Reality still bites:
A first look on labour law and jobless youth in Nordic and Southern European countries

'It is easier to study the motion of infinitely distant celestial bodies than that of the stream flowing at our feet.' (Galileo Galilei, Discourses and Mathematical Demonstrations Relating to Two New Sciences, 1638)

I. INTRODUCTION

Reality Bites is a 1994 famous film, directed by Ben Stiller and considered as a manifesto of the so-called ‘Generation X’, i.e. the adults born just after the World War II baby boomers.¹ This generation was the first to face problems like unemployment. After 20 years, young people’s situation has so extremely deteriorated that one of the most recurrent – and plastic – expressions to describe them is the ‘scarred generation’.²

In 2008, the economic crisis started as a financial turmoil from the US to a global scale because of the collapse of several large financial institutions (wrongly considered by analysts ‘too big to fail’).³ This systemic banking crisis⁴ generated a global lack of


liquidity, which brought many countries, like the US and several European countries, to inject enormous amounts of public money into the banking system.

Within the EU, this created some legal problems to solve, above all in terms of EU State aid legislation. Nevertheless, the European Commission responded very quickly. Indeed, between 1 October 2008 and 1 October 2014, the Commission authorised the following amounts: 3.892.6 billion euros (29.8% of EU GDP in 2013) for guarantees on liabilities, 821.1 billion euros (6.3% of EU 2013 GDP) for recapitalisation, 379.9 billion euros (2.9% of EU 2013 GDP) for liquidity measures, 669.1 billion euros (5.1% of EU 2013 GDP) for asset relief measures. According to the European Commission, the countries that supported their banks the most, in the period from 2008 to 2013, were the UK (100 billion euros), Germany (64 billion euros) and Ireland (63 billion euros). Even though Member States did not implement all the aid approved, this huge quantity of public money created difficulties in State budgets and, in some cases, exacerbated a pre-existing sovereign debt crisis.

In Europe the financial turbulence ended in a monetary crisis and a number of countries from the euro area periphery – Greece, Ireland and Portugal – received huge loans from other EU Member States. A big part of these countries’ sovereign debts was owed by their domestic banks and foreign creditors: for instance, Greece’s largest creditors were mostly French and German banks. Even other larger Member States, like Italy and Spain, always in the euro area periphery, were threatened by the crisis and could no longer respect the golden rules of the EMU, i.e. 3% as the maximum budget deficit and 100% of GDP as the maximum state debt. While the financial system was taking off again, without any major regulatory reforms having been taken, economic growth decreased in many European countries. So, Europe fell into the worst recession since World War II.

Two main ways to recovery were under debate among economists and policymakers: the neoliberal recipe, based on government expenditure cuts, especially on social systems, a decrease of wages and taxes on property, and labour market reforms on the one hand; and the neo-Keynesians’ recipe, which called for public investments, an increase of taxes and stimulation of aggregate demand on the other hand. Despite the debate and its evidences, the technocrats from the so-called ‘Troika’ (European Commission,

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8 European Commission, Financial Crisis Aid: Approved amounts, totals per aid instrument, 2008 – 1/10/2014.

9 For instance, only 3.13 billion euros of the total guarantees provided have been called.

European Central Bank and International Monetary Fund) decided to follow the first recipe, and so austerity measures were the conditio sine qua non for Member States to access financial support. This is how the financial crisis has been transformed, through different steps, into a sort of ‘development model crisis’, which questions above all the public expenditure and sustainability of welfare states.

The result of this situation was a huge increase of unemployment, in particular regarding youths.\(^{11}\) Despite the European contingency, youth unemployment presents a severe economic and societal problem in many countries throughout the world,\(^{12}\) and it is not a recent problem. The global youth unemployment rate rose from 11.6% in 2007 to 12.9% in 2012 and 13.1% in 2013, which means that in 2013 almost 74.5 million people aged between 15 and 24 were unemployed, with an increase of more than 700,000 in 2012.\(^{13}\) In 1991 the global youth unemployment rate was 11.7% (almost 70 million young people) but the peak was in 2002, with 13.2% (almost 78.5 million).\(^{14}\)

On the basis of Report V, ‘The Youth Employment Crisis: Time for Action’, the General Conference of the International Labour Organization (ILO) issued a resolution in 2012, called ‘The Youth Employment Crisis: A Call for Action’.\(^{15}\) Its guiding principles were inspired by the need to take a multi-pronged approach with measures to foster pro-employment growth and decent job creation through macroeconomic policies, employability, labour market policies, youth entrepreneurship and rights to tackle the social consequences of the crisis, while ensuring financial and fiscal sustainability.\(^{16}\) As part of its principles, it seems useful to remember that, first of all, full employment should be a key objective of macroeconomic policies, and then, that economy, employment, education and training, and social protection policies require being effectively coherent.

\(^{11}\) S. Verick, ‘Who is Hit Hardest during a Financial Crisis? The Vulnerability of Young Men and Women to Unemployment in an Economic Downturn’, (2009) IZA Discussion Paper Series 4359, Institute for the Study of Labor (IZA), available at http://www.iza.org/en/webcontent/publications/papers/viewAbstract?dp_id=4359. The author says: ‘An analysis of the current crisis confirms this heightened vulnerability of youth to unemployment, which can be explained by a combination of the degree of economic contraction, sectorial composition of employment prior to the crisis and institutional structures. However, it is also clear that the last dimension does not play the leading role; rather the outcome is being driven by the collapse of aggregate demand, which is concentrated in contracting sectors. This process subsequently interacts with the institutional arrangements and the policy environment, which in turn influences how labour adjusts. Overall, these lessons indicate the importance of considering the heterogeneous impact of the crisis on the labour market in terms of age and gender dimensions. In particular, there is an important gender dimension to the vulnerability of youth in the current crisis as young men have been generally more affected, reflecting that these individuals are employed in such sectors as construction and manufacturing, which are heavily impacted by this recession. Young women nonetheless do experience increasing unemployment rates often in a similar fashion to young men, and in some countries, they are in fact the group that suffers the most. Moreover, this comes on top of the longer term barriers young women continually face in the labour market’, 32.


\(^{15}\) This document from the International Labour Organization is available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_185950.pdf.

and coordinated. Pro-employment macroeconomic policies should support stronger aggregate demand and improve access to finance. Labour-intensive public investment in large-scale infrastructure and public employment schemes can generate new decent employment opportunities while meeting social needs and improving infrastructure. The language used by the ILO denotes an ‘ideological’ context that cannot sound more distant from the EU bodies and Members States policies.

Between 2008 and 2009, in the so-called developed economies and the European Union, youth unemployment rates increased by 4.6%. That marked the largest annual increase in this kind of rates ever recorded in any region and joined the highest the region has seen since regional estimates have been available. There is no doubt that the global economic crisis underlined the vulnerability of young people in the labour market, but youth unemployment rates have traditionally been higher than the unemployment rates for all ages, generally twice or even three times higher. In Italy, for instance, total unemployment rates rose from 7.4% in 1983 to 11.2% in 1995; in the same period youth unemployment rates leapt from 25.6% to 29.9%. In Portugal the total unemployment rate in 1983 was 8.9% against the 20.4% for young people, and 11.2% in 1995 against 18.3%. Sweden’s total unemployment rate in 1983 was 3.7% and youth unemployment was 9.8%; in 1995, these rates amounted to 8.8% and 19.1%, respectively.

There are various reasons why youth unemployment rates are higher than adult rates, and they may vary from an internal or external perspective. As some economic studies on labour have shown, in the internal labour market, young people generally have less specific human capital and fewer work skills, while in the external labour market, they may show a lower efficiency in job-seeking activities than adults.

As the European Council admitted,

‘young people […] are vulnerable because of the transitional life periods they are going through, their lack of professional experience, their sometimes inadequate education or training, their often limited social protection coverage, restricted access to financial resources, and precarious work conditions. Young women are more likely to be affected by low pay and precarious employment, while young parents, primarily young mothers,
lack adequate work-life balance measures. Furthermore, some young people are at a particular disadvantage or at risk of discrimination.\textsuperscript{13}

The lack of work in the early stage of working life reduces young people’s perspective on future employment possibilities, because the connection between youth unemployment and social exclusion are tight, as the ILO has proven.\textsuperscript{24} The social exclusion of a jobless generation dangerously hinders its access to fundamental rights and freedoms.

The reflections of this phenomenon in the social and economic sphere have worried policymakers, especially at EU level, placing the issue at the top of its agenda. Numerous initiatives at the European level have promoted social integration of young people as a fundamental pillar for achieving the objectives set in the ‘Europe 2020’ strategy: action programmes and recommendations to undertake deep reforms of labour market institutions (which are part of the famous ‘structural’ reforms requested at every turn by the European Commission) have radically changed the face (and the idea) of labour law.

Several years after the (financial, monetary, economic, social and lastly humanitarian) crises occurred, the results of the efforts are slow to arrive. The bleeding did not stop; on the contrary, it still seems to increase, at least in the mostly damaged countries.

This article aims, in the first instance, to frame the problem from a different point of view, not (simply) in terms of youth unemployment, but within a framework that analyses the phenomenon more broadly, beyond the spectrum of jobless youth. Secondly, the article reconstructs, albeit in broad terms, the most recent actions taken to combat this phenomenon in Northern and Southern Europe; this axis seems particularly useful and meaningful, because it allows to better explain some salient features of the current trends.

The north-south axis, like all geographical area criteria, may seem risky, as it puts together very different legal systems. Indeed, Sweden has an employment legislation that is close to that of Finland and Norway, but has little to do with Denmark. But what these two polar areas have in common is the model of the welfare state or, even better, the relations between capital and labour. The Nordic model is based on high

\textsuperscript{13} Council Recommendation of 22 April 2013 on establishing a Youth Guarantee, 2013/C 120/01.

\textsuperscript{24} International Labour Organization, ‘Global Employment Trends for Youth 2010 – Special issue on the impact of the global economic crisis on youth’, 2010, Geneva, 6: ‘An inability to find employment creates a sense of uselessness and idleness among young people that can lead to increased crime, mental health problems, violence, conflicts and drug taking. The most obvious gains then, in making the most of the productive potential of youth and ensuring the availability of decent employment opportunities for youth, are the personal gains to the young people themselves. The second obvious gain to recapturing the productive potential of underutilized youth is an economic one. Idleness among youth can come at great costs. They are not contributing to the economic welfare of the country – quite the contrary. The loss of income among the younger generation translates into a lack of savings as well as a loss of aggregate demand. Some youth who are unable to earn their own income have to be financially supported by the family, leaving less for spending and investments at the household level. Societies lose their investment in education. Governments fail to receive contributions to social security systems and are forced to increase spending on remedial services, including on crime or drug use prevention efforts and on unemployment benefits in the countries where they exist. All this is a threat to the growth and development potential of economies. Focusing on youth, therefore, makes sense to a country from a cost-benefit point of view. Young people might lack experience but they tend to be highly motivated and capable of offering new ideas or insights. They are the drivers of economic development in a country. Forgoing this potential is an economic waste.’
wages that, by means of high taxation, are able to maintain high investment both in the industrial and social sectors.

The Southern European model, on the contrary, is characterised by fragmentation, coverage gaps and differential treatment. Southern Europe, however, is united by post-fascist constitutions, which have impressed on States a strong social print but with a more democratic parliamentary (and less governing) political system. These constitutions are apparently on their way to be replaced by new, not yet very clear material constitutions, of undoubted neoliberal mould.

Ultimately, this article attempts to draw the threads of the discussion, with a critical review of the lines that seem to inspire the legislatures in Southern Europe. If the crisis was an alibi for the suppression of workers’ rights by neo-liberalism, youth unemployment would be its most fluttering flag.

II. THE PROBLEM (REFORMULATED): JOBLESS YOUTH

During the last seven years, there has been a significant rise in policy initiatives in response to the substantial increase of youth unemployment. In Italy, for instance, the youth unemployment rate, as measured in August 2014, joined the record of 44.2%, revealing a loss of 88,000 working units compared to August 2013. In Spain, in the fourth trimester of 2014, this rate was 51.8%, while it was 50.6% in Greece and 34.5% in Portugal. The situation in the Nordic countries was far better, even though with imbalanced patterns: the quite low rates, i.e. 7.4% for Norway and 11% for Denmark, on the one hand, and a less healthy condition for Finland and Sweden, on the other hand, with 21% and 21.8%, respectively.

Whereas the situation in the Southern European countries drawn from the unemployment figures is dramatic, it could be beneficial to affirm that reality is even worse. The concept of youth unemployment, indeed, cannot escape its legal definition. Its analysis makes it evident that it does not represent the whole reality. If we look at the international definition set by the ILO, the ‘unemployed’ are defined as every person above a specified age who, during the reference period, was without work (non-paid work as an employee or self-employed person), currently available for work and seeking work (which means that the unemployed person should have engaged in effective activities of seeking paid employment or self-employment, such as registration at a public or private employment service, applications to employers, checking in at worksites, placing or answering newspaper advertisements, and so on). So, the first element is the specified age above which a person is considered unemployed; the second element to

29 Eurostata, 2014.
30 International Labour Organization, ‘Resolution concerning statistics of the economically active population, employment, unemployment and underemployment’, adopted by the Thirteenth
take into consideration is the reference period. The third element is that all three conditions should co-exist, as there is no disjunctive conjunction among them. The conventional nature of this definition is clearly linked to the necessary comparability of all data from different countries in the world, but it may also produce some distortions. According to these standardised definitions, an individual is classified as employed if he or she declares at least one hour of paid work in the seven days before the time of the survey, while an individual is considered to be unemployed if he or she declares to seek employment, to be immediately available to work and to have taken at least a concrete activity of job-seeking within the previous four weeks.

The first problem with the concept of ‘youth unemployment’ is related to the definition of ‘young’. Within the European context, the EU growth strategy ‘Europe 2020’1 refers to young persons as those being under the age of 30, while generally all the statistics from Eurostat and the EU policies about youth mean people aged between 15 and 24. Nevertheless, according to the definition set in Directive 94/33/EC on the protection of young people at work, ‘young person’ means any person under 18 years of age.2 Some EU Member States target their youth unemployment measures on persons aged up to 24, others up to 30 or even 34, eg Italy. The second problem is that inactive youths who do not meet the three conditions of being without work, being currently available for work and seeking work, do not appear in the figures on youth unemployment. In the most depressed areas of Europe, young people are so discouraged that they no longer actively look for a job. This means that the statistics, as negative as they are, may not only be unable to present the problem in its entirety, but may probably not even show the most serious aspects of the problem itself.

In December 2012, the total young population within the EU-28 amounted to 55.5 million people: 33 million of these were economically inactive and the remaining 22.5 million persons represented the labour force, of whom 5.6 million were unemployed (a youth unemployment ratio of 9.7%).3 A relevant part of the inactive young population have been defined as NEETs – Not in Employment, Education and Training. This part represented the 15.8% of the whole EU-28 youth. Greece, Bulgaria, Italy and Spain led – and still lead – in this kind of survey.4 There is not yet an international standardisation of the definition of NEETs, so it could vary.5 Moreover, these NEETs

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3 Dir 94/33/EC.
5 In particular: Greece with 26%, Bulgaria with 24.7%, Italy with 23.9% and Spain with 22.2%. Eurostat, 2012.
6 See Eurofound, ‘NEETs – Young people not in employment, education or training: Characteristics, costs and policy responses in Europe’, Publications Office of the European Union, Luxembourg, 2012, 20, which reads as follows: ‘Most European countries defined NEET as young people aged between 15 and 24 years who were not in employment, education or training, and used national data from the Labour Force Survey (LFS) to measure the phenomenon. Internationally, however, different definitions are used. For example, in the UK (Coles et al, 2002; McGregor et al, 2006) and in New Zealand (Hill, 2003), the term NEET continues to mainly capture teenagers. In Japan and Korea, the category tends to be associated with a social phenomenon that affects not only the labour market but also the integration of young generations into society. For example, the Japanese definition of NEET strongly differs from the one adopted in Europe; there, the NEET group is defined as ‘people aged 15–34 years old who are not in the labour force, not attending school and not housekeeping’ (OECD, 2008a). Similarly, in Korea, NEET refers to people aged 15–34 years who have left school, are not
represent a varied population group, which may include young people in long-term unemployment, sick and disabled persons. As a survey by Eurofound has disclosed, there are some who are at a greater risk of becoming NEET:

‘those with low levels of education are three times more likely to be NEET compared to those with tertiary education, while young people with an immigration background are 70% more likely to become NEET than nationals. Young people suffering from some kind of disability or health issues are 40% more likely to be NEET than those in good health. Family background also has a crucial influence […] NEETs are at higher risk of being politically and socially alienated. Compared to their non-NEET counterparts, NEETs have a dramatically lower level of political interest, political and social engagement, and a lower level of trust.’

In 2011, the existence of NEETs corresponded to a loss of 1.2% of European GDP (almost 153 billion euros). In this time of recession, all young people are at risk, regardless of their educational attainment. Above all in some areas, like the Southern European countries, the competitive advantage of higher education seems to be irrelevant, or at least greatly softened. So, with the youth unemployment rate and the NEETs rate we have two different pictures of the young population. But what are the differences between them? While the former is calculated as the number of young unemployed persons divided by the number of young people economically active, the latter is the number of persons not engaged in employment, education or training divided by the total population of young people. This means that the number of NEETs is higher than the number of young unemployed people even though the NEET rate is lower than the youth unemployment rate. So, the problem of youth exclusion from the labour market and society is not entirely represented by the youth unemployment rate and there is an urgency to move forward towards a wider concept that focuses on all joblessness of young generations. This change will make it possible to include in research, analyses and, as a consequence, policies a broader spectrum of the phenomenon, hopefully ensuring a greater incisiveness in terms of solutions. The field of jobless youth, indeed, is a place where several regulatory streams cross, streams that belong to different sectors of legal regulation. First of all, it is innervated by labour law, meant in its broadest sense as the regulation of the labour market as well, along with the individual employment relationship. Then, it is crossed by regulation on education and vocational training. The regulatory framework is then complemented by social security law, on the one hand, and social policy (housing, health care, social services, sport policy and so on) on the other. A final area, whose hybrid nature has so far prevented any attempt to include legal concerns, is informal education, such as learning by doing, which,
being informal, escapes the institutional framework. Despite this wide scale of policies, the scope of this research nevertheless focuses only on labour policy measures.

III. THE RESPONSE MEASURES

The first part of this chapter takes into account the measures driven by European Union institutions, mainly related to the so-called Youth Guarantee, and how the Nordic and Southern European countries have implemented them. The second part focuses on domestic labour law reforms taken with the aim of heightening the level of youth inclusion in the labour market.

A. Youth Guarantees: the European discourse

Following the new start of the Lisbon Strategy, in 2005 the Council of the European Union adopted the European Youth Pact, a cross-sector policy tool ensuring a set of measures to meet the needs of young generations.39

In 2011, the European Commission adopted the Youth Opportunities Initiative,40 which called for action between Member States, social partners and the EU, above all the Commission, to help in particular young people who are not in employment, education or training, in line with the Europe 2020 Strategy, the June 2011 Council conclusions41 and the Council Recommendation on policies to reduce early school leaving.42

In April 2012, the Commission proposed the Youth Employment Package, a section of the wider set of policy documents called the Employment Package,43 focusing on ways to smooth the transition between school and work, ensure traineeships that may offer high-quality work experience, improve the quality and supply of apprenticeships and facilitate working and training opportunities to young people abroad.44

In April 2013, the European Council adopted the Recommendation on establishing a Youth Guarantee, according to which Member States are required to ensure that all young people under the age of 25 receive a good-quality offer of employment, continued education, an apprenticeship or a traineeship within a period of four months after becoming unemployed or leaving formal education.45 Its guidelines for setting up

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39 European Council, Presidency Conclusions, Brussels, 23.03.2005 (04.05), (OR. fr), 7619/1/05, Annex I.
41 Council Conclusions 11838/11 of 20 June 2011 on Promoting youth employment.
44 For a complete and argued reconstruction of the framework, see J.J. Votinius, ‘Young employees: securities, risk distribution and fundamental social rights’, (2014) 5 European Labour Law Journal 3-4, 378-381.
45 Council Recommendation of 22 April 2013 on establishing a Youth Guarantee, 2013/C 120/01.
these Youth Guarantee schemes include: following partnership-based approaches, early intervention and activation, supportive measures for labour market integration, the use of Union funds and assessment and continuous improvement of schemes.

To support these measures from a political point of view, the Commission issued an important document, *ie Working together for Europe’s young people - A call to action on youth unemployment*,46 while on the financial side, the European Council created a dedicated Youth Employment Initiative.47

The EU is also moving forward to promote two important tools of youth employment integration: the apprenticeship – with the European Alliance for Apprenticeships (jointly coordinated by DG Education and Culture and DG Employment, Social Affairs and Inclusion)48 – and the internship – through a social partner consultation on a quality framework for traineeships that encourages ‘host organisations to offer more traineeships providing a high quality learning content, decent working conditions and representing real stepping stones to enter the labour market’.49

Another comprehensive package of policy initiatives is Youth on the Move, which basically focuses on education and employment actions, like *Your First EURES Job*,50 a mobility programme to help young people to find a job, a traineeship or an apprenticeship in another EU country. These tools are a clear expression of the Open Method of Co-ordination, as the Commission provides the objectives and their priorities, and suggests the actions to be taken. But in this huge stratification of programmes and initiatives, it is often not simple to decode the real extent of the directives addressed to national legislatures in the regulation of labour. In its communication *Working together for Europe’s young people – A call to action on youth unemployment*, the Commission asks Member States to incentivise firms to recruit and retain young people, and one of the ways to do so is by reducing first of all the gap between employment protection legislation for temporary and permanent contracts in order to promote the transition of newcomers, including young people, and then the cost of employing young people in their first job, for example through targeted subsidies and reductions in social security contributions for

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47 ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Youth Employment Initiative’ COM(2013) 0144 final, 12.03.2013.

48 This programme aims *to bring together public authorities, businesses, social partners, VET providers, youth representatives, and other key actors in order to promote apprenticeship schemes and initiatives across Europe. There are three strands of action: reform of apprenticeship systems promote the benefits of apprenticeships smart use of funding and resources.* For further information, visit http://ec.europa.eu/education/policy/vocational-policy/alliance_en.htm.


50 According to the Program Summary of November 2014, this initiative has so far filled 3188 job vacancies with young jobseekers from another Member State; supported 1267 job interviews in another Member State; supported 1138 preparatory trainings for YfEj job finders; and supported 138 SMEs with integration trainings for YfEj job finders.
low-skilled positions. These proposals are present in other key documents of the Commission, such as the communication on the Youth Opportunities Initiatives.

This kind of objectives follows the conclusions of a large economic literature, including working papers and reports from international organisations like the International Monetary Fund (which during the crisis issued several researches on youth unemployment), and scientific journal articles and essays. These documents often refer to empirical studies whose main findings connect (a relevant part of) the cross-country differences in labour market performance to collective bargaining, unemployment benefits and employment protection, even though they 'do not agree on the role of specific institutions, and the evidence is sometimes contradictory for some indicators. This is largely because labor market institutions interact with one another, and with the macroeconomic environment, making a one-size-fits-all reform recipe unsuitable'.

Thus, the Commission adheres to the idea that one of the major obstacles to youth employment is market dualism – ie outsiders (workers who work on temporary atypical contracts with lower employment protection) against insiders (those on standard contracts with higher protection) – which must be fought based on the reduction of rigidities. In this regard, some authors recognise that 'in general, the impact on labor market outcomes of employment protection legislation – laws governing the hiring and firing of employees – is found to be small and ambiguous, as it potentially lowers both the separation rate (by increasing the cost of firing), and also the employment rate (by increasing reluctance to hire workers in the first place)'.

Tito Boeri, an Italian economist, suggests that 'if countries want to reduce dualism without giving up the benefits of the job-creation enhancing effect of the increased employment volatility in the recovery, they should find a way to credibly maintain flexibility in labour markets, even in the presence of strong pressures


to go back to the rigid regime’, and one possible way could be a model of contract with increasing protection, ie through graded tenure schemes.

The general EU framework is a symphony that is not too much in tune, unfortunately – sometimes real dissonances are audible. Flexicurity and activation policies hit the wall of austerity measures. The fiscal crisis obliterated security in favour of mere flexibility. Youth Guarantee, which could be a potential tool to engage Member States in strengthening their employment services and designing them to avoid unemployment and social exclusion of youths, is hindered by social expenditure cuts. Fate could seem to be mocking, but Youth Guarantee, as happened for flexicurity, is a policy born in northern Europe, more precisely in the Scandinavian countries. First Sweden, in 1984, pioneered such policy, followed by Norway in 1993, and Denmark and Finland in 1996. The establishment of Youth Guarantee by the EU was supported by ETUC in 2009.

B. Youth Guarantees: the northern lights

From the Nordic experience, it may be deduced that the ability of youth guarantee schemes to be effective depends on various factors. The principal one is the development of macroeconomic policies aiming at reversing the downturn. Furthermore, a major role is played by the institutional context, in particular related to employment services. Properly targeting the group, taking tailored actions and stimulating activation through mutual obligation are the final challenges.

In general, Nordic countries’ labour markets have been characterised by high employment rates (all strongly above 70%) compared to other European countries, for the population aged 15-64 (66.8%). Even though the current economic crisis has hit Nordic countries to a lesser extent than other European countries, figures on the situation of youths are ambiguous. Youth unemployment rates in 2013 were not the lowest ones. Rates in Sweden (23.5%) and Finland (19.9%) are close to the EU-28 average rate (23.5%), but when it comes to data about long-term unemployment and NEETs, the situation is far from the dramatic numbers of the majority of other European countries. But, these figures, as low as they are, in a context of wealth and strong social security, could produce on youngsters an increased effect of exclusion. This is the reason why new policies to promote youth inclusion are on the top of the political agenda in the Nordic Council of Ministers and in each domestic government.

61 M. Mascherini, ‘Youth Guarantee: Experiences from Finland and Sweden’, 2012, Eurofound, EF/12/42/EN.
62 Eurostat 2013.
63 NEETs rates: Denmark: 6%, Finland 9.3%, Sweden 7.5%, EU-28 13%. Youth unemployment rates (more than 12 months): Denmark 1.3%, Finland 1%, Sweden 1.5%, Norway 0.5%, EU-28 8% (Eurostat 2013).
The Nordic cooperation issued a study on the measures for the accommodation of the Nordic Welfare States to the need of young people not in employment, education or training. The main finding is that the groups most affected by labour exclusion are young people with minority ethnic origins or with immigrant backgrounds and youth with disabilities.

Nordic countries are moving towards advanced knowledge societies where economic activities require high-skilled workers. Consequently, youth exclusion challenges them to invest in social regulation and fight against school drop-outs, discrimination on the ground of ethnic origin or religious belief, and improve ‘reasonable accommodations’ for youths with disabilities.

Nordic countries organise the initial vocational training systems in different ways. The two poles are represented by Denmark and Sweden. In order to address problems that occur in the transition from school to work, Sweden has been taking initiatives in the apprenticeships system. The main objective is to move from a strong full-time school-based vocational system towards larger workplace learning. However, this model does not fit the Swedish productive environment and its regulatory framework, so it could take big efforts and a long period to implement these policies. In Denmark, on the contrary, the major role is played by apprenticeships, which ensure a more workplace-oriented vocational education.

Special measures to fight unemployment and inactivity have always been very efficient in Nordic countries. The Danish experience above all is the most well known, often used as a reference model. Until the 1980s, the Keynesian perception of unemployment as a result of a low demand was the foundation for the universal and generous approach to employment policies: ‘labour market policy should reflect the principle of the right to work. If an individual was unemployed, society therefore had an obligation to provide compensatory measures in the form of either activity or unemployment benefits. Compensation should be generous and without strings attached.’ But since the 1990s the perspective has radically changed: ‘persons are not to be protected from the market but prepared for the market’.

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65 For instance, Sweden has amended its Discrimination Act (2008:567): the new legislation, which came into force 1 January 2015, implements the broader accessibility perspective introduced by the UN Convention on the Rights of Persons with Disabilities. According to the preparatory works (government proposition 2013/14:198, 73-75), this change will be a more inclusive tool for young jobseekers like trainees and students on training programmes.


68 See eg M. Kuczera, S. Field, N. Hoffman & S. Wolter, ‘Learning for Jobs – OECD Reviews of Vocational Education and Training: Sweden’, OECD, 2008, 12, which reads as follows: 'In Sweden high levels of taxation are widely accepted, with the expectation that the government will provide many services at no charge. One risk of this historic arrangement is that employers may be reluctant to provide VET themselves, even though it can provide the skills needed by their labour force.'


70 Ibid.
Rather than passive assistance, these new policies, called Active Labour Market Policies (ALMPs), are based on conditionality and set a range of financial incentives and sanctions to foster young unemployed persons’ behaviour towards long-term paid employment.

Sweden started the labour market policy programme Job Guarantee for Youth in December 2007, targeting young people who have been unemployed and registered as jobseekers at the public employment services for at least three months over a four-month period. Sweden’s local self-government implies that the most important public actors are municipalities, which have the responsibility to be informed about young people’s occupational situation, and to act. Assessment, educational and vocational counselling and jobseeker activities with coaching are the main services provided within the job guarantee schemes. Special measures are set for newly arrived immigrants (refugees or persons in need of protection together with their families).

As a novelty, since 2010, also in sectors other than constructions, there have been collective agreements concerning vocational introduction. The Swedish government has also relied on economic incentives, decreasing social contributions for the recruitment of young people. Further reductions on social contributions are available for youths who have been unemployed for at least six months, and a financial compensation for twelve months is provided to employers hiring a long-term unemployed young person. Young people who have been long-term unemployed receive a subsidy equivalent to twice the social security contributions. Nevertheless, Swedish trade unions (LO and TCO) were critical about the targeting and the efficacy of some measure.

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71 See C. Lagala & M. D’Onghia (eds), Politiche di attivazione dei disoccupati in Europa – Le esperienze realizzate in Belgio, Danimarca, Francia, Germania, Inghilterra, Spagna e Svezia (Ediesse, Roma, 2010).

72 For a complete study on the origins of his concept, see T. Weishaupt, From the Manpower Revolution to the Activation Paradigm: Explaining Institutional Continuity and Change in an Integrating Europe (Amsterdam University Press, Amsterdam, 2011).

73 These initiatives include:
- Central government responsibility, with the PES as the coordinating agency. The PES has been given a central role and primary responsibility to underline the importance of a fast introduction to the labour market.
- Individual introduction plan. An introduction dialogue between the PES and the newly arrived immigrant should lead to an introduction plan that is based on a mapping of the newly arrived immigrant’s educational background, previous work experience and need for training and other measures.
- Individualised benefit. Newly arrived immigrants who take part in activities under an introduction plan are entitled to a benefit; c) Civic orientation. The aim is to foster a basic understanding of Swedish society and provide a foundation for continued knowledge acquisition.
- Introduction guide. This is an independent actor working on assignment from the PES to support newly arrived immigrants in their search for work.


74 The agreements that have been signed, or are being discussed, typically involve employment up to 75%, at a wage according to collective agreements in the sector, and a training component of 25%. Thus, the individual obtains a wage and a training component that, together, add up to a total of 100%. The training component consists of on-the-job training supervised by an experienced worker and some contracts also include the possibility of classroom training. The target group are young people who lack relevant work experience in the sector. However, few young people were employed under these agreements, ‘Youth employment policies in Sweden – the Swedish response to the Council recommendation on establishing a Youth Guarantee’, Ministry of Employment of Sweden, 14.

75 M. Bussi & L. Geyer, ‘Youth Guarantee and recent developments on measures against youth unemployment – A mapping exercise’, ETUI, Background analysis 2013.04, 40: ‘Firstly, the measure treats young people as a homogenous group, which they are not. Secondly, the mandatory waiting period
Denmark is implementing the Youth Guarantee scheme in line with its active labour market approach and reforms. It is, however, also including various initiatives targeted at youth and specific groups of youth with higher risks of unemployment: from dedicated measures for 15-17-year-olds, mainly focused on knowledge and skills, to initiatives for 18-29-year-olds, based on a wider method that includes activation, internships, job rotation, usefulness jobs and training programmes. Beside these actions, young people can access financial support – unemployment benefits (if eligible) or cash benefits (if not eligible for unemployment benefits) – and education support. Danish schemes foster partnership and cooperation between job centres and educational institutions. The challenge of the school-to-work transition is mainly developed upon the municipal Youth Guidance Centres, which provide services to all people under 25 years old. Another relevant key actor for youth policies in Denmark is the Youth Unit: composed of representatives from the job centre, the health care sector, the social affairs administration and the educational sector, they ensure relevant offers across the various administrations. As the Danish labour market is regulated in strong cooperation with social partners, the latter intervene in employment measures, providing advice to job centres and vocational education institutions. There are continuous improvements of Youth Guarantee schemes in Denmark. The next step is a general reform of vocational education and training to make VET programmes more attractive and make opportunities to acquire qualifications more flexible. In Danish policies, conditionality is a key factor: for instance, young people receiving benefits are obliged to accept an offer within three months; so in case of non-compliance, the loss of benefits for three weeks applies.

On the other side of the continent, the situation is quite different. Greece, in order to fight poverty and social exclusion, included the already launched temporary hiring programme for young (under 35 years old) unemployed persons in community-based work programmes in the cultural sector. In addition, in July 2013, the country launched a youth internship and employment voucher programme under the Youth Action Plan, aimed at supporting vocational training and internships for a six-month period. On education, Greece set two main targets: the first aimed at bringing the rate of early school leavers under 10% and the second at making sure that at least 40% of the population aged between 30 and 34 attains a higher education degree. With two of three months before young people can access activation measures can have a scarring effect, while if the training measures provided are of low quality, they can have the effect of locking the most deprived young people into unemployment or inactivity. Thirdly, those who are eligible for unemployment benefits through work experience have their benefits replaced by the lower Youth Guarantee allowance. Further, while long-term unemployed young people will become eligible for social assistance, this has a stigmatising effect. Fourthly, the quality of the training and other measures offered under the Youth Guarantee is too low (LO/TCO, 2013). What is more, instead of paying long-term unemployed young people twice the social security contributions, TCO suggests a wage subsidy for those affected which would increase their wage to the level set by collective agreements. At the same time, employers are entitled to receive some reductions in the salary paid to young people. Lastly, the trade unions point out that their de facto involvement in the 2007 revision of the Youth Guarantee was very low. Further, the reforms in the governance of the public employment service increasingly reduced the involvement of trade unions in this public institution (LO/TCO, 2013). The country’s 2013 NRP plans some improvements in delivering places for apprenticeships and the level of financial support for studies will be raised for those not registered with the job guarantee. LO/TCO argued that these measures are not to contributing substantially to combating youth unemployment because they do not affect young people who are unemployed but young people who have finished schools (only the municipal sector also welcomes youth who are unemployed). Moreover the agreements target all people aged between 16 and 24 but actually most of young people who get access are 18, since the completion of an upper secondary education degree in a technical or professional school is requested. Finally, while the Government aims at 30,000 places, less than 1,000 places have been made available so far. In Denmark there are 27 unemployment insurance funds.
programmes, ie Youth Entrepreneurship and Women’s Entrepreneurship, the Greek government aimed at supporting business start-ups for youth and women, who are affected by high unemployment and need an opportunity in entrepreneurship, and at creating new jobs.\textsuperscript{77} Greek trade unions – ie the General Confederation of Greek Workers (GSEE) – thought that these measures were insufficient to improve the situation of young people, without a complementary macroeconomic investment plan.

In 2013, the Italian government approved a preparatory document for the Garanzia Giovani.\textsuperscript{78} The targeted regions are mainly in southern Italy, where youth unemployment rates are the highest (above 60%). The apprenticeships and internships formed the object of intense legislative activity, in order to improve their appeal for both employers and young jobseekers. Recruitment incentives, internship subsidies and incentives for work-study training for 18-29-year-old jobseekers and disabled workers were available. The three main trade unions (CGIL, CSIL and UIL) supported the approval of the framework for internships and the implementation on Youth Guarantee schemes, though the CGIL criticised the age setting for the measures (25 and not 29), which excluded a large portion of NEETs and unemployed persons, and the fact that they were not consulted during the design of the legislation. Moreover, the CGIL questioned the efficacy of the activities.\textsuperscript{79}

The Portuguese government implemented the Youth Guarantee scheme Impulso Jovem, which includes professional internships and reductions of social security contributions for recruiting employers.\textsuperscript{80}

In 2013, the Spanish government issued the ‘Strategy for Entrepreneurship and Youth Employment 2013/2016’: the plan consists of 15 key emergency measures and another 85 medium-run measures, focusing on education and training, improved employability, promotion of entrepreneurship and self-employment, guidance, support and improvement of mediation by public employment services and partner organisations, and a range of incentives for hiring.\textsuperscript{81}

Despite the great communication strategy, there is no lack of criticism of Youth Guarantee.\textsuperscript{82} According to critics, EU policies present several dangers. The lack of consensus among social partners on the opportunity to target youth as a vulnerable group in several countries has resulted in measures without any relevant action tailored to young groups of the population. The role of partnership and cooperation with social partners is largely underestimated in southern countries.

\textsuperscript{77} All these initiatives are laid down in the Greek National Reform Programme 2013, Greece - Ministry of Finance, available at http://ec.europa.eu/europe2020/pdf/nd/nrp2013_greece_en.pdf.

\textsuperscript{78} The Italian government has built a dedicated online platform, available at http://www.garanziagiovani.gov.it/.

\textsuperscript{79} See the Monitoring Report by La Repubblica degli Stagisti and Adapt, available at http://www.repubblicadeglistagisti.it.


The third conclusion is that flagship initiatives are ‘heading towards an EU policy approach of precarious protection that provides a weak system of social benefits and stresses labour market inclusion’. The main key concepts behind these schemes are employability (as a refusal of full employment), matched skills (as a refusal of demand-side measures) and conditionality (as a reflection of financial sustainability of social systems). The lack of interest in fundamental discourse about the decency of jobs and the security side of the employment policies may reproduce the umpteenth refusal of the legal dimension of social rights. Austerity policies undermine local authorities and public administration, which are the principle operators and the ones mainly responsible for the effective implementation of the Youth Guarantee schemes. So, in order to avoid the risk of schizophrenic policies, which result in dramatically wasted opportunity (for the EU, national governments and jobless youth), it should be reasonable to overtake the budget constraints for certain matters. In any case, these initiatives, however laudable, are still supply-side measures, and as such cannot entirely solve the problem unless accompanied by macroeconomic policies, as the Nordic approach has consistently proven.

C. Labour law reforms: the Southern passion

The financial and economic crisis has intensified the process called the ‘modernisation of labour law’, undertaken by EU Member States under the blessing of the EU flexicurity agenda. The austerity measures, in general, and the peculiar prescriptions for the countries financially assisted by the Troika through the famous memoranda of understanding and their ‘Competition Principle’, are the background to a huge decrease in employment protection legislation, which caused social inequalities and poverty spread around the Old Continent. As explained above, the mainstream approach intends that unemployment is related to the dualism of the labour market, which originated from the asymmetry in employment protection between precarious and permanent employees. All the main institutions of labour law have been affected. The major reforms have been collected in a very useful study, which has the value that it plastically shows the trends in the recent years. Reading the outcomes of such a research, the first consideration that may be made, in the light of the purposes of this research, is that the most incisive and drastic measures have been implemented in the southern European countries. The Nordic countries have not altered the structural arrangements of their labour laws, which, with the exception of Denmark, provide very high levels of protection.

In Greece, Act 3899/2010 introduced a new Youth Contract, for young persons up to 25 years of age, which entails a lower wage (20% less), a two-year trial period, without any social security contributions for employers nor entitlement to unemployment

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benefits for the employee. In Spain, the Contrato de Trabajo en Prácticas and the Contrato Emprendedores offers the former a huge reduction of salary (60% of the minimum wage during the first year and 75% during the second year) and the latter a long probationary period. The Italian government, in order to promote forms of stable employment for young people, established an experimental incentive for employers who hire, under a contract of employment of indefinite duration, an employee aged between 18 and 29, who has not been engaged in regular paid employment for at least six months and is without a high school or professional diploma.\footnote{Article 1 of Law Decree 76/2013, converted in Act 99/2013.}

The lack of a rights-based approach in the general discourse is evident here: these favourable treatments recognised when hiring young persons must be coordinated with a general context of a decreasing cost of labour, so that the incentive mechanism may become greatly hampered. Why should an employer recruit a young worker, whereas it is probably much more convenient to hire another type of worker under one of the several contractual forms or under a deregulated standard contract? The general legal context in terms of employment protection legislation is as follows. If we take into account the legislation on dismissal, for instance, there has been a considerable reduction of the notice period and severance pay in Greece, Spain\footnote{See Acts 3863/2011 and 4046/2012.} and Portugal,\footnote{Act 35/2010.} on the contrary, Denmark has increased the severance pay for blue-collar workers. The basic characteristic of these changes is that the employer’s interests are put in a central position: this is what is behind the continued reduction of valid grounds for termination in Spain and Portugal; the removal of the requirement to find another position within the organisation prior to dismissal as a legitimating condition in Portugal; the severance payment for non-compliance with the redundancy procedure instead of reinstatement in Spain; and the introduction of a probationary period of 12 months during which the employer can dismiss the employee freely (without notice or grounds and severance); or the double attempt to reinstatement in case of unfair dismissal in Italy. The objective of Spanish, Italian, Greek and Portuguese legislatures is to decrease the costs of dismissal, reducing the severance pay in case of unfair dismissal, excluding the intervention of the court in the economic redundancies. The core principle of employment protection – the dismissal as an \textit{extrema ratio} – has been dismantled. In Italy, the new government’s reforms package, called the \textit{Jobs Act},\footnote{On 18 January 2012, the Portuguese government together with social partners signed a national tripartite agreement, ‘Compromise for growth, competitiveness and employment’.} has accelerated in terms of flexibility. First of all, the legislation on fixed-term contracts now provides no grounds for contracts up to 36 months, with a limitation of 20% of the total staff, and a maximum of eight extensions in three years, provided that they refer to the same tasks. For the apprenticeship, the Individual Training Plan is not to be written anymore, the basic and transversal training is optional, and the percentage of stabilisation for the use of the apprenticeship contract has been removed; then, for a special type of apprenticeship (of a certain level), the hours of training will be paid by only 35% of the standard working hours. But the icing on the cake for Italian employees arrived on Christmas Eve, when the government first implemented the \textit{Jobs Act}: the \textit{contratto a tutele crescenti}, literally translated as an increased protection employment contract. It is an indefinite duration contract of employment that differs only in the main remedy in case of unlawful dismissal, ie a compensation not subject to social security contributions for an amount equal to two

\footnote{In reality the \textit{Jobs Act} is a group of acts: Law Decree No 34/2014, No 34 converted in Act No 78/2014, and Act No 183/2014, which delegates the government to intervene in several institutions.}
months of the total salary for each year of service, from a minimum of four to a maximum of twenty-four months; reinstatement is possible only in case of discriminatory, void or orally ordered dismissal. The decrease of employment protection in Southern European countries has also been crystallised by OECD patterns: over the last decade in the Nordic countries the index of EPL Strictness has been almost the same or has even increased, while in the Southern countries it has dropped impressively.

IV. THE ROLE OF LABOUR LAW

In the structural reforms of labour law brought into being by the Southern Member States in the wake of the recipes imposed by technocracy, which often met the favour of national governments – the fight against youth unemployment is a pretext and a pretext. First, it indicates something that is before the legislative text, a sort of simple premise, a political reason or ‘justification’, but it is barely consistent with the regulatory text. This condition of ‘confinement’ outside of the text in its normative part confirms, moreover, that the fight against youth unemployment is just an ornament, a motivation that is not in line with the full truth adduced as an explanation of the act, in order to mask the real reasons.

As mentioned above, an effective response to the drama of the exclusion of millions of young people from the labour market consists of several instruments including, first of all, employment policies that coordinate with macroeconomic policies, industrial policies, i.e. public policies that intervene in the context of economic activities, programming their developments, at least in principle. On this ridge mark lies one of the major points of difference in the approaches adopted by Nordic and Southern European countries, the latter having obliterated the important faculty of the state as an economic stimulator, which also belongs to their political, legal and even constitutional heritage. In fact, both in Italy and in Spain, for instance, there are constitutional rules that legitimise the activity of controlling and programming/planning the freedom of enterprise for social utility. Underlying this political revisionism, more or less induced, is the de facto abandonment of full employment as a political principle and an objective of economic policy, although it is also recognised by the European Union’s founding texts of Article 3(3) TEU. Although not explicitly stated, it is likely to infer from the lines in place that current economic policy objectives are structured on levels of underemployment, so that not only is it unnecessary to combat unemployment (and youth unemployment even less), but it would not even be suitable.

If the Marx theory of the industrial reserve army – which originated during the second industrial revolution, when capitalism did not know any limits of the rule of law (or knew very little) – was not able to explain Fordism – meaning that agreement between capital and labour where the economy produced mass goods for workers who received an income that grew with productivity and could maintain high levels of consumption

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93 Greece: 2.80 (2007) and 2.12 (2013); Italy: 2.76 (2007) and 2.51 (2013); Spain: 2.36 (2007) and 2.05 (2013); Portugal: 4.42 (2007) and 3.18 (2013). Source: OECD.
94 It follows the definition given by the Treccani Dictionary, available at www.treccani.it.
95 About Italy, for instance, it is sufficient to recall the sumptuous S. Rodotà (ed), Il controllo sociale delle attività private (Il Mulino, Bologna, 1977).
96 Article 41 of the Italian Constitution and Article 38 of the Spanish Constitution, respectively.
and savings to finance investment – maybe (and just maybe) this might tell something about the relatively near future of capitalism, ie (again) rampant. Provocations aside, surely, the contract social, as it was called by Rousseau, or the Keynesian basic bargain\textsuperscript{97} considered the goal of full employment of mutual interest, both for the capitalists and the workers.

In the 1970s this pact crumbles. For a number of reasons and causes, which we do not need to deal with here, we entered a new era. We are not yet able to define what it is, but what it no longer is, ie post-Fordism. The new social contract imposed by (global) capital does not provide mutual support to middle class workers and acts more rapaciously: it reduces income distribution, stopping wage growth but maintaining high levels of consumption through finance. The new covenant based on the debt showed all its hazards in 2007-2008, when the house of cards fell of its own weight.\textsuperscript{98} The challenge is that this structural change in the relationship between capital and labour is very high and that the means adopted are sophisticated. The impact on labour law, moreover, is obvious. The individual’s working obligation prevents, in legal terms, that labour law is flattened to the trade market system. When looking at labour law through the lens of the constitutional norms, or those set in the European and international treaties that relate to it, it quickly becomes clear that the usefulness of legal regulation should be conceived not only as a means of easing the (materials and intangible) costs for the entrepreneur. Moreover, labour law itself is reluctant to be neutral with respect to the reference values.

An example could be helpful: an institution such as the prohibition to dismiss workers on maternity leave can be understood as a tightening rule, increasing operating costs and thus discouraging the employment of women, or, on the contrary, as an instrument of protection that drives women to seek a job that they will not lose if they are pregnant, thus being an incentive for them to enter the labour market. The labour law scholar who feels called not only to a mere exegetical exercise (or at least does not have a narrow conception of legal interpretation), will need to work with new cognitive tools, expanding his or her knowledge to other fields, comparing his or her research with other scientists, both in economic, social and political science. This journey (which is cultural before being purely scientific) is becoming more and more necessary.

A. Evolution, involution, deconstruction

Labour law deconstructed by recent reforms in Southern European countries appears to have labile boundaries – increasingly porous against other branches of law, such as eq private or commercial law. The effects are so restrictive towards the freedom and dignity of the worker that they might raise conflicts with fundamental principles recognised by constitutions or charters at European and international level. What we are experiencing is not just a reduction of the apparatus connected to the protective status of the employee, but a principle of genetic mutation of the very notion of subordination. In other words, the quality and quantity of lowering employment protection is a prerequisite for achieving a far more radical, ontological change of foundations of labour law.

\textsuperscript{97} R.B. Reich, \textit{Aftershock - The Next Economy and America’s Future} (Knopf Doubleday, New York, 2010).

\textsuperscript{98} For a further reconstruction, consider M. Salvati, ‘Postazione’, in R.B. Reich, \textit{Aftershock} (Fazi Editore, Roma, 2011).
I will now try to represent the magnitude of these destructuring processes and their impact on the legal level. However, for evident reasons, I will take into consideration only one national example, ie Italy, nevertheless highlighting some trends that could be tracked also in other countries. The first pillar that recent reforms radically attack is the heart of the notion of subordination. In Italy, there is no legal definition of subordination, but there is a definition of a subordinate worker in the Civil Code (Article 2094), so the exegetical activities brought by the doctrine and, above all, by the courts play a major role. As stated by a well-known – although often overlooked in the hermeneutic – judgement of the Italian Constitutional Court, subordination in the strict sense is the double alienness of the worker. This is – in the words of the Italian Constitutional judges – ‘the alienness (meaning exclusive destination to others) of the result whose achievement the provision of labour is used for, and the alienness of productive organization the service is part of’.\footnote{Corte Costituzionale, case No 30 of 5 February1996.} According to this notion of subordination, this ‘is not simply a way of being of the performance obligation of the contract, but it is a classification of the benefit resulting from the type of regulation of interest chosen by the parties with the signing of a contract of employment, involving the incorporation of his work in a productive organisation on which the worker has no power of control, being formed for a purpose in respect of which he has no (individual) interest legally protected’.\footnote{Corte Costituzionale, case No 30 of 5 February1996.} However, the tendency to, more and more, anchor aspects of the employees’ pay to results, through the so-called pay for performance (often promoted by the public authorities by means of tax and social incentives) contracted at a decentralised level, weakens the condition of alienness of the worker compared to the productive organisation to which he or she is legally alien. In this way, in the consideration of the employer there are elements (only) indirectly related to job performance. The result is that not only the area of the duty of the employee is likely to expand in an unbalanced and irrational way. Also the interest of the worker is translated, albeit partially, towards the interest of the employer, the conflict of interest thereby being squeezed ‘unnaturally’ (in the sense that it sets through heteronomy and not as a result of autonomous parts) to the benefit of the employer. In this sense, the mantra of ‘productivity’ (having become synonymous with ‘competitiveness’) plays an important ideological and cultural role also in the grounds of social relations. This phenomenon is quite similar to what has been called ‘flexibility downward’, which is visible also in other countries, like Sweden, Germany, France and the UK.\footnote{See inter alia T. Blanke & E. Rose (eds), Collective Bargaining and Wages in Comparative Perspective. Germany, France, The Netherlands, Sweden and the United Kingdom (Kluwer Law, The Hague, 2005).} However, in countries where the concept of subordination is based on the concept of double alienness, the genetical modification is much more evident. The second element affected by the crumbling of the current labour law has to do with the business risk. According to the definition of the Italian Civil Code, the entrepreneur is the one who ‘exercises professionally organised economic activity in order to produce or exchange goods or services’ \footnote{Article 2082 of the Civil Code}, ie the one, that is to say, pursuing an economic activity at its own business risk. The extraordinary enterprise interest advances – what exactly lies behind the applicable legislative expression ‘economic, organisational and productive reasons’ – as ‘new’ interest worthy of higher protection than his or her counterparty \footnote{Corte Costituzionale, case No 30 of 5 February1996.} (the worker or workers’ organisation), almost raised to the status of ‘general interest’, makes a considerable part of the ‘risk’ shift from its ‘natural’ subject (the entrepreneur, indeed) to the other contractual party (the employee).

The regulation of the fixed-term contract or, even better, of redundancies – which basically means the liberalisation of these two institutions in favour of the employer – underlines this shift of the ‘alea’ towards the legal position of the worker, even though he or she should stay formally \footnote{Corte Costituzionale, case No 30 of 5 February1996.} (ie legally) extraneous to the business. Imagining the microphysics of legal regulation, this deconstruction produces a fracture in the struc-
ture of legal power between the parties which, as a defective line that moves in the earth’s crust, generates kinetic energy of unpredictable effects (unpredictably imperceptible or, conversely, unpredictably devastating). The recent reforms of the labour market have not been successful in the fight against unemployment, even less the fight against youth unemployment, although they have certainly increased the number of disputes in courts. The poor quality of legislation has had its game, but the fact remains that the nature of the employment relationship – which is immanently conflicting – always tends to reach its equilibrium. Even the relations of social power have their principles of mechanics. Labour law in the years of crisis can be read through these earthquakes, which have produced a level of social outsourcing comparable to the level of the early 1900s. The economic system becomes legally non-reliable on its ‘social damages’ and (so, legitimately) pours ‘human resources’, fired for ‘economic reasons’, into the social system, thus escaping the social connections of the economic transactions. This brief ‘seismology’ of labour law has the purpose to better understand the current neoliberal labour law, as we can now definitely call it; a labour law that is no longer inspired by social justice and respect for the dignity and freedom of workers, as it used to be in the last century.

B. A character in search of an author?

The last reflections, at this point, can only relate to the idea of the overall labour law, grasped from its functional side. What is the purpose of labour law? History – in general, besides jurisprudence – tells that labour law as an instrument for the protection of workers is just one of the possible ideas. Labour regulation definitely has an impact on the market, but the idea that the policies of job creation fall solely on the shoulders of labour law has no logic; nor even a scientific basis. And what is more, there is research that reveals new findings on the impact of employment protection legislation.\textsuperscript{102}

We should sharpen, with empirical evidence, the ideological assumptions of certain legislative trends, such as the relation mentioned above. We should remember that labour law regulates the conflict of interest between capital and worker(s)\textsuperscript{103} and, as a result, affects the structure of societal powers and the distribution of wealth. Labour lawyers should not be afraid to explore proposals such as unconditional basic income, which at first sight seems to take away the earth beneath their feet. Workers’ rights protection needs courage and imagination. We have to secure the issue of young people in the discourse of fundamental social rights, as already suggested.\textsuperscript{104} Because all unjust rules against the freedom and dignity of (young) workers deserve (and eventually find) a judge who assesses them, as in the case of Contrado Emprendedores before the Spanish Constitutional Court, the Contrat Nouvelles Embouches before the French one, and the Greek Youth Contract before the European Committee on Social Rights. Ultimately, the pretext of youth unemployment – with its macroscopic contradictions – and the weak results of the recent policies should produce at least the opportunity of being ‘ naïve’ enough to shout: ‘the Emperor has no clothes’.


\textsuperscript{103} For a further analysis of topics like this, see M.G. Garofalo, ‘Diritti e poteri nell’analisi giuslavoristica’, in G.G. Balandi & G. Cazzetta (eds), Diritti e lavoro nell’età repubblicana (Giuffrè, Milan, 2008), 183-192.