

The ILO's 'Decent Work' And Labour Law Deregulation: Can They Be Reconciled?

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In a national framework labour law constantly evolves in a system of forces and purposes, and such evolution shapes the relevant labour market. Labour law systems result from political and social contention informed by theory, legal tradition, and other variables. During this process, in fact, the labour market develops its own regulations, as it does not rely upon a theoretical scheme of vacuums and gravities. The tension between the labour law's pressure to make labour markets conform to the law, on one hand, and the labour markets' pressure to make labour law adapt itself to economic changes, on the other hand, generates the 'duality' of labour law that is the subject of this paper.

Such duality is in itself a genre. Duality, in such a case, should not be confused with a mere binary scheme based on two conflicting genera (the one having a positive and the other a negative character). That is, the duality of labour law is not a fixed dichotomy. It is a moving force with labour markets usually the first movers, perpetually advancing against the labour law system. There is a perpetual advancement of labour market regulations towards the labour law. Labour law, in fact, tends to 'absorb' what the labour market engenders. This means that labour law can extrapolate, test, recombine and modify the labour market's models and its own regulations. At the same time, labour law tries to shape the labour market through an action of osmosis, which affects labour law along with its relevant labour market. This idea of osmosis makes it easier to grasp the concept of duality of labour law, which is proposed in this essay as a general speculative frame.

We can examine the duality in the light of the most recent theoretical as well as practical developments in labour law and labour markets. 'Modernising' labour law has become a *leitmotif* in Italy, in Europe, and in much of the world. The terms 'rigid', 'outmoded', 'old economy', and the like, are usually attached to demands for labour law modernisation. At the same time, an international consensus has taken shape around the need for labour law to be the bedrock of 'decent work', a *leitmotif* of the International Labour Organisation (ILO). When the precise phrase is used, the demand for 'decent work' arises also at the national level. The labour law system is expected to provide equilibrium in the labour market to facilitate access to new employment opportunities, to reinforce employability policies, and to cope with the notion of work which evolves outside the standard employment relationship and beyond the contract of employment.

Accomplishing these purposes creates a general tendency towards a renovation of labour law. But without regard for decency at work, the duality of labour law can degenerate into asymmetry when the above-mentioned action of osmosis between labour law and the labour market is not accompanied by social security rights. Actually, the lack of symmetry (or, in other words, what leads to the process of dualisation mentioned above) originates from the lack of social security. The lack of symmetries means that dualisation is introducing dichotomies in the protection of the workers' rights to social security.

The core idea of my research is that strengthening social security systems is key to making the duality of labour law, as it reflects the tension between law and markets, a positive force for reconciling demands for modernisation with demands for 'decent work'. Here, I try to build on studies I have already carried out in recent years on irregular (or undeclared) work and the relevant legal techniques for regularising and declaring such work. My essay sets the stage for a larger-scale comparative project on the duality of labour law, which arises from the functioning of labour law in relation to the

application of the principle of decency at work. The duality of labour law can turn into dualisation, though not automatically. I draw the attention to the fact that there is an archetype, which can be considered the core theme of the duality of labour law. Such archetype is not, and should not become, a legal concept. It is rather an organising concept that refers to the ILO goals defined by the 1919 Constitution preamble and by the 1946 Declaration of Philadelphia. It is a concept which 'encapsulates and updates' the spirit of the 1946 Declaration of Philadelphia and calls for a new interpretation of the ILO standards.

Such archetype is the principle of decency at work. It can be expressed with the ILO notion of decent work, which focuses on four strategic objectives: the promotion of rights at work, employment, social protection and social dialogue. It can be considered as a new means to set more easily the ILO standards in order to facilitate the implementation of declarations, conventions and recommendations. It can be a device to measure the performance of countries. However, this is not enough to encompass the potentiality of this archetype. Neither is it enough for a labour lawyer who intends to interpret such concept also in relation to the principles and assumptions ordinarily used to create a juridical perspective. The potentiality is directly connected to the duality of labour law and, therefore, to the modernisation of labour law.

This could have practical consequences in case a plan or a general policy is implemented at national level in order to modernise labour law.

It is argued as follows:

(a) Decency at work is the pre-legal assumption of the modernisation of labour law;

(b) Dignity at/in work is the legal assumption of the decency at work;

(b.1) Dignity at work represents the equality of opportunity. This means that the worker should be entitled to social security rights as broadly defined by the 2001 ILO Resolution (the renewed social security approach analysed *per ratione materiae, personae, temporis*);

(b.2) Dignity in work represents the quality in work. This means that a worker completely involved in his/her work should be allowed to combine his/her life (vision and personal affairs) with his/her work;

(c) Decency at work coincides with the application of social security. The suitable and due social security scheme, which can be either public or private, should be applied to make work decent.

Such scheme is shaped on the juridical syllogism of dignity as the matrix (i.e. the indispensable condition) of decency and social security as the matrix of dignity; thus, social security is the matrix of decency. Such syllogism is a mere juridical syllogism that needs to match with a 'social' syllogism that may reproduce the same, but this time more pragmatic items (decency - dignity at/in work - e/quality - social security). Such social syllogism should be grounded on an activity of collective bargaining aimed at creating the social environment/surrounding to protect and buttress workers. Dualism means in this case that the capacity to be protected and buttressed by work can arise from the often inconsiderable but fertile territory where collective bargaining intersects with social security.

This article is an excerpt of Dr Faioli's book 'Decency at work: della tensione del lavoro alla dignità. Categorie interculturali e sapere giuridico', La Nuova Cutura, Rome, Collana del Dipartimento di Studi Europei e Americani, Sapienza Università di Roma, 2009.

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