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Uniform plots. Comparative and Labour Problems in the Legal Culture of Journals at the beginning of the twentieth century

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1. *Labour, law and the fashion for comparison*

In 1973, Otto Kahn-Freund delivered a speech on the "Uses and Misuses of Comparative Law" at the annual Lecture in honour of Lord Chorley at the London School of Economics[1].

At the time, the debate on the application of comparative law to labour law was experiencing a period of great development in many Western countries, as part of a general trend towards the widespread use of comparative tools in the construction of law. As he was a keen observer of the phenomenon, he warned against the fashion for comparative law, carefully addressing the reasons for the danger of misuse of comparative law.

In particular, Kahn-Freund's analysis revolved around the question: "Can we do something to trace the line which separate the use of the comparative method in lawmaking from the misuse?"[2].

The author did not deny the usefulness of well-established comparative methodologies in research and university teaching and the opportune use of foreign models of legislative processes, but he wanted to suggest that a

[1] Kahn-Freund, *On Uses and Misuses of Comparative Law*, in *MLR*, 1974, 1, pp. 1-27.
[2] Kahn-Freund, *cit.*, p. 6.

thorough and critical assessment of the appropriateness of individual legal transplants is indispensable against the "risk of rejection". Beginning with a sophisticated reference to the "comparatist" Montesquieu, he develops a discourse that balances case studies of his contemporaries with incisive theoretical passages, and ends by convincing us that the use of the comparative method "requires a knowledge not only of the foreign law, but also of its social, and above all its political, context"[3].

Kahn-Freund's profound sense of history, even though he traces his analytical scheme back to the reflections of the French philosopher, prevents him from stopping at the outward appearance of the elements that he considers resistant to the test of comparison: geographical, moral and political factors. In the two centuries between the time of Kahn-Freund and the time of *Esprit de lois*, industrialisation, urbanisation and the development of communications had led to a flattening of cultural and economic differences between different countries, which was undeniably reflected in the law and consequently reduced the environmental obstacles to legal transplantation. Nevertheless, the political factor proved to be an obstacle to the international exchange of legal institutions, because the different forms of power organization – variable also in relation to the role of organised interest groups, which exercise their political power and influence in very different ways and with very different intensity from country to country – "can prevent or frustrate the transfer of legal institutions and turn the use of the comparative method into an abuse"[4].

In this line of argument, among other topical examples, there is a seemingly innocuous reference to the Industrial Act of 1971, by which the British legislature had decided to substantially reform the national system of industrial relations. Particularly with regard to collective bargaining, trade unions and strikes, the Act had attempted a "transatlantic transplantation" by introducing some American industrial relations rules into English law. On these points, Kahn-Freund's objection is significant[5]. The case is carefully analysed

[3] KAHN-FREUND, *cit.*, p. 27.

[4] KAHN-FREUND, *cit.*, p. 13.

[5] KAHN-FREUND, *cit.*, p. 25 ff. The author had already analysed the Industrial Relations Act in *Labour and the Law*, which he had written at the time of its enactment. This coincidence might have made a judgement on the effects of the Act seem premature, but Kahn-Freund took up the challenge, attempting to put things in perspective and formulating a reflection which in some respects returns in the text of the lecture, in a more concise manner and with more data from experience to support it. See KAHN-FREUND, *Labour and the Law*, Stevens & Sons, 1972, p. 8.

to show that it was a typical example of the misuse of comparative law, because the legislator who transplanted it failed to take into account the profound differences with US institutions and traditions: an error of judgement that proved old Montesquieu right.

The prominence of these conclusions also resonated in Italy where a year after the publication of the English text Bruno Veneziani published a translation[6] accompanied by a dense commentary that made the tenor of Kahn-Freund's objection even more explicit[7]. The failure of that law, which neglected the consensus of organised interests, failed to analyse the role of political institutions in the policy-making process, and attempted to superimpose itself on the customary values already accredited by the system, was sanctioned by the introduction of the Trade Union and Labour Relations Act of 1974. The new regulation of industrial relations restored the legal and customary values that existed before the Industrial Relations Act of 1971, with a return to the policy of "abstention of the law" with regard to collective autonomy[8].

First and foremost, the text of the conference provides the indispensable instructions on how to make good use of comparison, but we can also glean other lessons from it. The "use" of Montesquieu, for example, is of interest to legal historians. Kahn-Freund is aware of the profound change in contexts between the 18th and 20th centuries, and he emphasises this explicitly and very precisely. So why the erudite quotation? One hypothesis is that, despite its distant content, it had a not insignificant function: to verify a politically indigestible position and to support the difficult critique of a widely accepted methodology, in which Kahn-Freund himself was considered a specialist[9].

I will not dwell on this topic and this period, but it seems to me a good starting point to look back and describe once again a very different context, which dates back to the beginning of the last century, when neither labour law nor comparative law had gained their disciplinary autonomy and grew together intertwined.

[6] KAHN-FREUND, *Sull'uso e l'abuso del diritto comparato*, in *RDPC*, 1975, pp. 785-811.

[7] VENEZIANI, *A proposito di un saggio in tema di diritto comparato*, in *RDPC*, 1975, pp. 815-822.

[8] VENEZIANI, *cit.*, p. 820 and 821.

[9] In Kahn-Freund's production, legal comparative law does not remain in the realm of methodological argumentation but is the ground for actual experimentation. Representative of both profiles, see for example: KAHN-FREUND, *Comparative law as an academic subject*, in *LQR*, 1965, pp. 40-61; KAHN-FREUND, *Labour and the Law*, *cit.* Recently on this point: DELFINO, *Legal orders in dialogue and the "resources" of the Italian Workers' Statute*, in this journal, 2003, p. 91 ff.

2. *Comparative practices at the origin of international labour law*

At a time when neither labour law nor comparative law had yet achieved its autonomy, we might be forgiven for thinking that the warning against the misuse of comparative law in the construction of labour relations rules was a negligible trace of analysis. On the contrary, a study of the doctrinal and jurisprudential sources of the time, at the turn of the nineteenth and twentieth centuries, reveals that the programmatic attention to foreign contexts was based on a genuine conviction of the efficacy of comparative practices in solving the most pressing problems of industrial relations[10].

In fact, the discursive, scientific and institutional contexts in which comparative data are described as inescapable and reflections on foreign models motivate the essential content of legal texts impose themselves on the legal historian's gaze in terms of quantity and quality. These were comparative methods adopted in order to understand in depth economic and social phenomena that were born internationally – or, we would say, Western, if not really only European. In other words, these were comparative methods used for technical reasons, and the contexts studied to make comparisons and develop models were united by the capitalist economic structure and a political history that could be described as homogeneous in its long duration and ideal horizon. Nothing could be more different from the mere narrative trappings used to embellish the discourse by referring to distant experiences. The objectives pursued by the various attempts at comparison seem to fit adequately into the three categories described by Kahn-Freund: a) "preparing the international unification of the law", b) "giving adequate legal effect to a social change shared by foreign country with one's own country", c) "promoting at home a social change which foreign law is designed either to express or to produce"[11].

[10] On this point see GAETA, *La comparazione nel diritto del lavoro italiano*, in SOMMA, ZENO-ZENCOVICH (EDS.), *Comparazione e diritto positivo. Un dialogo tra saperi giuridici*, RomaTre Press, 2021, p. 1834 ff.; VANO, *Hypothesen zur Interpretation der 'vergleichende Methoden' im Arbeitsrecht an der Wende zum 20. Jahrhundert*, in Schulze (ed.), *Deutsche Rechtswissenschaft und Staatslehre im Spiegel der italienischen Rechtskultur während der zweiten Hälfte des 19. Jahrhundert*, Dunker & Humblot, 1990, pp. 225-243; VANO, *Riflessione giuridica e relazioni industriali tra Ottocento e Novecento: alle origini del contratto collettivo di lavoro*, in Mazzacane (ed.), *I giuristi e la crisi dello Stato liberale in Italia tra Otto e Novecento*, Liguori Editore, 1986, pp. 126-156.

[11] KAHN-FREUND, *On Uses*, cit., p. 2.

Comparison was an old technique, used by European jurists in the mid-nineteenth century in its more general form of "comparative methods" or "comparative practices", but between the 19th and 20th centuries it refined its objectives and gradually achieved a very significant theoretical transformation[12]. In its more traditional version, the comparison of legislation, the instrument of comparison lent itself very profitably to the study of labour problems. On the one hand, the topicality of this method was linked to the contextual internationalisation of human affairs; on the other, the labour question was a classic example of a "modernisation problem" that stimulated the "collection of persuasive examples to refer to in order to find effective and politically progressive solutions"[13]. The more macroscopic the problem became, the more it had to be addressed by sharing proposals and solutions: governments throughout the industrialised West provided for the creation of real institutional organisations in charge of this task, such as labour offices; lawyers set up private communication networks, such as scientific societies and international congresses.

The comparative approach was qualified with further nuances when doctrine, in addressing the transnational dimension of labour problems, constructed the first attempts to build an international labour law. At the beginning of the twentieth century, strands of research emerged that aimed to identify homogeneous rules for the regulation of industrial labour that could be widely applied in European countries, as a kind of "common labour law". In this sense, legal culture sought to shape political decisions by proposing a normalising strategy against inequalities in national social legislation that were harmful to competition between advanced capitalist countries[14]. There are numerous doctrinal works that we can place in this area, which support the political tendency to intervene in the economy and homogeneous legislation. These studies are traditionally considered minor because of the modest content of dogmatic reflection, but they tell a lot about the history of

[12] On this point see Vano, *Codificare, comparare, costruire la nazione. Una nota introduttiva*, in Vano (ed.), *Giuseppe Pisanelli. Scienza del processo, cultura delle leggi e avvocatura tra periferia e nazione*, Jovene, 2005, pp. XX-XXIX; Petit, *Lambert en la Tour Eiffel, o el derecho comparado de la belle époque*, in Padoa Schioppa (ed.), *La comparazione giuridica tra Ottocento e Novecento. Incontro di studio*, Istituto lombardo di scienze e lettere, 2001, pp. 53-98.

[13] Mazzacane, *Alle origini della comparazione*, in Padoa Schioppa (ed.), *cit.*, pp. 15-38.

[14] On the attempts to making of international labour law before 1919, see Amorosi, *Storie di giuristi e di emigranti tra Italia e Francia. Il diritto internazionale del lavoro di primo Novecento*, ESI, 2020.

comparative labour law, especially if one adopts an overall view that enhances the common lines and impact of the collection of texts. The common denominator of these texts is the determination not to go outside the existing regulatory framework, and to use the comparison between national legislations in a measured and almost never ideological way, as an essential tool for studying the workers' question and for identifying, through a game of cross-references and analogies, possible solutions at the legal level, first at the national level and then, finally, at the international level.

One of the most significant examples is a small treatise written in 1903 by Victor Brants, professor of political economy at the University of Leuven, entitled *Législation du travail comparé et internationale*. The author's desire to emphasise the close link between comparative study and the definition of an international legal horizon for labour problems is immediately apparent from the title. It reveals the content of the text, which is divided into two parts: one focusing on the comparison of legislation from a purely methodological point of view, and the other illustrating the instruments for drawing up international labour law. The inherent binary structure of the Treaty is reflected in an expressive dichotomy, starting with the Preface, which clearly distinguishes between an effective level, referring to comparative law ("*on fait partout de la législation compare*"), and an ideal level, referring to international law ("*on parle partout de législation international*", "*on préconise l'adoption de mesures générales*")[15]. While, at the time of Brants' writing, national labour legislation existed in every industrialised country and was at a stage of development where it could become the subject of further comparative doctrinal elaboration, international legislation on the same subject remained only a programme, an object of study in the planning stage. In the light of these considerations, the author declares his intention: "The purpose of these few pages is simply to examine the uses and abuses of comparing and imitating laws, and to see to what practical extent the laws of different countries can be brought into line with each other"[16].

The first part of the work is entirely devoted to a reflection on the comparative method applied to labour law, and the depth of this reflection is all the more interesting because the author is aware of the difference between a traditional approach, based on a simple comparison between regulatory

[15] Brants, *Législation du travail comparée et internationale*, Louvain-Paris, 1903, p. VII.
[16] Brants, *cit.*, p. VIII.

measures with the same content, belonging to different national contexts, and a more modern study of comparative law (there are frequent references to the thought of Raymond Saleilles and the theoretical innovations made by the *Société de Législation compare*).

Brants began by pointing out the difficulties involved in comparative work, which consist mainly in the inevitable "imperfect" knowledge of the laws to be compared – due to language or multiple interpretative tendencies and their application – which is reflected in their inaccurate and incomplete appreciation and in the tendency to hasty or thoughtless imitation[17]. These difficulties could be overcome by an in-depth, monographic study of the laws under consideration, a study that would take into account both the supreme moral principles of law, the general conditions of human society, and the physical, historical and social *milieu*[18].

Such an endeavour, Brants argued, could certainly be fruitful for those matters which, for a variety of reasons, lent themselves easily to "cosmopolitanism". Foreign legal experience could provide a useful model for the improvement of domestic legislation when economic and social development and the intensification of relations between nations produced a multiplication of analogies; the labour regime was an effective example in this sense because it was imposed on all industrialised countries for the social good and on the basis of higher principles[19].

The historical conditions observed by the author thus allowed him to affirm the existence of "*une sorte de législation international de fait*": a minimum of measures that were eventually imposed on all countries that had reached a certain level of industrialisation, because the differences in tradition and temperament of each people could not prevail against the principles, nor justify the perpetuation of abuses, but could, if anything, modify the timing and the manner of application of the reforms[20].

In the conclusions, the author, in keeping with the enthusiastic spirit that pervades the entire essay, gives the necessary indications for achieving an "effective and genuine concordance" between all industrialised countries in the field of labour law, which, he stresses, need not necessarily be common

[17] BRANTS, *cit.*, p. 2 ff.

[18] BRANTS, *cit.*, p. 26. Although never explicitly quoted, the thought of Montesquieu evoked by Kahn-Freud is echoed in these words.

[19] BRANTS, *cit.*, pp. 43-45.

[20] BRANTS, *cit.*, pp. 21-23.

but rather homogeneous. On the one hand, at the purely scientific level, it was a question of working with the tools of comparison; on the other, at the level of dissemination – or, if you like, politics – it was a question of finding the most useful strategies for building consensus around the common goal.

The same comparative intention, aimed at defining a space more specifically dedicated to the formulation of internationalist hypotheses of labour regulation, appears in works that are less pretentious than Brant's, but are perfectly in tune with the same essayistic vein – legal in the broadest sense – regarding the labour question as a problem common to the entire West.

In the pages of the legal journal *Il Filangieri* in 1904, an essay was published that captures some of the nuances of the link between legal discourse on labour issues and comparative approaches[21]. The author, Francesco Perrone, a lecturer in commercial law at the University of Naples, articulated a reflection on the uniformity of the legislative currents of his time with reference to the social question.

Perrone's attitude is that of an enthusiastic observer of a phenomenon he sees looming before his eyes and which he describes as necessary: the emergence, "among peoples living at a similar stage of economic civilization", of a movement of legal reforms uniform in outline and principles and aimed at the "beneficial" limitation of freedom and the concept of individual property[22].

Born of the "conquering power" of the masses, the "new spirit" that animated the law and penetrated all the relationships it regulated, uniformly characterised the most recent legislative currents in many Western states, whose similarities were due to an equally uniform set of causes. Perrone identified some of them: firstly, "consciousness in labour organisations", i.e. the constitution of an organised workers' movement, which manifested an increasingly widespread diffusion of interests of a collective nature; then "the solidarity of markets", which, strengthened by the similar development of industry and better communications, moved towards the formation of a single market.

In addition to the economic and social factors that, according to the author, preceded the law and conditioned it towards uniformity, Perrone also

[21] Perrone, *L'uniformità nelle correnti legislative contemporanee*, in *IFi*, 1904-1905, pp. 190-201, 270-280, 353-361, 436-445.

[22] Perrone, *cit.*, p. 445.

identified minor causes, cultural and scientific factors that contributed to the serenity of the social movement: the development of comparative legal literature, "social" teaching in universities, international congresses[23].

Having enumerated the causes, he went on to illustrate, on the basis of comparative evidence, the multiple manifestations of the phenomenon of legislative uniformity. The most obvious expression of this uniformity was the creation, in all Western countries, of homogeneous institutions with multiple purposes, but all committed to regulating the social question. In his paper, Perrone gave a brief classification of them. They were bodies in charge of studying labour problems (Labour Offices), defending and controlling workers (Inspection Institutes, Emigration Commissariats), settling individual and collective disputes (specialised courts, *probiviri*)[24].

Following a systematic list of countries and examples, the author found the same tendency towards uniformity in the regulation of accidents at work, in the various forms of insurance, in the creation of rules to protect female and child labour in factories, in the increasingly widespread guarantee of the right to form unions and to strike. In the final outlook, as grandiose as it was foggy, this was a trend that was becoming more pronounced, that was destined to constitute a new "*diritto comune*" that would almost slyly "infiltrate" and gently "revolutionise even the codes without leaving a trace of violence and blood"[25].

The comparative key to studying labour problems is also used by Leone Neppi Modona in *La legislazione operaia e l'Ufficio del lavoro*. The author gave the first clues for orientation: by "workers' question" he meant the complex of problems and solutions arising from the unequal distribution of wealth between the class of wage-earners and that of the bosses. Then settled the long-running diatribe between the supporters and opponents of state intervention in industrial relations by presenting public measures in favour of workers as inevitable, so much so that they had penetrated the common feeling and action of the industrialised countries[26].

Social legislation is therefore the central theme of the work, which is built around a specific objective: to show that labour legislation, far from

[23] Perrone, *cit.*, p 195 ss.
[24] Perrone, *cit.*, p, 273 ss.
[25] Perrone, *cit.*, p. 201.
[26] Neppi Modona, *La legislazione operaia e l'Ufficio del lavoro*, Torino, 1904-06, pp. 3-5.

being peculiar to one or a few countries, is a universal fact. The author approaches the subject in a schematic and precise manner, examining "for each institution the historical and legislative changes that this subject has undergone in the main civilised states"[27]. This was a classic application of the comparative law method to measures relating to the work of children, women and adult workers, adapted to cover a very wide geographical area. In fact, Neppi Modona included no less than nineteen countries in his study (in addition to the European nations, the United States, Russia, Argentina, Australia and New Zealand), reproducing and synthesising that scouting operation of foreign legal experience, to which national institutions and bodies were specifically assigned, as a preliminary stage to the drafting of legislation[28].

In fact, the element that characterises Neppi Modona's work is an in-depth reflection on the role of the *Ufficio del lavoro* and the *Consiglio Superiore del Lavoro* in Italy, of which the author seems to wish to promote, for the purposes of dissemination, the functions of special utility represented by the knowledge of the "reality of working class life" and the guarantee of a "greater agreement between the classes", in deference to that conciliatory spirit of Giolitti's imprint between the workers' organisations and the public powers[29]. At the same time, the author did not neglect to highlight the internationalist aspects of the problem. The structure of the work almost reflects a necessary process, which, starting from the awareness of the governments of the workers' problem, moved on to the phase of scientific elaboration carried out by the institutions in charge of seeking solutions. Finally, by observing the work of other countries, it was realised that the social question was a common problem and that it was necessary to be guided by the will to find a common solution: international legislation.

Paul Pic, Professor of Labour Law at the University of Lyon, was the pioneer of the successful trend towards the use of comparative methods in the study of labour law. His vast production, the originality of his approach and his prominence in scientific circles devoted to the social question would require a larger space for analysis than these pages[30]. However, it is appropriate

[27] Neppi Modona, *cit.*, p. 2.

[28] Neppi Modona, *cit.*, pp. 74-167.

[29] Neppi Modona, *cit.*, pp. 34-67.

[30] See, Bayon, Frobert, *Paul Pic (1862-1844) et les «Lois ouvriéres»*, in *RHDS*, 1997, 18, pp. 69-94; Hakim, *La science de la question sociale de Paul Pic ou les malheurs de l'hétérodoxie dans les facultés de droit*, in Hakim, Melleray (éd), *Le renouveau de la doctrine française. Les grands auteurs de*

to mention Paul Pic's *Traité de législation industrielle* as a very eloquent example of the methods and reasons for using comparison in the study of labour legislation in his time. It is an ambitious and avant-garde work, which was rewarded with lasting success at European level and numerous editions (six between 1894 and 1930 and two "supplements" to the sixth edition, in 1933 and 1937). In his *Traité*, from the very first edition, Pic articulated his discourse along the lines of an intuition that proved to be very fruitful: the existence of a necessary international link between the social policies of the countries of the West. Starting with the observation of certain empirical data: "Peaceful relations between nations, [...] similar organisation of large-scale industry [and] similar social problems in the various States, [...] general spread of socialism"[31], Pic showed an awareness of the importance of giving an accurate account of foreign labour legislation and accompanied each argument with a comparative feedback report. In this sense, highlighting the causes of the simultaneous development of labour legislation in the industrialised countries was an essential piece of the mosaic constructed by Pic, the glue that held the whole structure of the work together. The constant references to foreign legislation were based on the feeling that it was no longer possible to avoid reflecting on the homogeneous nature of the political and legal superstructures of the industrialised countries.

3. *Legal journals as case studies*: Il contratto di lavoro. Rivista di giurisprudenza e legislazione sociale

Pic's familiarity with comparative practice had been honed as editor of *Questions pratiques de législation ouvrière et économie sociale*, a journal he founded with Justin Godart in 1900 and edited until its closure in 1936.

From a methodological point of view, it should be noted that the journals have received generous attention from European legal historiography, thus stimulating a traditional but still very fruitful strand of studies dedicated to them[32]. As virtual meeting places for lawyers, the journals not only hosted

la pensée juridique au tournant du XXe siècle, Dalloz, 2009, pp. 123-158; AMOROSI, *cit.*, pp. 15 ff., 36 ff., 88 ff., 101 ff.

[31] PIC, *Traité élémentaire de législation industrielle*, Rousseau, 1894, p. 30-31.

[32] The bibliography on the subject is extensive and varied, I will only mention here GROSSI (ED.), *La "cultura" delle riviste giuridiche italiane*, Giuffrè, 1984, for the Italian context

and stimulated theoretical debate, but also served as a means of disseminating the latest publications, judgments and commentaries on legislation and political and social news, thus making available to a non-specialist public the views on the most pressing legal issues.

With regard to the journals devoted to labour problems at the beginning of the twentieth century, the discourse must be approached taking into account a number of specific factors: the embryonic stage of scientific specialisation, the complex and inhomogeneous nature of the legal sources in the technical sense (private contract law, public law, non-codified contractual practices), and the peculiar link between the nascent discipline and the material dimension of industrial relations (working conditions, emergence of collective instances, protagonism of political and trade union organisations). In view of these characterising aspects, comparison seems to be another attribute, of a methodological nature, functional to intensify the international exchange of virtuous models and to construct new and more effective rules.

The subject of the "uniform plots" of labour legislation in the various countries was frequently dealt with in the pages of Pic and Godart's journal, a journal that explicitly called itself "popular" and had as its programmatic aim the sensitisation and education of the general public on social issues[33]. In the dense programme published at the opening of the first issue, the comparison is immediately announced as a necessary complement to the first objective: the exposition of French legislation was to be compared with similar institutions abroad – there is no reference to Europe, demonstrating a comparative interest that could have a wider geographical scope. The third point of the programme is interdependent with the first two, since it was intended to highlight the shortcomings and deficiencies of French legislation, evidently on the basis of an analysis that would flank the study of national legal sources with a comparison with foreign ones.

An examination of the early issues of Pic and Godart's journal provides us with an interesting source of verification of the dissemination, in quantitative terms, and the instrumentality, in qualitative terms, of the legal understanding of labour problems at a crucial time for the definition of the discipline. The urgency of the topics dealt with in the journal is emphasised once again in the opening editorial, which makes it clear that social legisla-

and Stolleis, Simon (ed.), *Juristische Zeitschriften in Europa*, V. Klostermann, 2006 for the European context.

[33] La rédaction, *Notre programme*, in *QPLE*, 1900, 1, pp. 1-2.

tion was a recent phenomenon and at the same time developed rapidly because it responded to "urgent" and "universal" needs. On the basis of these considerations, the two editors went so far as to state "without fear of being contradicted" that the study of the protective laws of industrial labour dominated the concerns of political assemblies both in France and abroad. With such clarifications, the two authors implied the indissolubility of the transnational link of labour problems and consequently the necessary appropriateness of a comparative treatment of legal solutions.

The extensive and varied use of comparative methods in the doctrinal reflection on labour problems also characterises the editorial profile of the Italian journal *Il contratto di lavoro. Gli infortuni sul lavoro. Rivista di giurisprudenza e legislazione sociale*, published from 1904 to 1915. It is a publication that is still neglected in Italian historiography, although it seems to be rich in relevant insights: the strong comparative emphasis and the distinctly practical aims that can be deduced from its contents make it in many ways homologous to *Questions pratiques*, although less fortunate in terms of international resonance and longevity. Then, due to its thematic specificity, declared right from the title, it is a candidate to be considered as the first Italian labour law journal, at a time when the legal discourse on labour found space in journals of a heterogeneous nature and channelled a conspicuous number of successful research works to the *Rivista di diritto commerciale*[34].

Il contratto di lavoro was a monthly publication of about 32 pages that boasted an authoritative scientific commission composed of a number of personalities from the world of institutions and the legal professions with a keen interest and professional involvement in the legal resolution of social issues: the deputies Avv. Enrico De Marinis and Prof. Angelo Celli, the Advocate General at the Court of Cassation in Rome Oronzo Quarta, Prof. Pietro Cogliolo and the magistrate Camillo Cavagnari. Equally authoritative and recognised as labour lawyers are the many contributors listed on the cover, including Lodovico Barassi, Giuseppe Cimbali, Giuseppe Salvioli, Ercole Vidari, Luigi Rava and Lorenzo Ratto. Of this long list, which is intended to be a mere smokescreen to ensure scientific rigour, only Lorenzo Ratto stands out as a prolific collaborator.

The true soul of the Review was its two directors: the lawyers Cesare

[34] See Grossi, *Pagina introduttiva*, in *QF*, 1987, p. 4; Veneziani, Vardaro, *La "Rivista di diritto commerciale" e la dottrina giuslavorista delle origini*, in *QF*, 1987, p. 441 ff.

Cagli and Nilo Verona-Positano, assisted from the 1907 issue by the editors Tito Giorgi and Giovanni Secchi, carried out an editorial work that was sometimes ungrateful, out of respect for a goal that was not stated but that could be clearly deduced from the content and methodological approach of the Review. A brief letter *Ai lettori*, published on the back cover of the first issue of the second year, shows the interest of the editors in valuing the contribution of their readership, when they thanked the members and contributors and asked them to circulate the journal, to indicate possible subscribers and to report any judgments worthy of publication. From the few words of the editors, we can read several relevant profiles. The first point to consider is the difficulty of carrying out a publishing project that has all the appearance of a pioneering attempt in Italy, designed with the intention of creating a network among "those interested in the progress of the new social law" and in its implementation. The scarcity of resources and the magazine's peripheral position in relation to the more established journals, in terms of longevity, traditional content and the authority of the writers, led the editors to strengthen the loyalty of the readers with a call for collaboration in the expansion and improvement of the magazine, in the perspective of an editorial work that necessarily defined itself as "collective"[35].

The efforts of the editors to activate and involve the public, in addition to responding to the material need to keep the journal alive, should be read as a strategy for affirming a line of legal policy. From the very first doctrinal essay in the 1904 volume by Cesari Cagli, *Le trasformazioni del diritto privato e la legislazione sociale*, it is clear that the theoretical references of the editors were the exponents of legal socialism and that the common idea was the construction of a discipline of labour relations in which the benefits would be more fairly distributed among the different social classes[36].

From an overall view of the twelve volumes, it is possible to reconstruct a pattern of content organisation that remains stable over time and largely fulfils the promise contained in the terms of subscription (*Condizioni di Abbonamento*). The first section, with one or two essays per issue, is always devoted to doctrinal studies in the legal and social sciences. Most of the journal is devoted to case law: a review of the decisions of the Italian courts, ordinary, administrative and probiviral, carefully divided into recurring themes. The

[35] La direzione, *Ai Lettori*, in *CLR*, 1905.

[36] Cagli, *Le trasformazioni del diritto privato e la legislazione sociale*, in *CLR*, 1904, p. 4.

labour contract, accidents, women's and children's work, probationers, railway workers and work-related illnesses are some of the most frequent themes, and they show us in an effective and immediate way what were the emerging issues that were being imposed on the legal discourse on labour. In particular, from 1907 onwards, and always in a quantitative crescendo, the jurisprudential review was enriched with a subsection specifically entitled *Giurisprudenza estera*. References to foreign experience are not lacking in the sections devoted to: reviews of monographs and essays (*Rivista di dottrina*), also carefully divided by subject; the bibliographical review; the bulletin of information. In particular, the latter collected news on legislative matters and reproduced for the use of its readers the institutional acts considered most relevant, including laws, ministerial circulars, bills, both Italian and foreign, but also the deliberations of private bodies, such as chambers of labour, workers' or industrial associations. The consistency of the references to foreign experiences, the international dimension of the object of study and the heterogeneity of the topics covered can be easily appreciated through various examples found in the pages of the journal. Suffice it to quote here from the Bulletin of the first issue of 1907, which is entirely devoted to the transnational view: the presentation of the project for the codification of labour law in France; the news, with an agenda, of the forthcoming meeting of the Italian section of the *Association international pour la protection légale des travailleurs*; the news that the English House of Commons had approved in second reading a proposal to amend the Trade Unions Act of 1876, particularly important because it declared it lawful for trade union agents to use picketing to persuade anyone to abstain from work.

In the same way that the comparative approach is never declared but is adopted as an indispensable method and direction in the research carried out by the editors, the technical and instrumental component of the journal's content constitutes a distinctive profile that is nourished by the editors' privileged relationship with the professional environment and their familiarity with forensic and contractual practices. This feature is all the more evident in the final section of the dossiers, which is dedicated to resolving certain legal issues and is structured as a dialogue window between readers and editors, who discuss various, often very specific, topics.

It is not possible here to go into the depth of the various interest profiles covered by *Il contratto di lavoro*. The point would be to focus on its multiple thematic paths, the fluctuations in the political line adopted, the internal re-

lations between the various professionals involved as collaborators and the external projection of these relations and personalities. I can, however, offer some thoughts on a first approach to the case study, also in the light of the topic we have been given. *Il contratto di lavoro* is what one might call a "peripheral journal", because it did not attract the most established academic lawyers among its authors, and because it did not attract international contributors, it also had a pronounced practical vocation. Despite this description, however, the journal is full of topics of great appeal to legal historiography that questions the construction of the legal culture of labour in Europe. In fact, the comparative effort on the methodological level and the innovative ambition on the content level, the timid thrust towards legal policy objectives in the broadest sense, are peculiar characteristics precisely because they come from a journal with little resonance: they tell us of a wider community of jurists than has traditionally been represented, including lawyers, politicians, magistrates, state officials, who approached labour problems from localist perspectives and with different professional motivations, but who shared an imaginary of modernity and progress that was extraordinarily linked to the most advanced cultural coordinates of the legal discourse of the industrialised West.

Abstract

The use of comparative methods in the construction of labour law in the West has a longer history than labour law itself. The comparison of legislation, the circulation of institutional models and the sharing of interpretative paradigms are some of the features of a widespread practice that characterised labour law culture at the turn of the nineteenth and twentieth centuries. They contributed to defining the sources of national law, but also to activating European legal reflection on the hypotheses of international labour law. The paper deals with the intertwining of these themes and tries to examine the methods and the subject of the legal culture in an Italian journal of the early 20th century.

Keywords

History of Labour Law, Comparative Methods, International Labour Legislation, Legal Journals.