETITION in the market for the PRODUCT or SERVICE	CM the organised workers decide to correct the monopsonistic distortion, but there is no monopoly rent to share	CC the replaceability of the entrepreneur is in any case a guarantee for the workers
COMPETITIVE with MONOPOLISTIC NICHE DUE TO INNOVATION	$C^M M$ the competitive market for the product or service, some entrepreneurs have temporary rent from innovation	$C^M C^*$ the workers are better off if they can choose the most efficient entrepreneur, to share this rent from innovation with him

* The darker background indicates the areas in the labour market where the workers' interest in competition between entrepreneurs is most marked.

My modest contribution consists in arguing for the following theses:

- in a context very close to the MM model, our traditional labour policies (aimed at reducing worker replaceability) and our traditional industrial policies (aimed at defending the great Italian entrepreneurs against the risk of being replaced by foreigners in the markets for goods or services) are linked by a strong nexus of complementarity and congruency: the bargaining power bestowed

(¹) The economists distinguish, in this connection, the *structural monopsony*, in which the worker has no choice, because he faces a single “work-buyer”, from the *dynamic monopsony*, in which – as typically happens in mature labour markets - the impossibility of worker’s choice is caused by lack of information or of mobility necessary to take advantage of the existing alternatives, or else by situations which in various ways lock the worker into the company where he/she is currently employed.

on *insider* workers through those labour policies has allowed them not only to neutralize the original monopsonistic distortion, but also to acquire for themselves a considerable part of the monopoly earnings, which drastically reduces their interest in the entrepreneur's replaceability;

- in many cases, the developments of globalisation and/or antitrust policies produce a movement from situation MM to situation CM; in these cases the *insider* workers usually have no interest in the entrepreneur's "contestability" or replaceability (movement from CM to CC), since they are able, through their own organized strength, to correct the monopsonistic distortion to their own advantage;

- however, if in the competitive market for the good or service there appears an entrepreneur capable of significant innovation (situation C^M), the *insiders* depending on the less able entrepreneur may have an interest in replacing the latter with the former to share the monopoly earnings with him, as long as these last: they therefore have an interest in an evolution from situation $C^M M$ to $C^M C$; and *this is possible without it being the workers who have to move to be employed elsewhere, bearing the sometimes huge cost of this move, or in any case without their bearing the cost of the diaspora (loss of specific collective human capital), since in many situations it can be they who collectively effect the "engagement" of the best entrepreneur or at least exert a determinant influence on it;*

- also where a service continues to be produced under a monopoly regime (I am thinking above all, but not only, of contracted-out public services), competition arising among entrepreneurs in the labour market, *i.e.* the movement from situation MM to situation MC, can create a considerable increase in efficiency for the company, of which the benefit can be shared between users and *insider* workers in such a way that the operation proves generally advantageous also for the latter; and also here, given that they remain in their present company, they can play a crucial role collectively in the choice of the best entrepreneur (here, in other words, *the hypothesis is that for organized workers the most advantageous strategy may be that of the choice of a new employer, instead of the expropriation of the old employer's profits*);

- in order for workers to be able to benefit fully from the competition among entrepreneurs in the labour market, it is not enough that their *individual* capacity to choose the enterprise in the labour market (*employability*) is increased: it is also necessary that their capacity and their opportunity for *collective* choice increase among an ever-widening number of possible entrepreneurs; it is thus necessary that their ability to *replace the entrepreneur* with the next best available, whether he be domestic or foreign, increase: the more the workers are able to replace the entrepreneur, reducing the cost of the operation, the greater is the opportunity for them to participate in the sharing of the earnings stemming from the difference in quality of the enterprise from that of the competitors;

- this line of action makes it necessary, in some measure, that our system of industrial relations reform itself; and it can be helped by a change in an institutional and cultural context which today does not favour— on the contrary, in many ways penalises – competition among entrepreneurs in the labour market.

My exposition does not follow the order of topics proposed in this summary, since it is dedicated, first of all, to the real and juridical possibility of the engagement of the entrepreneur by the workers and, successively, to the examination of some cultural and institutional obstacles which this meets in our present system of industrial relations, and to the proposal of some labour policies which could contribute to overcoming them.

3. A new key to the interpretation of the labour market: the workers, too, choose and hire their employer

The idea that workers can be (and to some extent already are, but could be much more) those who collectively chose their counterpart, the employer, or who exert a strong influence on this choice, without moving from where they are, can appear as paradoxical or as utopian escapism. We are accustomed to thinking that in the birth of a new enterprise, or in the choice of the new entrepreneur who will run a pre-existing firm, workers are not legitimated to interfere, except to defend their economic and professional rights: we usually recognize a legitimate interest in interfering in this choice only in the case of the owner who is selling the company, of investors, or of financial backers. Further, we are accustomed to conceiving the birth or the transfer of an enterprise as an event in which the decisional power is exerted by those who own capital and the means of production, while workers – who lack these - play only a passive role; that is to thinking that they are hired by the new employer, or sold out to him/her, and that in this case they have the sole right to be informed in advance on the effects of the transfer. This way of thinking derives from the vision of the labour market as a monopsony, *i.e.* as a market in which the sole subject who has a real freedom of choice is the employer, while the worker – albeit formally free – is effectively forced to accept passively what he/she is offered (this is the situation which most precisely corresponds to the original industrial labour market: the one that Karl Marx justifiably described as that in which the contract is “the fig leaf that covers the shame of the dictatorship of the owner over the worker”). Now, this old model, as any other model, still explains an important part of today’s reality; but it is a part which is shrinking more and more. If we want to understand also the other part, the one which in mature economic systems is assuming more and more importance, it is useful to adopt another model; also this a model which certainly has not the claim to explain the reality in all its complexity, but which can make it possible for us to shed light on what is happening in the

phase of the (admittedly slow) sunset of the monopsony and to make some predictions on what could happen more widely in the near future.

The starting point for the conceptual construction of the new model consists in accepting the idea that a greater and greater proportion of workers have a real possibility of choosing the firm which is more capable of giving value to their work: they begin to exert this choice when they focus their interest on a certain productive sector, when they steer their vocational training towards a specific professional goal coherent with that first option, when they delimit the geographical area in which they prefer to live and work, when in this area they identify the firm which allows them to carry out the tasks for which they are available, to perform them in the hours which best fit with their family and personal requirements and on the best terms and conditions, and so on. This is, furthermore, the choice that is being renewed by that approximately 30 per cent of Italian workers who every year shift from one firm to another. As non-frictional unemployment affects only some marginal areas of the work-force characterized by a peculiar weakness, it can well be maintained that all the workers in the labour market who don't belong to those areas exert not only a formal, but also, in some measure, a real contractual autonomy.

In other words: the fact that workers don't own material means of production doesn't at all mean that they lack a possibility of choice, where the owners of means of production are numerous and in competition with each other, at least in the labour market.

The new idea is that this model can apply not only to the behaviour of individual workers, who negotiate one-to-one with employers, but also to the collective behaviour of the workers of a certain firm. Here, the first obstacle to their freedom of collective choice consists in the difficulty of coordinating their interests and of giving them a unified voice: this is a classical example of a transaction cost, whose minimization constitutes a typical and essential function of trade-unions. The second obstacle is constituted by the difficulty of finding at least one employer, as an alternative to the old one, or to the first with whom the workers have to deal at a certain moment. Other obstacles can consist in institutional or cultural factors which allow trust practices between companies, preventing their competition in the labour market, or in forms of self-inhibition of the workers themselves. Let's examine this issue more closely.

Today we already witness several cases in which it is easy to recognize a form of participation in the positive or negative choice of the new employer by an organically constituted group of workers: cases, for example, of enterprises in crisis, in which the succession of a new employer to the former takes place on the basis of a previous collective negotiation of the recovery or reorganisation plan; we also witness cases in which the activity of selecting the employer is exerted by the representatives (as a trade-union or a public body) of a group of workers only

potentially interested in the start-up, located in a depressed area. We can think, for example, of the policies aimed at the attraction of investments tried out in the last decades by some North American States, or in Europe for the development of economically weak areas. Another very interesting case of this kind is that of the choice of the company to which a public service must be entrusted by a public body in an administrative concession regime: here, the trade-union which represents the workers who will be utilized in the public service can be considered as exerting a significant influence on the choices of the body which is selecting the new enterprise.

In the conceptual context of this reasoning, we can also conceive the collective choice of the employer as an act that workers tacitly renew every day, by the fact that they don't resign and don't negotiate a new contract with another employer willing to take over the whole firm; this substitution of the old employer by a new one is, of course, hindered by the above-mentioned transaction costs; but, on the other hand, it is facilitated by the fact that the commercial value of the set of capital goods of the firm drastically decreases if it is separated from the human capital which currently makes it function: without its human capital, the firm often loses most of its value.

To be convinced of this, let's consider the case of a group of journalists working for newspaper N, owned by publisher P1: if publisher P2 offered them better strategies and work conditions, they could collectively propose to him/her to take over their work contracts, so taking over also the newspaper's historical memory, their know-how, their relationship of trust with readers. At that point, newspaper N, completely deprived of its essential content (the human capital constituted by its journalists), would entirely lose its value for publisher P1; and P2 could buy it out at a low price, or easily replace it in the publishing market by a new newspaper. It is less easy to understand that something similar could happen in the industrial sector; but the same thing becomes plausible if we consider, for example, the situation of skill shortage that characterizes the productive fabric in many areas of Northern Italy (where it even happens that a company takes over a firm only with a view of securing a group of skilled workers otherwise impossible to find and of getting rid of old machinery).

4. The objections to the idea of workers hiring the employer. The limit of the prohibition of competition. The sunset of the prohibition of approaching and hiring the competitor's employees

One could object that the transfer of all P1's employees *en bloc* to the employ of P2 requires an activity contrasting with the non-competition duty which workers hold towards their employer in law systems worldwide. But in most national law systems the prohibition concerns competition activities only as long as the work relationship with the present employer is underway: it doesn't

concern the preparatory activity for a new contractual relationship, even with a competitor, carried out by employees while they are still employed by the last employer and just with a view to terminating the relationship. Obviously, in order to avoid the risk that the activity of alternative option preparation may be considered as an already ongoing competition activity, a legal and theoretical refinement aimed at clarifying its limits can be useful; this could better guarantee, on the one hand, the workers' interest in putting to good use the employers' competition in the labour market, on the other hand the interest of the latter that the activity carried out by the counterparts to prepare the alternative doesn't infringe on the still-operating contractual duty.

The employer certainly can avoid the risk of being replaced, by stipulating with his/her employees a non-competition clause valid for a certain period after the termination of the contract; but this agreement, in most national law systems, must foresee a specific additional reward, consisting in an appropriately substantial amount, for that additional obligation limiting the worker's professional freedom. And the more the employer fears the concrete risk of being replaced, the more his/her employees will be able to increase the price of the non-competition agreement. This too shows the benefit that workers can derive from the possibility of an activity of individual or collective search and hiring of a new employer.

Another possible objection is that the takeover of all employees of a company *en bloc* by a competitor is forbidden by the traditional prohibition - this one addressed to employers - of "stealing" workers from each other. This is a very important issue, from which another aspect of the present evolution of our law systems emerges. The prohibition of "stealing workers" can well be included among the juridical institutions aimed at limiting the competition among employers in the labour market, *i.e.* at limiting the possibility that the employer may be replaced by workers. But - if the Italian experience, which I directly know, can be considered as corresponding to a general tendency - by now this rule seems to be close to disappearing, if it has not already definitely disappeared.

In the most recent decisions on this matter of the Italian courts - which have drastically reduced, if not completely eliminated that prohibition - we can find the precise expression of the tendency of the present law system to allow workers to derive the maximum possible benefit from the competition between employers in the labour market. We can almost state that, through this recent orientation in jurisprudence, the law system adopts the rule B that we have mentioned in § 1, drawing logical consequences from it. Here too, anyway, a legislative rule which explicitly establishes the lawfulness of hiring a group of a competitor's employees could be useful. What is needed is to clarify that, in the same way that it isn't forbidden at all for workers collectively to search for a new company, even if it is a competitor of their present employer, it is also not

forbidden for the competitor to actively operate in order to convince those workers to pass *en bloc* to his/her employ.

It certainly isn't sufficient for the institutional framework to change (as it has already partially changed, in this specific aspect, in some national law systems, by virtue of the recent evolution of the courts' decisions); it is necessary for the prevailing cultural attitude to change in this matter. Today workers or trade unions who happen to bestir themselves in order to move bag and baggage to another company, even if they aren't bound by a valid non-competition clause, will be taxed with serious disloyalty; and probably they themselves will feel disloyal, much more than an employer who is proceeding with a view to moving his/her activity to a place where the work is less costly.

But – upon thorough consideration - the most important cultural obstacle to the replacement of the employer by his/her employees is another one: it is the old idea, which dates back to the monopsony era, that in the labour market the entrepreneur is the sole party who is enabled to choose, to hire workers; and that it is in the nature of things that the latter must be satisfied with the employer by whom they happen to be hired. This is why it is important that a new way of looking at the labour market prevail.

A possible further objection to the perspective that is here proposed is based on the current view that the function of putting production factors together is essentially peculiar to the entrepreneur: if workers were able to exert this function, they wouldn't need to "hire" an entrepreneur, because they would be entrepreneurs themselves (and effectively they sometimes act as such, by forming a cooperative). This is true. And this explains why, usually, the selection of the employer is only practicable at the level of the individual worker, who takes advantage of his/her employability in order to choose the employer who gives more value to his/her work. But in many cases the workers are already effectively organised and able to take advantage of the selection and organisational work previously carried out by their old entrepreneur-employer. In exactly the same way, the entrepreneur can take advantage of the increase of his/her employees' human capital, consequent upon their prolonged working in his/her firm: this capital would be lost in the case of their dispersion towards a plurality of other companies (the so-called idiosyncratic investment in human capital, which, according to economic science, constitutes a typical factor in the worker's economic dependence on the employer). Just the fact of having already been selected and organised by the old entrepreneur can be – quite legitimately – fully exploited by the staff of a firm by collectively offering their services to a competitor entrepreneur. And in this operation – as we have

seen above - they can be further benefited by the fact that the material assets of the company lose most of their value if it is not these workers who continue to make them work.

In the debates in which this idea of workers “hiring” the entrepreneur is proposed, the objection is sometimes raised that the assumption of risk by the active party is essential in the concept of “hiring”: because it is the active party who, having at his/her disposal the risk capital necessary for the enterprise, guarantees a certain reward to the hired worker. But things don’t always go like this way: in the commercial agent relationship, for example, it is normal that it is the worker who entirely runs the risk of the productivity of his/her performance; in the work relationship with mixed compensation, partially constituted by profit sharing or commissions, as well as in sharecropping and in several others, the risk is shared in varying proportions between the parties (*à propos* of sharecropping: today in many Italian regions, in particular in the country around Milan, Turin and Florence, it is the sharecropper who chooses the land to work on and the landlord, and who dictates terms and conditions to the latter, with the result that he is able to keep for him/herself up to 80% of the yield). The risk distribution agreed by the parties cannot, therefore, ever constitute a conceptual obstacle to the idea that it is the workers who hire the entrepreneur whom they judge best qualified to give the most value to their work.

The truth is that both parties can perfectly well select each other; and, once the choice has been made, they can agree on the enterprise plan, on a contractual basis of parity. Certainly, when it is the individual who negotiates, that parity may be only formal, owing to the well-known distortions that, also in the mature labour market, can produce relationships of economic dependence or positions of dominance and abuses related to these. But when it is the workers’ coalition which bargains, distortions at the expense of the latter in most cases do not exist or can be easily overcome. It also happens – as we shall see shortly – that in this negotiation a certain group of workers is represented by its Government, either national or local; and in this case the most probable hypothesis is precisely that the relationship of contractual power between the parties is not biased by transaction costs or by information asymmetries at the expense of those workers.

5. The great contradiction between the discontent with domestic entrepreneurs and the rejection of the alternatives available on a global scale

The availability of good entrepreneurial alternatives in the market can be strongly boosted by the increase in capital and management mobility brought about by globalization. On the other hand, in the global market it can be strongly limited by the transaction costs specifically related to the transnational character of the search for a counterpart and of the negotiation (it is enough to

consider language difficulties, lack of knowledge about foreign contexts, etc.). But the availability of good alternatives can be even more limited by prejudicial choices made by workers' representatives – be they trade union organizers or politicians – aimed at preventively marking out the possible content of the agreement, with whatever new entrepreneur, about the industrial relations model to be tried by the new enterprise. Essential missions of labour policies aimed at increasing the entrepreneurs' replaceability, therefore, are: *i*) reducing transaction costs relating to this replacement; *ii*) increasing the technical and juridical skills of workers' representatives who are expected to bargain with new entrepreneurs, by removing institutional and cultural obstacles that limit the possibility of negotiating industrial plans based on new models of individual and collective work relationships: this is the way in which workers (as such and not only as consumers) can seize the positive aspects of globalisation and not condemn themselves to suffer only its harmful aspects.

It happens too often that workers as such are damaged by globalization, through the increase in their sector of competition in the market for *goods or services*, in addition to the competition in the *labour* market from the side of the workforce, without benefiting from a corresponding increase, in the same labour market, of the competition from the demand side, *i.e.* from the employers' side. This is, upon thorough consideration, the phenomenon to which the last Italian Chamber of Deputies' communist Speaker Fausto Bertinotti refers when he defines globalization as “a bourgeois capitalistic restoration” ⁽²⁾: if one allows entrepreneurs to be the only ones who benefit from globalization, in terms of widening their possibility of replacing their employees, this cannot but produce a strengthening of their contractual power in the labour market. But it's another matter if workers, too, learn to seize the opportunities offered to them by globalization, in terms of easier replaceability of their employers.

It is again the last Italian Chamber of Deputies' communist Speaker who states that “Italian capitalism is unrepresentable”; why, then, don't workers' representatives begin to think of replacing, where possibile, domestic second-rate capitalists with the most capable and reliable foreign ones? Instead, it is again an exponent of the radical left-wing, the last Italian Transport Minister Alessandro Bianchi, who extols the virtues of the contribution made by his Government to the raising of barriers against the penetration of foreign entrepreneurs into Italian companies' ownership and management: “We have worked to keep Alitalia Italian” ⁽³⁾; and this was the answer to the unambiguous urging of the main Italian trade-union: “Italy is not for sale” was the headline of the Cgil organ a few days before ⁽⁴⁾, precisely in reference to the question of Alitalia's capital privatisation, but also in reference to the affair relating to Telecom Italia's capital transfer. We'll

⁽²⁾ *Liberazione* and *l'Unità*, *** ** 2007.

⁽³⁾ *La Repubblica*, May 6th, 2007.

⁽⁴⁾ *Rassegna sindacale*, April 5th, 2007.

shortly come back to these affairs; we'll see, in particular, how the protection of the "Italianness" of larger Italian companies by their employees can suit the interest of the latter to protect benefits acquired inside those companies which do not correspond to higher productivity; we'll also see, however, in what way the replacement of the old entrepreneur can promise even larger benefits for them. But first we must examine more closely how the mechanisms of defence or opening-up towards foreign entrepreneurs' penetration into the ownership and management of Italian companies functions in the system of trade-union relations.

6. Alpha and Omega: two models of trade-union and of labour policies

Also the opening of a national system to negotiation with foreign investors and entrepreneurs depends on a set of institutional and cultural data. More than anything, institutional data: the organization of the State and the national system of industrial relations may allow experimentation with a more or less extended range of models, to which more or less extended range of business plans corresponds capable of being negotiated in Italy although conceived elsewhere. In addition, there are cultural data: the breadth of the range of projects which can be negotiated is obviously dependent on the trade union culture of a given country, which can create a greater or lesser willingness to experiment with new models.

On the basis of these considerations we can place industrial relations models in a continuous series between two extremes (which we shall call for convenience α and ω): at extreme α we can place the model in which the trade union intends to obtain the greatest possible security for its members, that is to say legal positions of advantage in which the content is rigidly pre-determined (*rights* in a strict sense), reducing inequalities, but at the cost of a general effect of depressing compensation levels. The diametrically opposed fundamental option is the one which characterises model ω , of the union which is most willing to make a bet together with its counterpart on his/her business plan, with a full sharing of the related risk. Here too, obviously, we can place the possible intermediate models of the union and of industrial relations between the two extremes, in a continuous series.

We cannot say *in the abstract* which of those trade union models is "best" for the workers: this depends on the quality of the systemic game which is created in a specific case with the counterpart, and thus also on the quality of the counterpart him/herself. In fact, even union ω , which has to negotiate with an unreliable counterpart and wants to do a good job as a trade union, can only behave according to the model which is typically of α .

With reference to model ω , as opposed to model α , I do not therefore intend to evoke a condescending and well-intentioned trade union, but a trade union-collective intelligence of workers, interested in (and capable of) evaluating

- the *technical quality* of its interlocutor: thus the quality of his/her business plan and his/her ability to realize it;
- the *transparency* of the interlocutor, that is his/her willingness to share all the information in his possession, so that the negotiation is conducted without asymmetries in information;
- its *reliability*, that is the credibility of the commitments that he will make regarding the sharing of information as work progresses and, obviously, on the division of the fruits, if and when these arrive.

Tav. 2 – Two opposing prototypes of trade unions and of labour policies

α – TRADE UNION AND LABOUR POLICIES WHICH PURSUE SECURITY	Ω - TRADE UNION AND LABOUR POLICIES WHICH ARE IN FAVOR OF THE JOINT BET
* high insurance value of the contract, with lower compensation levels	* reduction of the difference in content between subordinate and free lance work, with higher compensation levels
* worker protection against examination stress	* greater room for individual incentives (monitored by the union)
* high percentage of fixed compensation; low percentage of production bonuses	* high percentage of variable compensation in relation to company productivity or profitability
* tendency to reject penalisation for the most inefficient	* tendency to accept penalisation for the most inefficient (to be compensated outside the working relationship)
* trade union tendency not to trust management quality, even to be uninterested in it	* trade union tendency to value management and, if it is appropriate, to agree upon the high performance/high terms and conditions bet with it
* tendency to claim rights and defend rights already won	* tendency to form workers into a sort of collective entrepreneur
* difensive concertation	* “aggressive” concertation (according to the recent I.L.O. terms)

Where a system of industrial relations close to prototype ω can be usefully tried, it has the advantage of better stimulating individual and collective commitment, thus increasing the efficiency and competitiveness of the enterprise, with consequent large possible improvements in workers' conditions. But, above all, the possibility of negotiating a system of trade union relationships and of work organization close to prototype ω may allow the union to choose the entrepreneur from a

larger potential group, so as to make possible the “hiring” of the one who also has the best know-how, the most advanced technologies and other competitive advantages.

It is true that in past decades in numerous Italian companies protected against competition, especially in the service sector, insider workers have benefited from high levels of compensation, even though this happens in a system of industrial relations which is very close to prototype α . But the passage from a system of this kind to a system closer to prototype ω can allow an increase in the productivity of the company, such as to allow those same insiders to benefit, overall, more than they have benefited from the previous system (we shall see some examples of this in the following paragraph).

The closer the system is to prototype ω , of course, the more the least efficient insiders can turn out to be penalized; and the refusal of this penalization can also constitute – precisely from the point of view of the insiders themselves – a good ground for clinging to the α model and for hanging on to the old entrepreneur, with whom that model has been negotiated. But when faced with the prospect of large gains in productivity and of consequential substantial income increases for the majority of insiders concerned, the game can become appealing for those, too. The fact that they (collectively considered) are given the possibility of making this choice means in any case an improvement – certainly not a worsening – in their position.

Today, on the contrary, in Italy and in some other European countries, a dense intertwining of institutional bonds and of widespread elements of political and trade-union culture anchor the national industrial relations system and national labour policies to a position quite close to prototype α , preventing experimentation with systems closer to prototype ω and so also reducing the replaceability of domestic entrepreneurs.

Let us consider the issue more closely, by observing some recent significant cases.

7. – When workers prevent themselves from hiring the best employer: the cases of Italian railways and of Alitalia.

Italian national railways are today run by Trenitalia: a company which is in disastrous conditions of insolvency analogous to the well known conditions of Alitalia. The category of Italian railwaymen – considered as a whole – should have a clear-cut interest in the possibility that the inefficient Italian company responsible for this service be replaced, maybe gradually, through a progressive penetration of the national railway network by other, more efficient companies; and, reasoning on the basis of the rule B mentioned in the § 2, Italian trade-unions should open up as much as possible to this prospect, with the objective of obtaining for the workers they represent

terms and conditions similar to the very good ones of the German or Swiss railwaymen. For sure, the much better standards enjoyed by the latter are related to a much more rigorous organization and control of their performance; and from this point of view a part of the Italian railwaymen could rationally prefer to maintain the binomial “low performance-low compensation”, which characterizes their present work conditions; but – even if we decide to discuss the issue from the purely egoistic point of view of a category of insiders for whom the users’ and customers’ interest is a matter of indifference (a point of view that shouldn’t be the one of the established unions) – we must at least admit the possibility

- that the German or the Swiss system is considered by a large majority of our insider railwaymen to be preferable to the present Italian one;

- that the amount of productivity gain which is made possible by the replacement of the old inefficient entrepreneur should permit the company to adequately indemnify the minority of inefficient railwaymen who are damaged by the operation.

In any case, it seems evident that the possibility of choice is intrinsically better than the lack of alternatives. And here the choice could be activated in two ways: by favouring the penetration of the Italian railway system by foreign companies which are able to offer at the same time better service to travellers and better work conditions to railwaymen, and by aiming at the replacement of the main Italian company, which today is in charge of the service in conditions of *de facto* monopoly, by a more capable entrepreneur. In this sector, on the contrary, as in many others, we witness a government policy – substantially supported by unions – aimed at protecting to the utmost the old Italian entrepreneur against the risk of replacement by foreign railway companies. This protection to the bitter end of the national monopolistic entrepreneur combines with (and is supported by) a policy of rigid defence – *i.e.* imposition of a rule of non-negotiability – of some cardinal elements of the system of individual and collective relationships in the sector.

From this point of view the story of the Swiss-Italian company Ti-Lo (Treni regionali Ticino-Lombardia) is emblematic. This company in June 2005 signs its first collective agreement with the Swiss railway unions, which foresees excellent work conditions, in many aspects decidedly better than the Italian standard for the same sector (initial wages of around 43,000 euros per year, which can rise to 55,000, plus the *ad personam* benefits; security of employment; from five to seven weeks of yearly holidays; a first-rate health care system; etc.); but it foresees also a rigorous no-strike clause, with a mechanism of arbitral solution of possible collective disputes, between the signing of the agreement and its renewal. A few days later, at the opening of the negotiation with the Italian unions, the same company proposes an agreement as close as possible to the one that has been signed on the other side of the Alps, with a view to progressively improving the Italian terms

and conditions up to the level of the Swiss ones; but union leaders reply by immediately abandoning the negotiating table and making furious statements to the press: “ the company has tried to insert in the negotiation the abolition of the right to strike; it’s still an isolated case, but a very serious one” ⁽⁵⁾.

Here, actually, the pre-emptive defence of the old national pattern doesn’t concern only the freedom of celebrating the ritual monthly strike, which for several decades has characterized the whole Italian public transport sector, but also concerns the burning issue of hours of work: the Swiss railwaymen have a 40-hour working week, while the Italian national agreement foresees a 36-hour working week; furthermore, it concerns another burning issue, that of the “single train driver”: in Switzerland trains have a single driver, while in Italy in the driver’s cab there must be two, according to an ancient collective clause, which Italian unions fight tooth and nail to preserve. Aren’t double wages for railwaymen, trains which arrive with a Swiss precision, which are safe, absolutely clean and comfortable, worth the sacrifice of the no-strike clause and of the “single train driver” rule? We can presume that a large majority of Italian railwaymen would gladly waive those “privileges” and their monthly 1,700 euro wage (reduced by the salary lost due to the inevitable monthly strike), in exchange for the terms and conditions enjoyed by their Swiss colleagues (even with some more working hours and the no-strike clause).

In any case, what seems beyond dispute is the interest of the category in the possibility of choice among possible alternatives; and this should imply the possibility that different unions should be enabled to make different choices (also, and above all, in the field of the plant level collective bargaining, free from the necessity of compliance with the model set by the national collective agreement); furthermore, it should imply that workers could in their turn choose the union or the coalition whose orientation best corresponds to their interest. On the contrary, here too the strategic option of the pre-emptive conditions predominates: an industrial plan cannot even be taken into consideration if it is not compatible with the old system of individual and collective relationships, and in particular with the part of that system which is governed by the national collective agreement.

An analogous case in many aspects is that of Alitalia, the Italian State-owned airline company, which for several years has also been on the brink of bankruptcy, due to the increase in competition in the air transport market in the last three decades (progressive passage from the situation MM to the situation CM represented in § 2). In previous years Alitalia workers were able to seize a sizeable part of the company’s monopolistic rent, partly in the form of more laxness in work organization and lower effort; now the competition regime threatens to suppress that rent. The

⁽⁵⁾ *Corriere della Sera*, July 30th, 2005.

sole reason that can induce them to defend the “Italianness” of the enterprise, *i.e.* its present form, is the hope that Italy can, despite everything, escape the Community discipline of competition, continuing to offer its “national company” State subsidies under the table or re-establishing the monopoly in domestic routes (this could have been the result, if the Air One offer had been preferred to the Air France one): otherwise – this presumably is their reasoning – losing the Alitalia job will not be worse than going on working for Alitalia without the monopoly rent from which they have benefited until now.

Now, though, let’s hypothesize that a foreign entrepreneur is there, who is able to increase the productivity of Alitalia and to enhance the value of the work of its insider workers, by cutting down on their old monopoly rent, but replacing it by the compensation increase made possible by the increase in their productivity. Sure, among those insiders themselves the present choice in favour of the old system could prevail; but it isn’t possible to exclude that, faced with the concrete feasibility of the alternative offered by the foreign entrepreneur, this choice could prevail. In any case, the possibility of choice is better than having no choice.

The story of the Alfa Romeo plant at Arese (near to Milan) is another one which emblematically represents the traditional hostility of the Italian system towards international competition on the part of employers in the labour market, which means a *de facto* refusal of the entrepreneurs who are bearers of technological and organizational innovation. In the second half of the Eighties the State-owned car company could be taken over by Ford, whose offer is better than Fiat’s one; but the Government – with the consent of most unions – prefers to sell the company to Fiat, so protecting the latter from an important competitor’s penetration in the national car market. At the end of the Nineties, when the Alfa Romeo Arese plant is going through a severe crisis and risks being closed by Fiat, the same choice is made by most unions, which take a position against the cession of the plant to General Motors. In October 2000 Nissan – which since the mid-Eighties has been successfully running a very productive plant in Sunderland, in Northern England, where manufacturing staff are paid wages, on average, double those of the Fiat manufacturing staff - is looking for a site inside the euro-area in which to install a new plant for the production of the *Micra coupé* model. Barcelona, Flins (near to Paris) and Erfurt advance their candidature for the investment; in Italy nobody, either on the management side or on the union side, even thinks of the possibility of proposing, for the new Nissan plant, the Arese site, where the last 2,000 workers are losing their jobs.

The reason for this behaviour of the leading Italian actors must be sought in the fact that the Nissan industrial plan foresees the adoption of a work organization model which is incompatible with the national collective agreement for the engineering sector (the Toyota model and *lean*

production are not compatible with the system of professional classification foreseen by that collective agreement); furthermore, it foresees, in the first start-up years, a lower fixed part of the salary than the minimum set by the Italian collective agreement. It is considered irrelevant that this industrial plan aims at reaching much higher compensation levels than the Italian engineering sector standard – as has happened in the Sunderland Nissan plant, where workers earn twice the salary of the Fiat ones ⁽⁶⁾ – because the derogation to the national agreement is considered *a priori* inadmissible. Here again, neither policy makers nor unions even take into consideration the industrial plan which is not compatible with the old model of individual and collective work relationships foreseen by the national agreement and practised until now by almost all Italian companies: the rejection of that plan is preferred even when – as happened in the Alfa Romeo case – it costs seven years of subsidized unemployment for hundreds of workers.

Simply to keep Italian highways in Italian hands, in 2006 the center-left Government built barricades against the Spanish company, Abertis, just as the centre-right Government in the previous legislature had allowed the Bank of Italy to build barricades against the acquisition of Banca Antonveneta by the Dutch bank Abn Amro.

To prevent the take over of Telecom Italia by AT&T – the largest company in the world in this sector, but which has the defect of being American - the Prodi Government, with the full support of the unions, managed to mobilise the entire Italian financial system and to adopt the behaviour most suitable for making this enterprise *de facto* not contestable in the global market, even reaching the point of considering favourably the possibility of it being controlled by the reviled (but Italian to the core) Berlusconi; it doesn't matter if he is in many aspects incompatible with that role due to the other entrepreneurial activities which he directs.

It appears to me, moreover, that the action of opposition performed by the left-wing of the Italian majority during the last legislature against the Lanzillotta Bill, and against the extension favoured by it of the number from which to choose the managers of the local public services, can be interpreted as a manifestation of the same protectionist policy.

8. The importance of the attitude to evaluating the industrial plan and, if suitable, to betting on it

The reason why Italian Governments, until very recently, have all preferred – more or less openly – to follow this line of policy would take too long to explain here. The reason why the unions

⁽⁶⁾ At the end of 2005 Nissan manufacturing staff in the Sunderland plant earned from an annual minimum of 27,706 euros to a maximum of 32,019, while Italian engineering manual workers earned from a national contractual minimum of 15,870.40 to 16,868.28, in a context in which the variable part of the compensation, negotiated at plant level, doesn't usually exceed 10% of the total.

prefer it seems to me explicable in this way: they tend much more to the prototype α than to the prototype ω . That is, they are little able to evaluate a new industrial plan and the professional qualities – competence, transparency, reliability – of those who are its bearers: they are more willing to negotiate “rights” for their members, neglecting the counterparts’ qualities. The Italian unions, effectively, seek for their members more security than opportunities for improving their conditions. But this strategy can only be successful in a relatively closed and static national productive fabric, not in a strongly dynamic one; it has a depressive effect on possibilities of innovation, prevents experiments in new forms of organisation of work and new forms of the compensation structure; therefore weakens today the whole system in which it is practised.

The damage caused by this policy for consumers and users is extremely evident; what is less evident is the damage for the insider workers themselves represented by the union, who deprive themselves of the possibility of benefiting from the increase in productivity of their companies, which could derive from the hiring of better entrepreneurs. It is certainly true that this increase in productivity can be in part delivered by a greater rigour in the organisation and in work control (however only partly: the other part is influenced by more advanced know-how and techniques); but the experiences which we can profit from internationally allow us to hypothesize credibly that for the vast majority of these insiders the cost in terms of greater intensity of working commitment would be amply repaid by the increase in compensation deliverable and by the increase in productivity of the company. It is, in any case, in the workers’ interest to have the possibility of choice; and I would say that it is also their right.

This is, then, the policy that should be followed by any national Government, in the era of globalization, not only in the obvious interests of the consumers and users, but also in the interests of the workers: to attract the greatest possible number of foreign entrepreneurs to the national labour market, so that it is possible to choose those who offer the best industrial plan. And this would appear to be, at the same time, the strategic option of a far seeing union, which does not preventively choose to defend old position rents earned by its members, at the cost of protecting gravely inefficient enterprises, but rather to take advantage as much as possible of the present or potential competition among foreign entrepreneurs in the national *labour* market in order to be able to choose the one who offers the best prospects for workers. However, this implies the willingness and the ability to evaluate the industrial plan advanced by the foreign entrepreneur without preconceptions; and, if the plan evaluation and the entrepreneur’s one are positive, it implies the capacity and the juridical qualification to conduct a total negotiation with him/her on terms and conditions of the common bet.

To be able to conduct such negotiations means to be able to negotiate not only the wage level, but also the level and structure of the insurance content of the work relationship; and to negotiate also – why not? – the industrial relations model.

In this field European Mediterranean countries – and Italy above all – have a lot to learn from Great Britain. To go back to the above mentioned Nissan case, we can consider the negotiations and the plant agreement which in 1985 gave birth to the Sunderland industrial experience as the contractual process through which English workers, represented by their national Government and their union AUEW, hired the foreign entrepreneur that they had valued as the best one for the installation of a new industrial plant in a very depressed area. But in order to be able to choose, they had to take into consideration the industrial plan advanced by that entrepreneur without prejudicial conditions (without the “red lines” of which Italian unions are so fond), to compare it with other plans advanced by domestic entrepreneurs, to evaluate pros and cons: they had to evaluate, in particular, Nissan’s proposal of reducing by around one fifth the fixed part of salary in relation to the current levels of compensation in the British car sector at that time, and of considerably increasing the variable part, in the context of a “common bet” on the possibility of reaching very high productivity levels; they also agreed to bet on a work organization system which at that time in Europe was totally new and unknown; they had to accept a very rigid no-strike clause, which at that time in Britain was difficult to accept (a no-strike clause similar to the one that in 2000 was proposed by Ti-Lo to Italian railway unions, and was rejected by these, as we have seen). At Sunderland there was a union willing to evaluate the plan and to place a bet on it, which has brought innovation, high productivity, high revenues and good employment for thousands of workers. And the Nissan case is not isolated, in Great Britain, if it is true that during the following two decades the British car industry has seen the almost entire replacement of domestic capital and entrepreneurs by foreign ones: with the Rover bankruptcy of 2006, about 95% of the British car industry capital has by now become foreign. The fact is that the British Government and unions have been able to get the best of globalisation; today, in Britain car manufacturing staff have reached such a technological level that they have nothing to fear from the competition of Indian, Brazilian or Romanian manufacturers.

In Italy – as I was saying – this today is much more difficult due, above all, to the dominant culture in our industrial relations system, which places this much closer to the above mentioned prototype α than to the prototype ω . But also due to some institutional factors. Among these I class in the first place that prohibition of derogating from the national collective agreement, which isn’t written in any statute, but actually constitutes nonetheless a pillar of our system, due to the extension *erga omnes* of the minimal remuneration levels by judicial means and to the strong

penalisations foreseen by several rules against those who do not apply the national agreement in its entirety. This is one of the causes – together with the general lack of effectiveness of the law, of efficiency of public administrations and of infrastructure modernisation, with the cost of services to companies higher than elsewhere – of Italy’s grave inability to attract foreign investments in the world capital market.

Tav. 3 – Italy’s difficulty in attracting investments in the global capital market

<p>US investments in EU countries at the end of 2005 (stock figures)</p> <p>United Kingdom: \$ 324 mld</p> <p>Germany: \$ 86 mld</p> <p>France: \$ 61 mld</p> <p>Spain: \$ 43 mld</p> <p>Italy: \$ 26 mld</p>	<p>Flow of foreign investments towards EU countries in 2005</p> <p>United Kingdom: \$ 165 mld</p> <p>France: \$ 60 mld</p> <p>Italy: \$ 20 mld</p> <p><i>Fonte: Unctad – Conference of the United Nations for Trade and Development</i></p>
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The obligation of total application of the national collective agreement, in Italy, makes necessary not only a model of wage structure, but also a model of work division and organisation created by hundreds and hundreds of extremely detailed rules regarding professional levels, tasks, professional mobility, working time distribution and shifts, which considerably limit the possibility of innovation in this matter. This limitation – let us be clear – today is not only defended by unions, but also, symmetrically, by the main employers’ organisations, starting from Confindustria (which preaches the opening of Italian markets to the international economy, but in its proposal of September 2005 about the collective bargaining system reform ⁽⁷⁾ is careful not to question the “red line” of the mandatory nature of the national collective contract as the only model of wage structure and work organisation). This happens both because national apparatuses of the main entrepreneurial organisations fear – no less than the ones of the main trade unions – the erosion of their role, which could derive from a shifting of the centre of gravity of collective bargaining from the centre towards the periphery; and, above all, because, even among medium-large entrepreneurs the old protectionist culture prevails: they can sleep better at night if they have the certainty that no competitor in the whole of Italy can obtain a competitive advantage by trying out a form of work organisation or a compensation structure which is different from that imposed by the national contract.

⁽⁷⁾ CONFINDUSTRIA, “Per una maggiore competitività delle imprese, lo sviluppo dell’occupazione e la crescita del Paese”, September 22nd, 2005.

The “red lines” drawn by the mandatory collective national contract are kept in place – when we look closely – by the convergence of interests between a union incapable of evaluating business plans and work organisation models which are dissimilar to those of the old standard national model and an entrepreneurial class mainly interested in avoiding the necessity of competing with those plans and those new models.

Note that allowing peripheral collective bargaining to experiment with new models of work organisation and/or of wage structure doesn't in any way mean lowering the safety net guaranteed by the national contract, that is diluting its regulations. Nothing prevents one considering the national contract, even with its current protective contents unchanged, as a default discipline, as a safety net applicable in all the cases in which a different discipline hasn't been validly negotiated at a lower level. Everything then depends, obviously, on establishing clear and simple rules for the individuation of the contractual agent which can bargain at each lower level.

9. Bargaining at the plant level, without limits and boundaries, as an indispensable means for the hiring of the best employer by workers and their benefiting from innovation

This empowerment of peripheral collective bargaining to experiment with new models constitutes a very important stage for giving back to workers an active protagonist's role in the labour market; and for giving back to the Italian productive fabric the necessary openness to innovation. The innovation, almost by definition, always appears in isolation; it is always proposed as a hypothesis concerning, at the beginning, an individual company; it is, therefore, only at the company level that it can be promptly negotiated.

On the other hand, in the post-Ford economy, it is the capacity to relate to complexity and to the unexpected - more than the capacity to foresee, to establish long lasting operational protocols valid for every occasion, to control the future by discounting it in the present – that assumes paramount importance; that is the capacity to map original routes for the exploration of the possible, to correct them along the way by non codified variants, to create unprecedented synapses between different competences and fields of knowledge, without waiting for them to be accredited by academia or the establishment. It is very unlikely that all this can be always reconciled with the very detailed discipline of work organisation and the wage structure contained in the national collective agreement, no matter how capable its parties are of updating its content at every renewal (the Italian ones, I may say, do not excel in this ability).

Certainly, the joint bet with the entrepreneur can also be lost. But a true pluralism in union and in collective bargaining could allow us to measure and compare the results of different policies and of different models. And it is plausible – as we have already seen - that the gains in terms of

general strengthening of the national economic system, besides the improvement in the workers' conditions, would amply compensate for the costs of some lost bet.

10. The logic of centralizing strategy and the fences protecting the old national standard pattern against new enterprise models

The centralization of the collective bargaining system and the *de facto* prohibition of derogating from the standards established by the national contract pose some serious problems of the narrowing of the entrepreneur's choice in the strongest and most dynamic part of the productive fabric: the part where the model of work organization set by the collective contract can constitute an obstacle to innovation; but serious problems of shrinking of that choice also arise from the centralization of the collective bargaining system and the mandatory nature of the national contract in the weak part of the productive fabric, and in particular in the geographical areas where it is evident that many enterprises today cannot support the cost of those standards.

The logic of the centralizing strategy – which in the second half of the last century characterized very important and positive national labour policy experiences, such as the Swedish and the German ones – consists in the following: once a national minimum standard is established, every enterprise is bound to comply with it, even if this causes the closing of less productive firms, which are incapable of bearing that load; and even if this causes their employees to migrate towards the more productive ones, with due assistance from the employment services. This will ensure that their work acquires the greatest value and that they obtain better terms and conditions.

In Italy today the problem consists in the fact that applying these strategies with the necessary rigour would mean losing at least a third of the jobs in the South and forcing the affected workers to migrate to firms in the Centre-North. Since in reality we cannot accept this consequence, we in fact tolerate the national standard being widely disregarded, and we resign ourselves to living with a vast illegal economic sector. Rightly or wrongly, we believe that it isn't realistic to pursue the strategy of centralized bargaining to the bitter end; and we choose to tolerate the worst of derogations from the national collective contract and from the law itself: illegal work, widely controlled by the *Mafia* and the *Camorra*.

11. A new way to look at the development of regular employment in depressed areas

Of these two, only one is a solution: either we are convinced that our Southern economy can support the cost of the minimum standard negotiated at the national level (but in that case we must really impose its compliance, by going down this road coherently and rigorously right to the end), or we must allow that standard to be adapted by collective bargaining at the plant or regional level,

in order to make compliance really enforceable, in the context of a policy in which the carrot of the reduction in the cost of labour is combined with the effective stick of sanctions (that same stick that we prefer not to use for fear of destroying jobs). It will be a derogation “for the worst”, according to our traditional labour law culture; however, at least it will not be a derogation decided unilaterally by the worst section of the entrepreneurs and by the *Mafia* gangs. It will rather be a derogation governed by open and transparent collective bargaining, perhaps in the framework of a tripartite negotiation, aimed at the restoration of legality and the development of the South of Italy, where on the one hand the union makes the commitment to negotiate all aspects of the greatest possible number of investments in legal enterprises; and on the other the public bodies undertake to do their part on the level of economic policy and improvement of infrastructure. All this must take place in the context of a gradual future realignment of regional standards to the national one.

Let’s try to look at our age-old question of the Southern Italian economic development from a perspective of labour policy opposed to the traditional one. That is, let’s try to consider the most unfortunate part of the Southern workers not as unemployed or irregular workers passively waiting for somebody to come to offer them a profitable job, but as subjects interested themselves in recruiting entrepreneurs able to increase to the utmost their work by setting up their firms in our Southern regions; as subjects who, therefore, are in active search of the bearers of good industrial plans, wherever in the world they come from, and who negotiate terms and conditions of recruitment with them in order to make it appealing. In order to do this, Southern workers obviously need to be enabled to collectively negotiate everything, from work organisation models to the salary structure; and, considering the conditions of the start up, it can be necessary for these workers themselves to assume a larger part of the enterprise risk than that which is normally assumed by their colleagues in other parts of Italy: it can be therefore necessary to negotiate a salary structure in which the guaranteed minimum is much lower than the minimum established by the national agreement, while a larger part will vary with the enterprise’s results. To deny this possibility means drastically reducing the Southern workers’ possibility of recruiting better and more numerous entrepreneurs than those who are today feasible and with whom they deal.

This new perspective doesn’t require only a change in our trade union movement’s dominant culture: it requires, too, a framework of clear-cut rules on collective bargaining and worker’s representation at the negotiation table, which make possible a choice of this kind also at the level of an entire region and – why not? – also in the case of disagreement of the unions which represent a minority of the involved workers. This, in Italy today, is possible only in theory: for all practical purposes, the lack of such a framework of rules makes that choice impossible, or possible only as an

exception, on condition that everybody agrees, but only in very limited areas and with high transaction costs.

12. The main problem: the huge increase in workers' income and productivity inequality

For sure, at least on one point those who oppose this way of thinking are right: to increase the competition among entrepreneurs in the labour market, and the freedom of manoeuvre of the union as workers' collective intelligence in its peripheral organs, necessarily leads to an increase in disparities of terms and conditions from company to company, from region to region; in the same way, on the other hand, increasing the part of compensation which varies in relation to productivity leads – by definition – to an increase in disparities among workers.

The increase in inequalities is, we might add, a phenomenon which has been occurring for many years, in every part of the world, in workers' productivity levels before it occurs in their earnings: a phenomenon for which it is possible to give various interpretations and explanations, but that we must clearly tackle.

One of the ways in which the phenomenon today shows up consists of the increase – not so marked as certain alarmist journalistic accounts would have us think, but nonetheless statistically well perceptible as a steady tendency in the last two decades – of the non standard work, of the bad jobs: a world inhabited by millions of workers who are practically unprotected, of “project workers” and other collaborators who are claimed to be autonomous but who are more subordinate than ever.

These sub-standard jobs are often extremely visible: for example in call centres, or in certain cooperatives or other small subcontractors for cheap services; or in medium large companies which hire “project workers” or free-lancers in order to give them the jobs that have been refused by regular workers, or in order to make them shoulder all the burden of flexibility that the company or the public body requires and which serie A labour law does not contemplate. Here too, as for the irregular work in Southern Italy, if this self-evident apartheid is *de facto* tolerated it is because we fear – certainly with some reason – that a rigorous and effective equalization of rights, protections and costs, *i.e.* the rigorous application of the law, would have the effect of eliminating a large part of the jobs which one would wish to regularize: that in which the sub-standard terms and conditions correspond to an effectively sub-standard productivity. This is why we turn a blind eye, or even two.

The true challenge that labour policies must grasp, perhaps even more than that of correction of monopsonistic labour market distortions, is that of the apparently relentless increase in productivity inequalities among people in the same social context, or also in the same professional group. Here there aren't legislative or contractual shortcuts which allow us to solve the problem by

the stroke of a pen: on the contrary, the attempt to equalize by decree can even worsen the damage precisely for those whom one wishes to protect. Here the equality, before it can be guaranteed by law or by contract, must be built into the social and productive fabric, by offering those who are less endowed a surplus of targeted training services, of information and of assistance for mobility; by taking the last of the line by the hand, in order to help him/her not to be left behind.

13. Why the idea of a subordinate worker's legal incapacity can be harmful

The true question that the labour policies must today face is not that of an intrinsic “weakness” of the labour force in the market, of a sort of curse with which the subordinate workers as such are thought to be afflicted.

It is, rather, the moment to realize how precisely this idea that subordinate workers are ontologically incapacitated can favour the maintenance of an institutional and cultural context which weakens workers themselves, clipping their wings and condemning them to a passive role in the markets. It is not the work in itself which is weak and fragile, vulnerable to exploitation; it is the absence of alternatives which makes it so. Everything that enlarges – both for the individual and for workers as a group – the number of possible synapses with different entrepreneurs contributes to protecting work from the risk of exploitation. When, however, the weakness and fragility of work stem from defects in individual endowment, those defects must be dealt with as such, and not as a divine curse which - it is thought - afflicts work.

I know well that the great majority of my labour law colleagues – not to speak of almost all trade-unionists – dissent from this way of framing the question. They deem that, even if any monopsonistic labour market distortion were eliminated, even if any asymmetry in information and transaction costs distribution were overcome, and the workers, as individuals and as a group, were enabled to choose really freely among a wide range of competing entrepreneurs, the work relationship would remain an intrinsically unbalanced one. But it seems to me that no one has yet explained in what, *at that point*, the residual condition of inevitable inferiority and subjection of the worker to the entrepreneur would consist. Still today many identify an intrinsic cause of inferiority in the fact that workers do not possess material capital; but workers have on their side the human capital, which hasn't at all an inferior value compared with the material one; and, if well organised, can be as strong or stronger in the negotiation than material capital. The fact that this possibility is ignored causes the very real risk that it is precisely this conception of work as an intrinsically weak part of the productive relationship – originally formulated in a social-economic context very different from the present one – that hinders the possible emancipation of work itself, keeping it in a condition of inferiority.

