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Migration, Labour and Legal Discourse in the early 20th Century

A French-Italian Example in the Making of International Labour Law*

The making of the international labour law was the result of a complex proceeding carried out by some jurists in the early 20th Century, between the draft of the first Labour Treaty (Franco-Italian Bilateral Treaty of 1904) and the institution of the International Labour Organization (Treaty of Versailles of 1919).

The jurists interested into this "nouveau droit" focused on the emergence of collective interests and their doctrinal efforts aimed to give a legal answer to the social question as a consequence of the industrial revolution. The peculiarity of their approach was the framing of the labour question into a transnational context, by paying great attention to the growing migratory phenomena.

The connection between migration and labour emerges from a preliminary examination of the legislative and doctrinal sources. Both in the drawing of an international labour law and in the regulation of migration, lawyers started from the same economic assumption: the mobility of labour, and referred to a same subject: the foreign worker.

In this matter the relationship between Italy and France seems to be exemplar in order to show the premises, the ideological plans and the practical results of the construction of the new legal discourse about international labour relations.

On 17 August 1893 in a small town near Montpellier nine Italian workers were killed by an enraged crowd.

They had been employed in the local salt mine by *Compagnie de salins du Midi*, which hired French and foreign labourers, in particular Italians, and paid them by cottage. To obtain a better salary, the workers used to share the profit of the common labour with the companions of the same "*bricole*". On 15 August, in the afternoon, during working time a quarrel blew up between an Italian and a French worker about the profit sharing. The consequences were tragic, since a chain of violence and revenges started, rapidly involving quite all the population of Aigues-Mortes, and leading to a struggle between French citizens and Italian immigrants. The final bloody event, took place near the station, before the eyes of *gendarmerie* escorting a group of Italians driven off the town by the administrative authority. A numerous armed band attacked the leaving people and "*ce fut un véritable massacre!*"[1]

From a legal point of view the question was solved through a process ended in a not-guilty verdict of the *Cour d'assise de la Charente* for the seventeen accused men (sixteen French and one Italian). From the political point of view, the diplomatic accident was avoided thanks to the

* In the following few pages I briefly illustrate some points of a larger research still in fieri. I intend to develop each theme in other location.

[1] BATAILLE, Causes 448; see the novel by GUCCINI, MACHIAVELLI, Macaronì (Milano 1997).

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reparation of 420.000 Francs given from the French government to the Italian victims.[2]

This story contains the useful elements to reconstruct another history: the birth of the legal discourse on labour problems in the frame of the international context. The idea that came from the observation of some empirical factors – "*relations pacifiques entre le nations,* […] *organisation analogue de la grande industrie* [and] *similitude des problèmes sociaux dans le divers État*, […] *diffusion générale du socialisme*"[3] – was developed by some European jurists as a great imaginative project.[4] The International Labour Law, before the Treaty of Versailles, was a big projection of expectations, a planning laboratory, a factory of ideas. After 1919, the creation of the International Labour Organization (ILO) gave a sort of 'normalization' to the matter: a responsible institution began to work together with the States to promote multilateral treaties and achieve an international standard in the protection of workers.[5]

The "*troubles de Aigues-Mortes*" were considered as a paradigmatic episode of the consequences of migration in Western Countries. The French jurists gave a precise 'political' interpretation of such violent events, since they indicated the increase of migration as the determining factor for some breaks of domestic balance, such as the crisis of employment for national workers and the connected problems of public order: "*rixes qui parfois dégénèrent en véritables émeutes, comme à Aigues-Mortes en 1893*".[6] It was necessary to find an answer to the 'cruel' competition of foreign labourers who accepted lower salaries in comparison with French citizens.[7] The protectionist proposal of an act imposing a residency tax was rejected by the Parliament, since it would have been "susceptible to provoke some revenges".[8] France preferred to adopt a more 'liberal' provision and created a special "*État civil"* for foreign workers: they had to be identified and signed up in a "*register d'immatriculation*".[9] That should be a solution to maintain the principle of *liberté du travail.*[10]

Ten years after the facts of Aigues-Mortes, France and Italy drew an international agreement on labour matter, which was indicated by jurists as a new way to solve the economic and social problems following the spread of migration.

In particular Paul Pic, professor of International Law and Industrial legislation at the University of Lyon,[11] referring to the bilateral treaty of 1904, pointed out that it had opened a new future about the international division of labour, which needed to be driven by a common intent of the different Countries to guarantee the same protection to citizens working abroad. According to Pic's analysis, such kind of agreements was aimed "*consciemment*" and imposed to diplomacy by the progress of public opinion.[12] The link between conscience of people and construction of a positive international law was a paradigm of the restored discipline[13] and involved the new internationalist discourse on social matters, too.

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[2] See Chroniques 175.

[3] PIC, Traité (1894) 30–31.

[4] About the creative role played by the jurists in the making of values and significant models of reference for the society, see the pages of HESPANHA, Introduzione 67–85: "*Before organizing a society, law imagines it*"; see also the analysis by GEERTS, Antropologia interpretativa.

[5] RAMM, The New Ordering 277–289.

[6] PIC, De la condition 278.

[7] MILHAUD, Questions 56.

[8] PIC, De la condition 275.

[9] Act of 8. 8. 1893, „*Loi relative au séjour des étrangers en France et à la protection du travail national*"; see PIC, Traité 59–62.

[10] About the conflict between the legal concept of *Liberté du travail* and the labour rights, see CAZZETTA, Una consapevole linea, in particular 157–160.

[11] About Paul Pic and his work, see BAYON-FROBERT, Paul Pic 69–94.

[12] PIC, De la condition 275.

[13] For a deeper analysis of this point, see NUZZO, Origini 133–144.

The same argumentations were used by the Italian Pasquale Fiore,[14] in the *Prefazione* of a little book about labour accidents, in which he underlined the importance of the scientific contribution in order to draw international treaties and limit the workers competition.[15]

The treaty of 1904, the archetype of bilateral labour treaty, had two subjects. First, France and Italy committed themselves to sign some agreements in order to guarantee mutual benefits for the Italian and French workers with regards to insurance and social security. Second, the two Governments contracted to improve the application of labour legislation in the respective Countries. It dealt with a sort of official declaration of mutual promises, "*une pierre d'attente*",[16] with the aim of balancing the national interests. The will of Italy to protect its citizens in France, giving them the same guarantees as the French, mirrored the economic instance of France to make Italy apply the labour protection rules, which would have limited the Italian competition. This last issue, i.e. the dangerous competition, was a leit-motif of the legal discourse in international labour problems: for example Paul Pic, and the Italian professors of International Law Scipione Gemma and Enrico Catellani pointed out this problem as an important reason to resort international agreements.[17] This treaty was set into the "social or labour" type, a special agreement that provides some delimited solutions to urgent instances through mutual concessions. The features of this type of treaty were: the aim to resolve the conflict following the economic competition and the moving of workers; the adoption of common principles with reference to labourers' protection; the equality of rights between national and foreign workers in territory of each contraction Countries.[18] Also, in social matters returned the echo of the principles of the latest International Law doctrine. Such ideas as "international community" and "international reciprocity"[19] developed their evocative power into the analysis of the jurists about labour problems. An interesting example: Emmanuel von Ullmann in his "*Völkerrecht*" briefly focused on the social question and indicated it as a complex of economic or political-economic problems become "international". This kind of problems, creating a "reciprocal dependence" of the States, could not be solved from a national perspective; they needed a "collective action", a "co-operation", because the reach of domestic goals in some particular fields often followed the common agreements between "Civil States jointly interested".[20]

The reason founding the first labour agreement was clearly illustrated by Barthélemy Raynaud, *chargé de cours à la faculté de droit* in the Dijon University, and *secrétaire* of the Commission for the elaboration of a law project about labour bargaining into the French *Société d'études legislatives*.[21] Italy, because of the numerous Italians working in France, aimed to benefits from the French social legislation. France, worried about industrial competition, got the promise that Italy would have limited the free employment. The lack of a real protection of women and children labour into the Italian factories and the avoiding of the provision about time working could have frustrated the competitiveness of the French industrial production[22] on the European market.

[14] About the influence of Pasquale Fiore into International Law, see KOSKENNIEMI, The Gentle 54–57

[15] FIORE, Prefazione VII–VIII

[16] PIC, La convention 526.

[17] See PIC, La convention 528–529; GEMMA, Il diritto internazionale 36–40; CATELLANI, Prefazione IX.

[18] PIC, La convention, 520–521.

[19] VEC, Principles 215–216.

[20] ULLMANN, Trattato 8–9, 650 ; about von Ullmann and his "social" approach, see KOSKENNIEMI, The Gentle 224–225.

[21] LE CROM, La Société 224

[22] RAYNAUD, Droit international 76.

Two years after the French-Italian treaty, Raynaud provided the first definition of a new legal discipline, International labour Law: "*cette parte du Droit international qui règle la situation juridique des ouvriers étrangers au point de vue des questions de travail*".[23]

In his reconstruction, Raynaud made a creative operation, almost imaginative, trying to channel – not jet systematize – in a perspective as much as possible organic, scholarly input borrowed from private law about accident on work labour insurances, material from domestic judgments and legislation on the protection of foreign workers, and the only sources of international law that could be available at the time: the French-Italian treaty was one of these. The "*ouvrier étranger*" was the original feature of this experimental subject that Raynaud attempted to define. Indeed, the urgency and relevance of the discipline can be traced in its special reason of usefulness "*il movente precipuo*",[24] that the most of authors identified with migration. "*Le fait économique qui donne naissance au droit international ouvrier est la mobilisation croissante de la main d'œuvre ouvrière à notre époque.*"[25] The migration was the empirical factor founding the International labour Law, the problems connected to the moving of workers in Western Countries were the favourite point of observation for a group of European jurists who thought social question needed to be analyzed in a transnational dimension, because they were conscious that the labour problems from the domestic law were "naturalised" into International law.[26]

The labour mobility influenced significantly both the economical and the social field and entered the economic, medical, and legal discipline as well as statics. The new technical knowledge became a new strategy of the liberal States in order to understand and control the migration.

In Italy, in particular, in the period 1901–1915, the emigration rate touched its peak, and created significant legal and social problems. The statics was involved in the study and quantification of the phenomenon,[27] and was an instrument to validate from time to time different opinions.[28] The strength of numbers became a banner wave of the supporters of the international protection of workers. The migration issue permeated the juridical culture following two parallel paths: on one hand, the creation of a specialized discipline of emigration, on the other the affirmation of a new legal knowledge which focuses its attention on the globalization of the labour problems. The Italian migration question inspired several laws: the "police" Act of Crispi in 1888, with the aim to restrain the phenomenon; the social act of 1901 to protect the emigrants, which established a special Institution called *Commissariato Generale dell'Emigrazione*; the act of 1910, sponsored by Luigi Luzzati, who opened the Council of emigration to representatives of one of the most important Italian Trade Unions the Confederazione generale del lavoro (CGIL); the code of 1919 (*Testo Unico*).

It is interesting to underline that such legislation shared with the international labour law two essential points: the economic assumption connected with the mobility of labour, and the identification of the juridical subject of reference, with the foreign worker. In Italy, this connection was sanctioned with the legal definition of the migrant actor introduced by the Emigration act of 1919: the people who go abroad for "manual work purposes" or to the exercise of "small traffic".

[23] RAYNAUD, Droit international 5
[24] LOCATELLI, Le leggi sul lavoro 56
[25] RAYNAUD, Droit international 41
[26] GEMMA, Il diritto internazionale 213
[27] Among the different works, see TAMMEO, Emigrazione 1–160.
[28] See MARUCCO, Le statistiche dell'emigrazione italiana 61–75.

The protection of the emigrant in the theoretical field of the international law lead to the need of preparing more suitable legal tools to protect all workers in Western Countries equally. Some requests had to be tackled: the need for regulation of the foreign labour flow, the possibility of extending labour rights to the migrant workers (trade union, strike arbitration) and the protection laws (about the daily working time, the forbidding of female and child work), the application of the rules of the workers' insurances. The solution proposed by the jurists focus on two possibilities. On one hand, with reference to domestic law, the extension of the labour legislation to foreign workers (Italian Civil Code of 1865 was considered very progressive in this matters, Art. 3 said: "The foreigners are allowed to enjoy civil rights of citizens"); on the other, the increase of bilateral labour treaties.[29] The final goal wished by the most of jurists was a general international convention "to regulate with a uniform discipline the labour contract".[30]

In the contest of the migration phenomenon 'importing' countries had necessarily a different perspective compared to 'exporting' ones. As it emerged looking at the reasons of the French-Italian Treaty, the move of a multitude of people represented for the countries of origin the problem of protecting them abroad, while the development of migrant community in the destination countries lead to alarming consequences connected to domestic public order. These consequences were connected to the social conflict between national and foreign workers (migrant workers represented a problem because they lowered the cost of labour[31]), and to defend the national production from the competition on the European market.

The different request of 'import' and 'export' countries was foundation of the difficulties in the development of multilateral treaties. Nevertheless and despite the lack of an international legislator leading to the "nearly impossibility to conclude multilateral treaties",[32] two labour international agreements were signed in Berne in 1906. The Berne conventions imposed a ban on the use of white phosphorus in the match industry, and the prohibition of the night work of women in the industry.[33] They represented a point in the path followed by the European Countries, since the Conference of Berlin in 1890 about labour problem until the Peace of Versailles.

The "international sensibility" was becoming a politic plan. In particular, for the scientists of international law, it answered to the instance of realizing a liberal project that gets a transnational dimension.[34] With reference to labour problems, the intent to co-operate was driven by a common reason of economic politics: the balance into the market and the stability of the governments. The German Emperor took the initiative and organized in Berlin the first conference with the aim to study the bases of an international labour discipline,[35] focusing on female, child and in mine work. It was a "purely scientific meeting"[36] to which took part the delegates of the European industrialized Countries. It was a first step of a series of meetings that drove to the foundation of the *Association international pour la protection légale des travailleurs* (AIPLT) in 1900 in Paris, during a Congress on the social question organized by some French Professors. The tasks of the new Association were: creating some links between the supporters of the labour legislation; organising an International Labour Office attended to publish the social acts in every Country; increasing the analysis of workers question

[29] See LOCATELLI, Le leggi sul lavoro, 57–58
[30] FIORE, Prefazione VIII.
[31] See LOCATELLI, Le leggi sul lavoro 47–55.
[32] VEC, Principles 219
[33] VALENTINI-FERSINI, Protezione 60–64.
[34] KOSKENNIEMI, The Gentle 57–67
[35] PIC, Traité (1922) 96
[36] NEPPI MODONA, La legislazione 303

and legislation of protection.[37] Two years later started the publication of the Association's *Bulletin* that allowed the circulation of the studies conducted in the different Countries and the resolutions of the international congresses.[38]

The discourse about the International labour law was set into the ideological frame of the liberal project: faith in the progress, humanitarianism, international spirit, fear of the revolution were the reasons that drove jurists between 19th and 20th century into the built of a Peaceful Community of Civil States. One of the difficulties to get this plan was the conflict between capital and labour. From a domestic point of view, the collective bargaining tried to solve the problem better than the legislator provisions: the trade unions represented a useful tool to weaken the revolutionary impulse of the working class; they played a role of mediation between interests and had the task to control the social tension in order to keep that peace aimed by the liberal governments.[39] In the European context, both the community of the States and the jurists, who had invented it, observed the increase of the movement of the International socialism, a dreaded global enemy that joined all the Countries against the danger of the subversion of the international order founded by the bourgeois.[40] Indeed, the liberal idea of a common "*esprit d'internationalité*",[41] which the jurists pretended to take from the conscience of the people and translate in a scientific form, was contradicted by the facts of Aigues-Mortes. At the same time, a different kind of 'Internationalism' spread in Western Countries.

The requests of the newly international labour movement needed to be attended, and often they appeared into the legal discourse about the social issues, since – the jurists stated – "Nowadays a strong impetus to the international agreement is provided by the interested",[42] or "the labour question are penetrating into the international law".[43] It seems that these jurists wanted to point out that the propulsive power of a very actual phenomenon was affecting the 'monolith' of the scientific statute of International Law. They were distant from the assumption of Rolin-Jaequemyns against any form of State's intervention into the economic matters and in labour bargaining, too. He declared the labour rules were extraneous to the field of International Law and he took a strong position with reference to the Conference of Berlin of 1890. He was against the creation of international legal instruments to reach a common labour legislation; in particular, he considered the international agreement dangerous for the autonomy of the Countries and the social laws an arm of the revolution; he imagined a tragic future where the socialism win thanks to a gradual opening to workers issues.[44]

Although the purpose of the jurists engaged into international labour law was sometimes embedded with humanitarian spirit and faith in social justice, they cannot be considered socialists. The "interested", the labourers, the migrants, were the subjects of a complex of juridical and extra-juridical instruments – social laws, international treaty, collective bargaining, congress and conferences, associations – aimed or accepted by the liberal government in order to self-preserve, through a solid guarantee of a social peace.

Nevertheless, the language and some empirical premises of the legal discourse presented some fascinating points of convergence with the polit-

[37] See LICHTENBERGER, La protection IV–V

[38] See BRANTS, Législation 119

[39] About the European legal culture and collective bargaining, see VANO, Riflessione giuridica, in particular 137–138.

[40] See HOBSBAWM, Il trionfo della borghesia 192–208.

[41] See KOSKENNIEMI, The Gentle 12–19.

[42] GEMMA, Il diritto internazionale del lavoro 7.

[43] See MAHAIM, Droit International 1.

[44] ROLIN-JAEQUEMYNS, La conférence 18–27.

ical talks of the Trade Unions League magazines.[45]

The General Statutes of "International Workers Association" stated: "The emancipation of labour is not a local problem or national, but a social one [...] and it therefore needs both the theoretical and practical cooperation of the more civilized countries".

The words were the same, the aims were different: the jurists wanted a legislation of social peace for saving the state order; the workers movement wished a new order.

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[45] See MASINI, La Federazione italiana 112.

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