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Constrictive labor and the dignity of work

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Abstract:

The paper summarizes the rationale and contents of a conference held at the Accademia Nazionale dei Lincei in December 2020, celebrating the fiftieth anniversary of the Italian Statuto dei lavoratori (Charter of Workers' Rights): a reform that represents an important advancement in Italian civic development. The paper illustrates the Charter: its attempt to reconcile, in light of the Italian Constitution, the twin and opposite characteristics of labor as sacrifice and as contributing to the social dignity of workers; and the law's compromises between the opposite needs of the labor process (stability and flexibility of employment, employers' freedom in hiring, the need to avoid discrimination, and so on).

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1. Constrictive labor and the dignity of work

Our current economic systems are characterized by an unavoidable conflict between the systemic demand for constrictive labor and the ethical demand for the recognition of dignity of work. Article 1 of the Italian Constitution refers to both: "Italy is a democratic Republic, founded on labor." Article 4 refers to both constrictive labor and dignity of work, but especially to the former—chiefly in the second section of the article: "The Republic recognizes the right of all citizens to work and promotes those conditions which render this right effective. Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society." The defense of workers' dignity (along with article 37, which covers gender equality) is reiterated in articles 35-40. Article 35 states that "The Republic protects work in all its forms and practices" (including, in articles 39 and 40, the freedom to create trade unions and the right to strike.)

* Presented in contribution to the conference titled *Lo Statuto dei lavoratori compie cinquant'anni* [The Charter of Workers' Rights turns fifty], organized by the Accademia Nazionale dei Lincei in collaboration with Economia civile and the Brodolini Foundation, held on December 4th, 2020.

The systemic demand for constrictive labor is born from the fact that a market economy, which is based on the division of labor, can only function and produce economic wellbeing if the wide range of jobs necessary to produce goods and services are covered to the extent required. It is not possible for everyone to be a poet or a musician: we also need engineers and doctors, plumbers and nurses, bus drivers, and house painters. There is some room for freedom of choice, but this freedom is not absolute. A significant portion of the population (if not the entire population) needs to work to have an income: this is inevitable in a functioning market economy.

Moreover, the division of labor within production processes demand coordination, which is impossible to achieve through spontaneous agreement between workers. The costs needed to stipulate all the necessary agreements—the so-called transaction costs—are too high. This means that businesses must have a hierarchical structure. According to an old maxim of economists, the market stops at the company's doors, and inside, a command economy prevails. Herbert Simon notes that large businesses have a complex internal organization, divided into departments (production, purchasing, sales, marketing, and so on) that enjoy a significant amount of operational independence. As such, the command structure is not omnipresent: the hierarchical structure does not pertain to all sectors, but only to those relevant to the organization of the work process. Workers' freedoms are not infinite, and they narrow as you move down the hierarchy.

As a result of these factors—workplace obligations, hierarchical structures (especially the former)—work has traditionally been considered to be a negative part of people's lives. Marginalist tradition theorizes the choices of economic subjects as a rational balance between pleasure and pain. Labor is sacrifice, and a source of negative utility; its contrast is pleasure (which has positive utility), and that comes from the consumption of goods and services that labor allows us to obtain.

However, this tradition, which is still dominant, is over-simplistic. To make the “felicific calculus” of pleasure and pain possible, this theory is forced to adopt a one-dimensional understanding of utility and disutility, which ignores the variety of human passions and interests. Labor—being a necessary element of human life and crucial for the development of the societies we live in—gives each citizen a role and a sense of dignity, and the lack thereof is deeply felt by those who are not able to find work. Sociologists view anomie as a natural consequence of unemployment: this can lead to severe psychological distress, and, in some cases, even suicide. I won't be discussing these ideas here, but the reference in the Italian Constitution (specifically article 4) to the right to work implies the existence of policies that ensure full employment. Hyman Minsky goes so far as to refer to the State as a last resort employer: this would be hard, but not impossible, to achieve.

On the other hand, the degree to which a job can be a source of satisfaction for the worker depends on the type of tasks and the level of strain involved. It can also be a source of dissatisfaction, especially when the hierarchy of the company prevents the worker from being able to fully consent to carrying out the tasks that are asked of him or her. A tradition that dates back much farther than the marginalist revolution acknowledges both the advantages of labor and the undeniable sacrifice involved: in the Bible, the curse “by the sweat of your brow you will eat your bread” is accompanied by the recognition of labor as a source of moral and material improvement. As such, the goal of the utopian movements of the 16th and 17th century—especially those connected to the protestant reformation—was to liberate workers from subjugation to their employers. The goal was not, however, to free mankind from the necessity of labor, which would have been truly utopian. Marx himself, in *Critique of the Gotha*

Programme, characterizes the endpoint of the development of productive forces—that is to say, communist society—as a state in which labor remains, but is the result of free choice. Von Neumann pushes this utopian viewpoint to its extreme by presenting a model of a fully automated society. However, his presentation is more of a formal exercise than a predictive model or a possible future goal.

2. The Charter of workers' rights

In the juxtaposition between the dignity of workers and the necessity for hierarchical organization, a lot depends on how things are concretely organized. Between the two extremes of a slave society and a society of independent workers (which is effectively impossible, given the undeniable advantages of the division of labor), there is a huge amount of middle ground. A society's distance from one extreme or the other depends on institutions (culture and laws), and civic development—which is facilitated by technological and economic development. These, in turn, move societies away from the extreme of slavery.

This brings us to the Charter of workers' rights, which turned 50 last May. This law represents a decisive move, though still an economically, politically, and socially sustainable one, toward a more civil society. The Charter was a source of many controversies and was modified multiple times, but in a lot of ways it has stood the test of time. This is also thanks to the amount of work that went into creating it: a large group of politicians, law experts, economists, statisticians, and even experts on occupational medicine, participated in its creation. The Italian minister Giacomo Brodolini successfully guided the law through a difficult parliamentary process and Gino Giugni, a reknown law professor and political activist, coordinated the various informal labor groups that managed the numerous aspects of the law.

The amount of work that was put into drafting the law hinged on the necessity to find the appropriate balance between contrasting demands. The goal wasn't to start a revolution, but to build a reform that would improve the condition of workers to the extent possible, given the circumstances at the time. More specifically, the Charter of workers' rights was a "structural reform", as Riccardo Lombardi defined it. It was not a neutral reform in terms of the power structure: it improved the condition of the workers, who are the less powerful side with respect to the industrialists. The Charter was the last reform that characterized the era of the first center left government in Italy and likely, along with the law on middle school reform, the most important.

Gianfranco Pasqualino's (2021) paper, also published in this volume, illustrates the political situation that led to the Charter taking the shape it did. This included the need to secure the Christian Democrat vote in Parliament, and the need to avoid parliamentary obstructionism from both the Italian Communist Party and the center-right parties. Other papers, published subsequently, discuss the juridic structure of the law (Sciarra, 2021), its economic implications, especially as it relates to employment (Simonazzi, 2021), and the evolution of the law in the 50 years following its approval (see Santoro-Passarelli, 2021 on the juridic aspects, and Regalia, 2021 on the social and political aspects.)

It's hard to explain the reach of the Charter to those with no direct experience of Italy in the 1950s and 1960s. While it was not revolutionary, it did lead to major changes, including the almost complete disappearance of the practice of punishing workers by assigning them the most physically demanding tasks, such as working with disturbingly noisy machine presses

and working in the toxic painting departments. The Charter also led to the disappearance of violent thugs—often disguised as amateur rugby teams—whose role was to break up picket lines during strikes. The Charter also quelled the repeated sexual harassment that female workers were subjected to by bosses and higher ups, it decreased the preferential hiring of protest-adverse workers, and so on. Of course, the situation couldn't have changed from one day to the next, and in many cases, mindsets had to change drastically. Unfortunately, these changes have not yet been made completely, but they have been helped by the gradual shift in the type of jobs available, including the increased number of specialized jobs and more skilled—even highly skilled—workers. This shift has been accelerated by the digitization of the production processes in the service sector as well as in manufacturing. Unfortunately, a high level of unemployment increases the relative power of employers, and the Charter is sometimes violated, though these violations are limited, because modern society is more prone to defend the dignity of workers than it was 60 years ago.

As such, the Charter tried to promote dignity in the workplace and the dignity of workers. The Charter touched on multiple issues, even though the debate that followed its creation focused almost exclusively on firing with just cause. As was seen in those debates, the problem was—once again—finding the right balance between business' demands for freedom from labor regulations and workers' demands for stability. Workers can't be randomly fired, but they can only lose their jobs if there is a "just cause" or a "justified reason". None of the debates following the creation of the Charter brought this principle into question. The often heated debate around this issue focused on its exact interpretation. The juridic practice applying the statutory norm has often been quite strict, as can be seen in the frequent denials of the "just cause" to fire workers that have been accused of damaging machinery or products, or of being violent during strikes, until all possibilities of appeal have been attempted and judged. This has created the pressure to make these statutory restrictions less severe, especially when it comes to compulsory re-hiring. In turn, these more lenient restrictions have led to employers firing workers anyway, without having to pay excessive compensation costs (except in extreme cases involving racial or political discrimination or workers being fired as a reaction to union involvement.) Moreover, firing—even group firing—for economic reasons is still possible.

In reality, companies have often used more flexible contracts to reduce salary-related costs, since the social security contributions are lower with these types of contracts. Accepting this compromise in successive laws was a serious mistake: flexible work contracts should have been associated with higher, rather than lower, social security contributions. This way, businesses could have chosen the necessary level of contractual flexibility, while still dealing with a disincentive cost, which would have led to fewer controls in the choice between various contract types. Moreover, a reform toward greater flexibility in employment should be accompanied by permanently low levels of unemployment and by policies that provide some form of income for unemployed workers. The Danish *flexsecurity* model can't only be implemented halfway—there can't be more flexibility without more security.

Changes related to hiring have been even more drastic. In fact, the articles that relate to the hiring process (articles n. 33 and 34) were repealed in 2002. The problem was how to differentiate, in the case of on-call contracts, between mass hiring based on a public registry of the unemployed and direct calls. The former made sure that there would be no discrimination in hiring based on politics, ethnicity, or sex, while direct calling allowed companies to select workers that were more suitable for the tasks or jobs at hand. I remember an in-depth discussion on this topic, which took place in one of the labor groups organized by Gino Giugni

during the process of writing the law. The debate was between the proponents of direct calling and the proponents of mass hiring in the case of divers working at the Genoa harbor. Giugni, influenced by his American training, proposed a model which consisted in identifying, article by article, concrete examples that could be used to demonstrate the effects of different formulations of the regulation. In substance, however, increasing job diversification, the growing demand for skilled workers on one side and the shortcomings of the labor offices on the other jeopardized this model, until it was definitively abrogated.

On the other hand, there have been only very minor changes made to the Charter over time, in other matters, such as for penalty procedures (article 7 of the Charter). Aside from verbal reprimands, there are well specified rules to be followed. Employers have the right to impose penalties on the worker in the case of contract violations or inappropriate behavior; however, employees have a right to protect their dignity: they must be informed in advance if their employer wants to impose any penalties or sanctions in order to be able to defend themselves—including through the support of unions, especially in the cases of more severe penalties. For half a century, essentially all cases in which these procedures were violated have been sanctioned. This rule is reaffirmed in the legislation that followed the Charter and in collective work contracts, and repeatedly confirmed when any legal action is taken against its violations.

The debate between economists on subject of the Charter has often been focused on the so-called flexibility of the job market. This debate highlights the differences between contrasting economic theories. The traditional marginalist theory, which is still dominant, believes that the “invisible hand” of the market can create optimal equilibrium by guaranteeing the full use of available resources (and, therefore, full employment), as long as the job market remains fully competitive. That is to say, the downward pressure on wages generated by competition between unemployed workers looking for a job increases job demand and leads, therefore, to the return to the equilibrium of full employment. Keynesian theory, on the other hand, shows that lower salaries are, if anything, counterproductive, because they lead to a decrease in the demand for consumer goods and services. This also leads to a decrease in investments at the very moment that the level of unemployment indicates that aggregate demand is too low. Moreover, in the vein of a tradition that dates back to Turgot and Adam Smith, all the way to Elton Mayo, many applied studies show that an increased sense of involvement—or at least less conflict between the workers and the company—leads to higher levels of productivity. The neoliberal request to re-establish a completely free labor market seeks to change the contractual power balance between employees and employers, which has already worsened during extended periods of crisis and economic stagnation. Since the 1970’s, this has led to an increase in the unemployment rate, which is also highlighted by the growing inequalities in income distribution. This overturned the trend that had been observed in the quarter century prior to the 1970’s.

While it is not a frequent subject of economic debate, it is also important to consider organizational flexibility within companies, given new developments in technology. The issue, in this case, is not that of firing workers, but that of modifying (possibly for the better) the tasks or jobs that workers carry out. This means that workers need to be willing to meet new challenges and companies need to be willing to provide training courses so that workers can improve and update their skills. Then, the two parties must agree on updating or reorganizing the production process. German employers and unions have excelled at this, which has made them significantly more competitive in the international market. There is a greater need for this type of flexibility than has been recognized by Italian and English unions. The risk (which

to some degree has already been seen) is that the resistance to this type of flexibility would lead to accepting the general neoliberal definition of flexibility. Article 13 of the Charter defends workers against deskilling, or favors career advancement in cases where the worker carries out tasks that require higher-level skills than those usually performed at the worker's paygrade. However, the article does not take into consideration the possibility of career change, as occurs when production processes are mechanized or digitized. This way, organizational flexibility is basically left up to negotiation between the parties involved. It would probably have been better to foresee ad hoc mediation procedures (entrusted to commissions of experts nominated by CNEL, the National Economic and Work Council, for example) that keep in mind the competitive needs of companies, given the ever-changing technological landscape and the need to deal with foreign competition.

3. Fifty years later

In the period following its approval, the Charter served as a fundamental factor in Italy's civic progress, since it created the conditions to better ensure the dignity of workers. As is the case with all reforms that are based on compromise between conflicting demands, the Charter—despite having stood the test of time relatively well—has dealt, and is still dealing, with various challenges. These include changes in technology, the transition from traditional Fordist factories to the fourth industrial revolution, the decline in levels of employment in manufacturing, and the increase in levels of employment in the service sector. All these changes require not only organizational flexibility in the work process, but they also change the very nature of the problems that are faced in the workplace. The broader political framework, considering the development of neoliberal culture, casts doubt on the analytical basis of the Charter. This challenge requires convincing theoretical responses, which many economists have provided. However, these responses need to be taken into consideration during debates between non-economists: especially between legal experts and politicians. A better understanding of the moral, juridic, economic, and political foundations of the Charter is a necessary condition for the maintained vitality of the Charter, even after the required changes are made to it. A revitalization of the Charter could lead to the start of a new era of reforms.

It is also important to keep globalization in mind, along with the increasing importance of competition between economies with more lax tax systems (and weaker welfare states), looser environmental regulations, more lenient workplace safety laws, and unbalanced job markets that favor employers. Consider the Hungarian system, in which the worker must pay a significant amount in order to be able to leave his or her job. This system represents the total opposite of our Charter, but in the last years it has attracted direct investment from multiple German companies. When it comes time to face the economic costs of the COVID-19 pandemic (which will be significant) it will be crucial to avoid doing so in a fragmented international context, in order to prevent a free-for-all of regulatory competition. This would lead to civic regression and an increase of the inequalities that, in the long term, could prove to be unsustainable for democratic systems like Italy's. The search for a level playing field should start first and foremost in the EU, possibly through second-level cooperation (i.e. not requiring unanimity), which could serve as the premise for updating the Charter of Workers' Rights as a way to improve its efficacy, in order to not regress back to the condition we had sixty years ago.

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