

The Limits of the Social in Law and Thought

Jorge L. Esquirol*

‘Italy is a democratic Republic founded on labor’.

ITALIAN CONSTITUTION (1947), Art 1, Sentence 1.

‘What we are confronted with is the prospect of a society of laborers without labor, that is, without the only activity available to them. Surely, nothing could be worse’.

HANNAH ARENDT, *The Human Condition* (1958)

Abstract

Labor protections originate from a notion of ‘the social’, particularly prominent in 20th century Italy. That notion justifies deviations from classical liberal law. Indeed, it has come to provide the main paradigm for the protection of vulnerable interests of any kind. It is, however, the product of a certain time and place – available only under certain conditions, types of states, legal political economy and geopolitics. In our times, it may have exhausted its practical utility as an effective source of protection for workers – and even other vulnerable interests. This article analyzes the limits of the social in the context of two case studies: the continuing struggle over jobs and health at the ILVA steel plant in Taranto and the irregular detention of migrants aboard the Diciotti at the Italian port of Catania. In both cases, the social as currently conceived offers quite limited, if any, responsive alternatives.

I. Introduction

In an age of highly mobile capital, national governments are struggling to promote quality jobs and suitable job substitutes. Fiscal incentives, import tariffs, subsidies for industries, universal basic income, lower (or higher) retirement age, and partial state ownership of private enterprises are some of the common proposals. Yet, no single policy prescription, realistically considered, appears especially promising. Most national governments lack the coercive instruments to constrain powerful multinationals. Large enterprises refuse to absorb the environmental and

* Professor of Law, Florida International University. A version of this article was previously published in K. Engle and N. Hoad eds, *Hierarchies at Work: Race, World Systems and Legal Distribution* (New York: Columbia University Press, 2025).

social externalities demanded by democratic politics. And international institutions fail to equitably reconcile the divergent objectives of heterogeneous global constituencies. This absence of traction, at every level, is a characteristic aspect of the contemporary debate over decent employment.

Of course, material realities such as resource scarcity and innovation challenges are certainly part of the difficulty. Yet, apart from that, quite common beliefs about government capacity, private sector constraints, and international institutional limits equally truncate both action and thought on issues concerning workers. These disconnects undermine the ability of policy makers to think more effectively about the future of work and work substitutes and to propose reforms with any anticipated success. Instead, they engender mostly rear-guard action in which governments are simply reacting to popular discontent with few apparent tools at their disposal.

Certainly, work and its substitutes are only one way of organizing societies. Productive employment is not the singular frame for human experience. An altogether different framing could well begin with personal satisfaction, cooperation in society, and collective well-being as the background paradigm. However, even universal basic income programs operate in most cases as a temporary substitute for work. And retirement benefits equally track the model of productive work, after individual labor is no longer possible or expected. Still, even retaining the limited approach of productive work as the starting point, additional policy alternatives may come into focus – if we note the current dead-ends and blind alleys of prevailing debates.

The focus here is specifically on Italy. That country is by all measures a developed nation in the global North, part of the European Union. It has extensive labor legislation and social protections, a mixed legacy of workers' union activism and nationalist syndicalism. Indeed, it is one of the Western countries with the highest levels of worker protections. Moreover, the country's leaders are not preemptively hamstrung by geopolitical unimportance, peripheral economies, and global racial disadvantage. Its people do not suffer the same obstacles, whether material or ideational, of developing countries in the Global South. At the same time, it does face its own challenges of structural inequities between the north and the south of the country, continuing presence of organized crime and corruption, one of the highest governmental debts in the EU, and the generalized perception of rampant inefficiency, extensive bureaucracy, and less than uniformly liberal legal culture. As such, Italy provides a useful example of mixed advantages and constraints characteristically associated with both developed and developing countries.

Not unlike some other places, the prospects of quality employment in Italy have increasingly eroded. Firms and factories are frequently enticed to relocate to lower wage countries. Worker unions and labor authorities are incapable of stopping them. The realities of mobile capital and disparate labor conditions across the world combine to limit any effective counter-pressure. Even the national government is at a loss to coerce private firms, or even to convince them to stay.

At the same time, there is demographic pressure from continuing immigration from the Global South, for which Italy is a main entry point. Local administrations struggle to process new arrivals while national politics are buffeted by deepening waves of xenophobia and anti-immigrant populism. It seems that national authorities are only capable of standing by and compensating the losers of globalization, in piecemeal and partial ways, for lower quality or no employment. At the same time, the only effective expression of national sovereignty consists of keeping immigrants off Italian shores and in perpetual states of precarity once they have arrived.

My objective here is to examine this perceived lack of effective legal instruments to make meaningful change in the arena of employment. The institutions presumably advancing worker interests are patently lacking, and labor legislation in Italy (and elsewhere) appear unequal to the complexities of the current moment. Instead, worker demands for satisfactory employment and income stability routinely abut in dead ends. Some obstacles are the product of the legal system itself. Background legal rules, government bureaucracies, international legal commitments, and informal allocations of power produce a situation in which democratic demands – such as worker interests – cannot permeate the protected encasement of neo-liberal policies. Certain arrangements have been effectively placed beyond democratic control. But that is not the only way that blockages are created. They are equally erected by limitations of legal consciousness. Traditional legal concepts – despite their widely recognized contingency – continue to reign and to restrict options. Common yet misleading distinctions like public versus private law, state intervention versus free market, intentional discrimination versus disparate impact all remain pervasive. They resurface more or less explicitly when debating employment policies and their alternatives and are part of the explanation for muddled public debate and policy prescriptions.

The discussion below addresses some of these troubling impasses. The paper is divided into three parts. The first describes two relatively recent events in Italy. One is a high-profile case arising from the steady influx of migrants to Italy from Africa, the Middle East, and South Asia. It highlights the negligible legal protections afforded to migrant workers. The second event retraces the vicissitudes of the ILVA steel plant in Southern Italy. The plant has been the object of continuing controversy over employment, health, and the environment. Even with the full array of labor protections afforded by a functioning welfare state, workers at ILVA are confronted with a dilemma between keeping their jobs and threats to their health, environment, and conditions of employment. The second part of the paper examines the way labor demands and policies are commonly framed. Specifically, appeals to ‘the social’ predominate – in Italy, harkening back to its fascist origins but progressing well beyond. Relying principally on this strategy for labor empowerment, and the types of remedies it suggests, may be part of the problem. The concluding part of the paper begins to sketch out some alternative thinking.

II. Two Takes on the Future of Workers in Italy

The discussion below focuses on the ILVA steel plant saga in Southern Italy as well as the plight of refugees aboard the Italian Coast Guard ship, the *U. Diciotti CP 941*. By examining them together, I explore the positions of government officials, private individuals, and international institutions in contemporary debates about work and work substitutes. Their unfolding in Italy certainly gives a particular shape to these issues, embedded as they are in that country's specific history and political economy. The events described below garnered widespread international attention, affected many individuals, and became the topic of heated public debate about various issues, including work. Adopting the focus of employment as a way of understanding them, admittedly, limits the discussion in advance. It perpetuates the notion of productive activity as the main goal of human life in society. However, it does offer some new perspectives on that paradigm.¹

1. Caso Diciotti

In August 2018, the Italian Minister of the Interior ordered the detention of 177 migrants on board an Italian Coast Guard ship for ten days. Its unfolding cannot be understood without the background politics that preceded it. Earlier in 2018, Italy held regular parliamentary elections. These elicited the most energetic opposition to mainstream parties from populists of the right and the left. The *Movimento Cinque Stelle* (5-Star Movement), hard to pin down in terms of its ideological commitments, and the *Lega* (the League) a clearly right-wing party – some would say radical right – both did exceedingly well.² Without an outright majority for either party, however, they formed a coalition government. They were unable to agree on the prime ministership, so they decided on a non-politician professor of civil law, Giuseppe Conte, to lead them. The heads of the main coalition parties, Luigi di Maio of Five Stars and Matteo Salvini of *Lega* would both become vice-prime ministers. Additionally, di Maio took over the ministry of work and economic development; Salvini took the ministry of the interior. The rest of the ministries were distributed more or less proportionally among them. The Yellow-Green government was born, the colors of each party.

It was a tumultuous government while it lasted.³ Practically enemies divided by vast political differences, they repeatedly disputed their political agenda and its relation to a coalitional pact. Salvini was a particularly controversial figure. His approach to government was unmistakably authoritarian. He may best be remembered

¹ 'Workers' here refers to individuals performing functionally 'heteronomous' work, ie not autonomous – whether they are nominally labelled employees or independent contractors.

² Originally a secessionist movement of regions of the North, formerly known as 'Lega Nord'.

³ The coalition government, lasted no more than a year as a result of Salvini's withdrawal – in the hopes of an off-year parliamentary election that would propel him to unrivalled victory. That did not happen. Instead, another odd-bedfellows coalition, the 5-Star and PD parties, unexpectedly allied to keep the country from going to untimely elections.

in those days for requesting from the Italian people ‘full powers’ to rule:

‘I ask Italians, if they so will, to give me full powers to do that that we have promised to do to the fullest without delays and without chains (balls) on our feet. (...) We are in democracy, who chooses Salvini knows what he chooses’.

Hard to know what he was truly thinking.⁴ At the time, it came across as a call for state power freed from counterbalancing constraints of unelected officials, such as national judges and international institutions. It chillingly recalled Italy’s fascist past and the figure of ‘il duce’.⁵

During Salvini’s tenure as Minister of the Interior, he took many controversial actions, including two security decrees that informally bear his name. They imposed strict restrictions on immigration, prohibition of immigrant rescue ships docking in Italy, vast diminution of humanitarian permits, and evictions of refugees from government facilities. No doubt, Italy’s immediate immigration problem stems *in part* from the vacuum of effective government in Libya. In practice, the decrees were focused on limiting the large numbers of African and South Asian immigrants who were attempting to enter Italy from North Africa. In July 2018, the Salvini decrees closed Italian ports to NGO ships bringing immigrants attempting to cross and those rescued at sea. The rescue ships that forced their way in were subject to arrest and detention. The decrees even prevented the Italian coast guard (which routinely conducts rescue operations) from picking up migrants whose vessels had stalled or broken apart or who were flung overboard by fleeing smugglers.

On August 16, 2018, patrol boats rescued and transferred to a coast guard ship, the *U. Diciotti*, 190 immigrants adrift in the Mediterranean. Most were from Eritrea, a former Italian colony. Following authorization from the minister of transportation on August 20, the ship headed to the port of Catania in Sicily. However, Salvini countermanded that no one except 13 individuals with grave medical conditions be allowed to disembark, effectively detaining 177 people on board a cramped and ill-equipped ship. He made clear that he would refuse entry until other European Union member states agreed to take some of the migrants. In the subsequent days, the EU Commission repeatedly failed to obtain the consent of member states to take any significant number. EU Treaties herald solidarity and shared burdens among member states in handling immigration flows, but there is no legally binding obligation.⁶

⁴ Salvini later walked back the purported intent of these comments. But, at the time, commentators noted the eerie resemblance to a Mussolini speech in the 1920’s. O. Pollicino and G.E. Vigevani, ‘Perché Salvini non può chiedere «pieni poteri»’ *Il Sole 24 Ore*, 9 August 2019, <https://tinyurl.com/uw3bkeum> (last visited 31 January 2026).

⁵ *ibid*

⁶ Contrast European Court of Justice 2020 decision condemning certain Member States for not complying with emergency measures (Emergency Relocation Scheme) passed in 2015 by EU Council to redistribute immigrants arriving in Italy and Greece. Joined Cases C-715/17, C-718/17 and C-

Though not the only incident of its kind during Salvini's ministry, it gained him international scorn. The sequester produced much human hardship.⁷ Some Individuals on board badly needed medical attention. State officials allowed to board were hardly sufficient to tend to the extensive human suffering. The news travelled internationally, and the government ultimately relented. Nonetheless, the incident seared the image of an Italy closed to immigrants, whether refugees or not, if they came from Africa or the Middle East. Notably, despite the opposition's rallying cry to repeal the Salvini decrees, the successor government took over two years to overturn them.⁸ Recently, some of the special protections afforded by previous law – like humanitarian status – have been reinstated.

2. ILVA Taranto

The second story involves the potential shutting down of Europe's biggest single-site steel mill, located in Taranto at the heel of the Italian peninsula.⁹ Taranto is deep in the heart of Southern Italy in the Puglia region, in the lesser industrialized parts of the country, where quality jobs are at a steep premium. The steel mill, which accounts for 75 per cent of the gross domestic product of the province of Taranto, is an icon of Italian industrialization established in 1905 in Genoa. It was rebuilt by the state in Taranto and consolidated with other holdings as *ILVA di Taranto*. When it was re-inaugurated in 1965, it was the largest iron and steel plant in Europe. It was publicly owned and privatized only following the economic crisis of the 1980s.¹⁰

The ILVA plant's modern history dates to the 1995 sale to the Riva family. Years of environmental pollution ensued, leading to the prosecution of owners,

719/17 *Commission v Poland, Hungary and the Czech Republic*, [2020] ECLI:EU:C:2020:257. The EU Dublin Treaty requires the country of entry to process refugee applications. Italy has been attempting to extend 'burden sharing' to include initial processing of refugees, relocated after they arrive on Italian shores. France and Germany, however, view burden sharing as simply a financial obligation not any requirement to apportion asylum seekers among them. The *Diciotti* stand-off was not resolved until August 26, 2018 when the Episcopal Conference of the Catholic Church (on Italian soil), Ireland, and Albania (a non-EU state) agreed to take charge of the remaining immigrants on board, and all were allowed to disembark. About 27 minors had been previously released.

⁷ For his actions while Minister, Salvini was personally indicted for kidnapping, abuse of power, and other charges corresponding to his detaining the *Diciotti* survivors. However, under Italian procedures, the legislature must lift his official immunity for criminal charges to proceed. With respect to the *Diciotti* case, the legislature gave him cover and did not lift immunity. Salvini's defense is that this was a government-wide action of which all cabinet members were aware.

⁸ Decreto legge 21 October 2020 no 130, converted to legge 18 December 2020 no 173; J. Sunderland, 'Finally, Good News for Asylum Seekers in Italy: New Decree Rolls Back Some of the Worst Aspects of Immigration Policy' *Human Rights Watch*, 7 October 2020, <https://tinyurl.com/yzw49yrb> (last visited 31 January 2026).

⁹ 'ArcelorMittal gets its fingers burned in Italy's Ilva steel mill' *The Economist*, December 7, 2019.

¹⁰ B. Massaro, 'Ilva di Taranto, la storia infinita di un pasticcio all'italiana' *Panorama*, November 6, 2019.

managers, and certain public officials for environmental crimes.¹¹ In 2012, a court ordered seizure of the plant for serious environmental violations. Since then, the Italian state has sought to save the company from closure, to avoid the loss of thousands of jobs and because of its fundamental importance to the Italian economy. In 2015, it placed the plant under ‘extraordinary administration’ to restore the plant both environmentally and economically and then sell it.¹² In June 2017, it awarded the plant through a public tender offer to a multinational, the world’s largest steel company ArcelorMittal.¹³ The express condition of the sale was that its new buyers maintain 10,000 jobs until 2023, with a 150,000 euro penalty for each worker dismissed under that number.

After a year of running the plant, the new foreign owners threatened to reduce the work force by 4,700 or shut down the business altogether.¹⁴ Ostensibly, they took advantage of the zeal of the then recently-elected to government 5 Star Movement, which proposed removing the plant’s legal immunity for past environmental harms.¹⁵ In the past, ILVA had continued operations on the authority of government decrees, despite adjudicated environmental harms and attempts to close the plant down.¹⁶ The cost of clean-up was estimated at 8 billion euros.¹⁷ However, based on strategic national security interests, the government decrees immunized officers and managers – including future acquirers – from criminal and administrative liability. Those government orders were challenged in the Italian Constitutional Court and the European Court of Human Rights on the basis of rights to health and to life, non-discrimination and safety at work.¹⁸

¹¹ After twenty years of litigation, the Rivas couple were condemned to twenty-two years and twenty years in prison, respectively, and the former governor of the Puglia region to three years for pressuring authorities to keep the plant open. D. Palmiotti, ‘Sentenza ex Ilva: 22 e 20 anni per Fabio e Nicola Riva, 3 anni e mezzo a Vendola’ *Il Sole 24 Ore*, 31 May 2021, <https://perma.cc/8VDZ-Z3KA> (last visited 31 January 2026).

¹² See F. Di Cristina, ‘Gli stabilimenti di interesse strategico nazionale e i poteri del Governo’ *Giornale di Diritto Amministrativo*, 369-378 (2013).

¹³ ‘ArcelorMittal Completes Transaction to Acquire Ilva S.p.A. and Launches ArcelorMittal Italia’, *ArcelorMittal*, November 1, 2018, <https://tinyurl.com/3x5u9y7f>.

¹⁴ See ‘Ex Ilva, ArcelorMittal rischia di pagare 700 milioni di penale per i 4700 esuberi. Clausola nel contratto da 150 mila euro a lavoratore’ *Il Fatto Quotidiano*, 5 December 2019, <https://tinyurl.com/4fx7wjzk> (last visited 31 January 2026).

¹⁵ Decreto legge 5 January 2015 no 1, Art 2, para 6 (the so-called ‘criminal shield’: conduct under the remediation plan cannot give rise to the criminal or administrative liability of the extraordinary commissioner and of the subjects functionally delegated by him. The Lega-M5s government, by decreto legge 30 April 2019 no 34, eliminated the legal immunity granted to ArcelorMittal for violations of health and safety at work (even under cover of remediation plan). On special immunities from liability in Italian law, see M. Bussani, *L’illecito civile* (Napoli: Edizioni Scientifiche Italiane, 2020), 689-690.

¹⁶ Decreti legge 10 December 2013 no 136; 5 January 2015 no 1; 4 July 2015 no 92; 9 June 2016 no 98.

¹⁷ Court of Taranto, Examining Judge Office, Preventive Seizure Decree, 22 May 2013, following appeal R.G.N.R. 938/2010; A. Biggeri et al, ‘Conclusioni’, in *Perizia epidemiologica e chimica sull’ILVA di Taranto*, 514-554, <https://tinyurl.com/d639wmya> (last visited 31 January 2026).

¹⁸ M. Neglia, ‘Striking the Right(s) Balance: Conflicts between Human Rights and Freedom

The Italian high court upheld them.¹⁹ The European court faulted the Italian court's reasoning.²⁰ But the plant remained open. In June 2024, the European Court of Justice upon referral by a Milan court petitioned by 300,000 plaintiffs from the surrounding Taranto area required human-health related pollution assessments as a pre-requisite to continued permitting.²¹ In February 2025, the Ministry of Industry of the Italian government took over the operation of the plant in the context of a reorganization proceeding of ArcelorMittal.²²

In any case, lifting the environmental shield was prominently heralded by the new populist government back in 2019. The steel investors reacted immediately. The new owners of ILVA cried foul and additionally demanded to renegotiate the deal over job guarantees. The purchase contract between the multinational and the state contains a rescission provision in case of later changes in laws and regulations in effect at the time of purchase.²³ A later decree-law reestablished the liability shield but only for *past* environmental violations; new deviations from the plant-specific environmental plan would henceforth be actionable. Still, ArcelorMittal threatened to pull out, and as a result legislation was introduced to reinstate the full shield to even new violations, although the immunity would progressively fade out over time. However, that proposal did not pass, and the government's remaining reassurances to ArcelorMittal consisted simply in emphasizing that abiding by the law – including the plant's environmental plan – would protect the company from any criminal liability.²⁴ The steel multinational ultimately sued for rescission of the concession contract.

The whole event caused deep national consternation and exposed the

to Conduct a Business in the ILVA Case in Italy' 5 *Business and Human Rights Journal* (January 2020), 143, 143-149; Italian Constitutional Court, No 58/2018 (*decreto legge* challenged did not take into account fundamental rights to life; but plant remains open on basis of other decrees); Eur. Court H.R. 54414/13, 54264/15, *Cordella et al v Italy*, Judgment of 24 January 2019, (Italian government violated art 8 of the European Convention on Human Rights); F. Giampietro, 'Sull'inquinamento dell'ILVA la CEDU dichiara la responsabilità dello stato italiano per violazione dei diritti dell'uomo' 4 *Ambiente e Sviluppo*, 263 (2019).

¹⁹ Corte costituzionale 9 April 2013 no 85, available at www.cortecostituzionale.it.

²⁰ *Cordella et al v Italy* no 18 above (condemning Italy and its courts for not conducting a fair balancing between the applicants' interest in not being harmed by serious damage to the environment and the interest of society as a whole in the continuation of production activity).

²¹ Case C-626/22 *C.Z. and Others v Ilva SpA in Amministrazione Straordinaria and Acciaierie d'Italia Holding SpA and Acciaierie d'Italia SpA* (Request for a preliminary ruling from the Tribunale di Milano) Judgment of the Court (Grand Chamber) of 25 June 2024. ('Where the activity of the installation concerned presents such risks, the second subparagraph of Article 8(2) of that directive requires, in any event, that the operation of that installation be suspended', para 132)

²² Reuters, 'Italy takes over running of ArcelorMittal's steelworks', 20 February 2024.

²³ Despite ArcelorMittal's threat to withdraw from the contract, in the conversion of this last decree into law (as legge 2 November 2019 no 128), Parliament deleted Art 14 with the consequence of leaving in force the text of the standard as modified by the previous decreto legge 30 April 2019 no 34 (converted with amendments by legge 28 June 2019 no 58), which limited the effectiveness of the 'scudo penale' through 6 September 2019.

²⁴ 'ArcelorMittal lascia ex Ilva: cos'è lo scudo penale, tra le cause del recesso di contratto', *Sky TG24*, 4 November 2019, <https://tinyurl.com/rvm5e9z> (last visited 31 January 2026).

government's limited power. The latter engaged in intense negotiations with the steel giant and affected parties throughout. In an attempt to placate striking steel workers, Italy's prime minister went personally to meet with them. The workers feared for their jobs, despite ArcelorMittal's contractual obligations, in the face-off between the multinational and the government over the liability shield. In an unprecedented move, the sitting prime minister Giuseppe Conte threw himself into the melee of agitated workers to speak with them face to face. His resounding message, despite transmitting much personal empathy, was that he 'does not have a solution in his pocket' to keep their jobs:²⁵

"The solution to the ex-ILVA crisis I don't have it in my pocket, I am not a smoke-and-mirrors salesman. (...) I am not a superman, nor a (superhuman) phenomenon. If there would have been a solution in hand, it would have already been undertaken".²⁶

In April 2021 the new government of Mario Draghi proceeded to take a thirty-eight percent equity stake in the company while obtaining fifty percent of the voting rights. The government would keep the liability shield intact for environmental harm and presumably seek a waiver of European Union rules on government budget deficits. Italy every year is at the edge or just above the 3% of GDP budget deficit maximum imposed by the European Union.²⁷ Any additional government expenditures – for universal basic income, social policy, or significant environmental clean-up like at ArcelorMittal – must be coordinated with Brussels.²⁸ Influencing corporate policies, even by the state, was not possible simply through public law mechanisms. It required a significant ownership stake.

3. Take-Aways from the Two Cases

The combination of policies and institutions, highlighted by the accounts above, reveal an evolving paradigm for workers within society. The national and international institutions, legislative and regulatory jurisdictions, legal rules and distinctions are increasingly contributing to the construction of a particular identity of 'workers'. These developments function on more than one register – both political and cultural. The criss-cross of rules and jurisdictions marginalize worker interests from fuller democratic expression, restricting their participation to weakened national institutions at the cost of jeopardizing their physical integrity

²⁵ See 'Ex Ilva, Conte a Taranto: "Stato ci metterà la faccia, vogliamo migliorare il piano. Saremo intransigenti, ad Morselli mia antagonista"' *Il Fatto Quotidiano*, 24 December 2019, <https://tinyurl.com/mvzdfsr6> (last visited 31 January 2026).

²⁶ 'Ex Ilva. Conte a Taranto: "Non sono un superuomo e non ho soluzioni in tasca"' *La Repubblica* video, 2:39, 8 November 2019, <https://tinyurl.com/55cbwpus> (last visited 31 January 2026).

²⁷ A. Magnani, 'Che cos'è il deficit al 3% del Pil e perché non solo Salvini vuole rivederlo', *Il Sole 24 Ore*, May 15, 2019, <https://tinyurl.com/59fsm6th> (last visited 31 January 2026).

²⁸ See F. Giampietro, n 18 above, 263.

and environment. It also projects the paradigm of identity onto industrial and low-level workers – both in the sense of marginalizing them socioeconomically as well as provoking a reactionary identitarian backlash from this subject position. It would not be the first time powerful economic interests make use of racialization to their benefit. Even workers in the global North – especially those underemployed or unemployed workers – are both vulnerable and susceptible to it.

Subordinating entire groups, like manual workers or the immigrants arriving on Italian shores, increasingly becomes possible when presumed to be the result of their own particular traits. Patterns of hegemony and domination appear like the natural workings of inherent, or near-inherent, attributes of groups. This makes the problem seem cultural or specific to certain demographics and not the product of policy and institutional decisions, of which culture and race are only back-formations. Indeed, it makes diminishing opportunities and marginalization of workers increasingly tolerable by society as a whole. It is not altogether surprising that one common reaction has been nationalist populism by those affected. That reaction to contemporary developments, in many ways misguided, is commonly expressed in the language of anti-discrimination movements against globalists and elites – the world's non-workers.

Furthermore, continual reliance on notions of the 'social' as a form of worker protection is rather ineffective. Legal protections for social groups may indeed be a natural paradigm in which to promote worker interests. It typically stands for needed changes in the rules of private, commercial, and corporate law to empower workers as well as the incapacitated and 'weaker parties'. Its doctrines are longstanding monuments to 'politics from below'. However, the particular versions of the social inherited from Italian fascism as well as the 1970's welfare state are too limited. They do not consider the changed political economy in which foreign investors, multinational corporations, and international economic institutions – armed with their own legal powers and protections – are a central part of the mix. In a nutshell, going forward, the interests of workers should be integrated in the background rules of the market, not merely segregated to offer protections from it. Below is the argument why.

III. Blind Alleys and Dead Ends

Calls for 'protection' from interest groups may be heard in all legal systems, if in varying degrees and forms.²⁹ Advocates for consumers, the environment and workers appear most prominently in this connection. And, indeed, consumer protection laws, environmental law and labor law are direct responses to these calls – but so are trade barriers, foreign investment treaties, international financial

²⁹ K. Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001), 76-77.

organizations, and independent central banks, responding to quite different interests. The Italian political context – no less than others – is heavily punctuated by claims to such legal protection from various sectors.³⁰ Broadly referred to as *tutela*, as discussed below, the concept is the common currency of national legal politics, quite evident from even minimal exposure to Italian public debate.

Indeed, framing legal alternatives as questions of autonomy versus protection, individualism versus altruism, formalism versus the social does significant political work.³¹ Societies and individuals that fiercely defend ‘individualism’ are generally loath to accept the language of altruism or protection. Those tending the other way more readily embrace the rhetoric of protectionism. The discourse in the end mostly muddies the practical effects and real distributional consequences.³² Outcomes *post hoc* are more a question of *whose* interests are protected rather than whether there is protection. Still, the conceptual dichotomy orients the cardinal directions along which ‘labor’ has traditionally sought to obtain relative advantages in solidly capitalist countries.³³

The demands of ILVA workers described above echo this strategy.³⁴ They draw on the long history of *tutela*, the specific Italian version of ‘the social’ inflected by its particular past. For the survivors of the *Diciotti*, this same kind of *tutela* is completely inaccessible. The concept’s historical and jurisdictional limitations render it unavailable to migrants and most foreign workers. Instead, legal protection must be sought elsewhere, such as in international norms, political morality, or even criminal law. Still, the history of *tutela* for collective interests is relevant to the stories above. It frames the development of ‘the social’ in a society that in the past turned to fascism for protection. It is part of the institutional legacy of a certain form of legal protectionism, in some ways still relevant today.³⁵ Moreover, it provides a historical lesson of the challenges for workers and worker empowerment from another era of labor crisis and its own anticipated future of work.

³⁰ D. Kennedy, ‘The Three Globalizations of Law and Legal Thought’, in D. Trubek and A. Santos eds, *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006).

³¹ K. Polanyi, n 29 above (depicting this market-versus-protection distinction).

³² D. Kennedy, ‘Form and Substance in Private Law Adjudication’ 89 (8) *Harvard Law Review*, 1685 (1976).

³³ Many workers in the global North (although not so much so in Italy) do not depend solely on salaries. They are often invested in the stock market, participate in company stock option plans, and have significant pension holdings in mutual funds and other investments. Such individuals may personally identify more with owners than with workers. This is in part structural, as reflected by their financial investments, but also ideological. It further contributes to the marginalization of labor organizations – and workers themselves. See S. Sonmati, ‘Low-Income Workers’ Financial Participation in Italy: A Proposal *de iure condendo*’ 5 *Italian Law Journal*, 197-206 (2019).

³⁴ K. Renner, *The Institutions of Private Law and their Social Function* (New York: Routledge, 2010), 92 (describing the advent of classical civil code and industrial revolution: ‘An institution of private law (...) takes the place of the regulation of labour by public law’).

³⁵ J.Q. Whitman, ‘Consumerism versus Producerism: On the Global Threat of “Consumerism” and the Mission of Comparative Law’ 117 (3) *The Yale Law Journal*, 340-406 (2007). (‘Nobody thinks that European countries are still fascist, but thoughtful observers continue to see lines of filiation between the economics of the ‘30s and the economics of today’).

My main point is that the conception of labor protection, as inherited from Italian (and world) legal history and projected onto current policy debates, is excessively limited. To the point, *tutela* as currently understood is incapable of protecting workers from multinationals, and it is incapable of protecting migrant, prospective workers from the state. A more robust conception of the social is needed. Below are some of the problems with relying solely on state *tutela* of workers.

1. The Indeterminacy of Tutela

The legal concept of *tutela* appears in 19th century civil codes modeled on the *Code Napoléon*, such as Italy's, as a form of protection for vulnerable individuals – then defined as the incompetent, married women, and minors. The doctrine served to restrict an individual's legal capacity and provide for the appointment of a legal guardian. Workers were not included in this category. They were not understood as in need of protection. Classical private law perceives individual workers as willing sellers of their hours of work, or piecemeal production, in mutually agreed contracts with purchasers – or, as may be alternatively conceptualized, in lease agreements with lessors for their bodies or energy.

However, faced with the extensive commodification of labor created by factory work in the industrial era, it soon became evident that:

‘no society could stand the effects of such a system of crude fictions even for the shortest stretch of time unless its human and natural substance as well as its business organization was protected against the ravages of this satanic mill’.³⁶

The unequal bargaining conditions between employers and employees, and the affront to the dignity and professional identity of workers, required protection. The historic turn in the early twentieth century to ‘the social’ experienced in many countries was the common response.³⁷ According to Karl Polanyi, from whom the quote is taken, the clashing forces of the ‘satanic mill’ and the social ultimately led around the world to dictatorial socialism in the Soviet Union, fascism as in Italy and the New Deal in the United States.³⁸

Post-WWI Italy witnessed a period of escalating labor struggle, strikes, and unrest provoking violent reaction by the bourgeoisie and ruling classes. It culminated in the *biennio rosso* (the red biennial), the two years 1919-1920 in which worker strikes paralyzed significant sectors of the economy.³⁹ These years paved the way

³⁶ K. Polanyi, n 29 above, 76-77.

³⁷ D. Kennedy, n 30 above, 50. (‘Enemies of the social never tired of pointing out that it was a “regression” from contract to status, and that it was “demeaning” to the beneficiaries to be treated as though, like the member of the Roman or feudal household, they lacked legal capacity’).

³⁸ K. Polanyi, n 29 above, 245-256, 252.

³⁹ D.D. Roberts, *The Syndicalist Tradition and Italian Fascism* (Manchester: Manchester University Press, 1979), 137-138.

for basic labor protections in Italy: mandatory unemployment insurance, an eight-hour work day, minimum wage, and a rise in real wages near fifty percent.⁴⁰ Social programs provided assistance to needy families, credits for the poor, disability insurance and old-age pensions.

These developments helped provoke fascism, at root inimical to labor empowerment.⁴¹ Worker gains were perceived as contrary to virtues of austerity and economy and as illegitimately extracted from a weak liberal government.⁴² It thus required repressive force to overturn them. Polanyi himself sharply observed that ‘In Italy alone were the conservatives unable to restore work-discipline in industry without providing the fascists with a chance of gaining power’.⁴³ By stopping labor unrest and bringing all sectors of the economy to heel within the corporatist state, fascism redefined the legal subject. As Maria Rosaria Marella has argued, the legal subject became the ‘worker’, in a redefined way which included entrepreneurs.⁴⁴ Indeed, fascism took up the ‘social’ in a quite particular form.⁴⁵ It embraced class solidarity not conflict, corporativism not liberalism, and productivism not social welfare as conventionally understood.⁴⁶ Work became a social *duty*.⁴⁷ And, the definition of ‘worker’ included all productive agents in society, most importantly

⁴⁰ C.E. Mattei, ‘Austerity and repressive politics: Italian economists in the early years of the fascist government’ 25 (5) *European Journal History of Economic Thought*, 998, 1001-1002 (2017).

⁴¹ *ibid* (describing the agreement of prominent liberal and fascist economists on austerity measures); see also, D.D. Roberts, n 39 above (describing the syndicalist intellectual influence on Italian fascism. While syndicalism is based on the centrality of worker unions, it came to reject class conflict in favor of class solidarity and corporatism).

⁴² C.E. Mattei, n 40 above, 1011. (Citing one of Fascism’s early economists, Maffeo Pantaleoni, ‘In my judgment, as a consequence of the laws and actions of Government, their (workers’) wages are much higher than the marginal return of their labour. This is the outcome, first, of the pressure of the war, and, then, of the pressure of socialism and Bolshevism’).

⁴³ A. Gramsci, *La questione meridionale* (Raleigh: Lulu press, 2019); K. Polanyi, n 29 above, 249.

⁴⁴ See M.R. Marella, ‘Antropologia del soggetto di diritto. Note sulle trasformazioni di una categoria giuridica’, in F. Bilotta and F. Raimondi eds, *Il soggetto di diritto. Storia ed evoluzione di un concetto nel diritto privato* (Napoli: Jovene Editore, 2020), 57.

⁴⁵ See D.D. Roberts, n 39 above, 70. (Commenting on Italian Fascism’s syndicalists roots: early syndicalists believed that ‘The workers could be counted upon to lead only because, through a difficult process of psychological maturation, they were coming to embody values diametrically opposed to those underlying the liberal capitalist system. The workers were learning to live according to the principle of solidarity on a day-to-day basis ... The foundation of the new solidarity would be common productive labor’).

⁴⁶ D. Kennedy, n 30 above, 41-42; K. Polanyi, n 29 above, 247. (‘People often did not feel sure whether a political speech or a play, a sermon or a public parade, a metaphysics or an artistic fashion, a poem or a party program was fascist or not. There were no accepted criteria of fascism, nor did it possess conventional tenets’); compare M. Sabbioneti, ‘Raymond Saleilles’, in O. Descamps and R. Domingo eds, *Great Christian Jurists in French History* (Cambridge: Cambridge University Press, 2019), 328-333. (Examining the ‘social citizen’ version of the welfare state espoused by Raymond Saleilles in France).

⁴⁷ See *Carta del Lavoro* (Charter of Labour of 1927), Paragraph II, adopted 1927 by Gran Consiglio del Fascismo, entered into ‘force’ as interpretive guidelines in 1941 and preface to 1942 Italian Civil Code (abrogated 1944) (in the collective bargaining agreement all opposing interests are subordinate to the superior interests of production, para IV).

capitalists in pride of place.⁴⁸

The entrepreneur was the linchpin of the economy and of national administration, deserving protection in the form of rights to profits and hierarchical power.⁴⁹ To implement this vision, the Fascist government gained ‘full powers’, by vote of the Chamber of Deputies, to make all necessary bureaucratic and financial reforms.⁵⁰ The program consisted of fiscal budget cuts, regressive taxation, layoffs in the public sector, privatizations of public entities, liberalization of financial markets, and colonial expansion in Africa.⁵¹ These policies were reinforced after the Great Depression in 1929, imposing a generalized reduction of production costs, lower interest rates, reduced tariffs, and timely repayment of government debts.⁵² An inherent part of this program was a new idea about law.

a) Social Law

Prior to the rise of fascism, Italian syndicalism was a political program based on an idealized model of industrial worker relations. Some of the main ideas of the social emerged in this environment. In the inter-war period, however, the general movement came to identify worker protection with nationalism and imperialism. The historical commitment to international socialism was abandoned as a disappointing delusion, belied by the lack of solidarity among workers of different nations. The ill treatment and discrimination faced by Italian workers abroad, especially in the United States and Argentina, were not insignificant to these developments.⁵³ Indeed, more prosperous countries at the time generally limited the entry of Italian immigrants and tolerated discriminatory pay and harsh working conditions against them. Italian workers would thus have to create socialism within their own borders. Additionally, imperialism was not altogether unattractive. It offered the promise of raw materials in short supply in Italy, additional markets, and other opportunities for excess Italian labor.⁵⁴ The thought was that if Italian workers did not support it, workers in other countries would.

⁴⁸ U. Romagnoli, ‘Diritto del lavoro (storia del)’ *Digesto delle discipline privatistiche, sezione commerciale* (1989). (‘a *tutela* that for him implies a recognition of the right to profit as well as a remuneration of his work as an organizer of the factors of production’); see also F. Galgano, *L’imprenditore* (Bologna: Zanichelli, 1980), 25.

⁴⁹ *ibid*

⁵⁰ ‘Near Dictatorship Given to Mussolini’ *The New York Times*, 26 November 1922; legge 3 December 1922 no 1601 ‘Delegazione di pieni poteri al Governo del Re per il riordinamento del sistema tributario e della pubblica amministrazione’ (*Gazzetta Ufficiale* 15 December 1922 no 293).

⁵¹ C.E. Mattei, n 40 above, 998, 1005.

⁵² B. Mussolini, ‘Per il Consiglio Nazionale delle Corporazioni’, in Id, *Scritti e discorsi dal 1929 al 1931* (Milano: Hoepli, 1934), 194-198; see also G.P. Calchi Novati, *L’Africa d’Italia: una storia coloniale e postcoloniale* (Roma: Carocci, 2011), 103 (discussing connection between the Great Depression and 1934 Italian colonial invasion of Ethiopia to provide greater opportunities for émigré Italian farmers and workers).

⁵³ D.D. Roberts, n 39 above, 108.

⁵⁴ *ibid* 109 (‘As imperialism followed protection, workers in favored countries found that they too had a stake in the imperialistic successes of their ruling classes’).

Providing jobs was especially crucial in this period of massive Italian emigration – before the Fascist regime restricted departures.

During the fascist regime, many of the earlier syndicalist ideas re-emerged but changed in authoritarian type ways. All productive agents of society were to be organized in associations – manual workers, industrialists, artisans, and others. In turn, all associations were to be operated under sectoral ‘corporations’ directed by the state.⁵⁵ For example, only approved labor unions, under the supervision of designated corporations, could negotiate enforceable collective contracts. Even worker-owned cooperatives, which Italy leads in numbers and have existed since the early 20th century, were remade in the Fascist era.⁵⁶ They were controlled by the single-party state under their respective national organizations.⁵⁷ Fascism transformed what was a class-based ‘labor unionism’ to a sort of ‘mixed unionism’ with all sides working in collaboration, at least in theory.⁵⁸ Directives emanating from the corporations set baseline conditions for workers such as vacation time, overtime pay, sick days and the like; prohibitions on strikes and lockouts; and mandatory adjudication of industrial disputes in specialized labor courts.⁵⁹ Salaries were still formally to be decided by collective bargaining, within reasonable limits.⁶⁰ Workers benefitted from insurance for accidents and occupational hazards, maternity leave, and involuntary unemployment.⁶¹ If the national interest warranted, the state reserved the right to intervene, encourage, and directly manage the enterprise.⁶²

⁵⁵ Ultimately, Mussolini’s plan was to eliminate the Chamber of Deputies and replace it with an Assembly of Corporations as the representatives of the people. J. Stone, ‘Theories of Law and Justice of Fascist Italy’ 1 (3) *The Modern Law Review*, 177-202 (1937). (‘From the ... internal viewpoint, the groups represent the absolute antithesis of the Marxian notion of the class struggle. From the latter, the external viewpoint, they indicate a close connection between political organisation and economic organisation which is thoroughly Marxian’); Carta del Lavoro, Art VII (‘corporations’ are organs of state with power to issue binding rules; all private enterprises are grouped under such corporations).

⁵⁶ For history of Italian cooperatives, see ‘Labor Conditions in Fascist Italy’ 57 (5) *Monthly Labor Review*, 911, 931 (November 1943). (‘[under Mussolini] the cooperatives did not represent a free movement controlled by the membership. Italy lost its membership in the International Cooperative Alliance for that reason, shortly after the Fascist Government took over control of the cooperative associations’).

⁵⁷ Regio Decreto 1 July 1926 no 1130, Art 8. (Three main organizations of this type continue to exist to this day. While not centrally controlled by the state, they are still heavily reliant on government support and subsidies).

⁵⁸ R. D’Alfonso, ‘Oltre lo Stato Liberale: Il Progetto di Alfredo Rocco’ *Il Politico*, 341, 345-46 (1999). (Referred to in Italy by their historical pre-liberalism analogues, ie, ‘corporations’ and thus ‘corporatism’).

⁵⁹ Legge 3 April 1926 no 563 ‘Disciplina giuridica dei rapporti collettivi del lavoro’, *Gazzetta Ufficiale* 14 April 1926 no 87.

⁶⁰ ‘Labor Conditions’ n 56 above, 921-922. (‘Actually ... there was little freedom in such matters. From 1929-38 real wages remained stationary but direct comparisons are difficult because of changing family allowances, social insurances, and benefits as well as union dues and salary deductions for social programs’).

⁶¹ J. Stone, n 55 above, 183.

⁶² Carta del Lavoro, Art IX; see also P. Grossi, *Scienza giuridica italiana. Un profilo storico. 1860-1950* (Milano: Giuffrè, 2000). (On the origins in this period of the term ‘impresa’ or ‘enterprise’ as distinctively ‘social’ and opposed to the individualism of productive agents).

Concomitantly, theorists of the social made significant inroads into classical legal thought and the liberal order.⁶³ They introduced the concept of social interests within both public and private law and openly engaged in what we would call ‘the politics of private law’.⁶⁴ New legal doctrines were fashioned to place limits on the purely consensual and absolute nature of private law rights.⁶⁵ Social function replaced individualism as the key organizing concept.⁶⁶ Both property and contracts were no longer thought of as merely voluntaristic and absolute within their respective spheres. Rather, legal entitlements were contingent on fulfilling their social mission. The particular function involved depended on the area and activity to be defined in legislation and other pronouncements.

With respect to property, it was no longer one unified abstract idea but rather multiple contextual definitions.⁶⁷ In rural areas, it could mean a duty to cultivate the land; in factories, to maintain production;⁶⁸ in urban settings, it may require making housing available. The same for contracts. Their objective and terms may be equally restricted to their respective social functions. For example, the doctrine of ‘abuse of rights’ sought to check the unbridled exercise of absolute individual rights. Collective contracts such as labor agreements were theorized as capable of binding those not formally expressing consent, thus acknowledging their quasi-public character. And the firm or economic enterprise became the focus of legal regulation and state protection.⁶⁹

These revamped doctrines and concepts were not platforms for judges and legislators to equalize unfair bargains between private parties or to protect the individual interests of the weaker side.⁷⁰ Rather, they offered a legal and technical

⁶³ P. Grossi, *ibid* 174-177. (Defending the valuable juristic debates and theorizations of corporativism in this period which Italian fascism ultimately instrumentalized and deformed. According to Grossi, corporativism stressed collectivities within society [not just the individual and the State as did liberalism], the wide plurality of collective interests needing accommodation within the superior national interest, and legal pluralism proper to the internal norms of the collectives).

⁶⁴ See generally, J.L. Esquirol, ‘Making the Critical Moves: A Top Ten of Progressive Legal Scholarship’ 92 (4) *Colorado Law Review*, 1079 (2021).

⁶⁵ Contrast G. Cazzetta, ‘Legge e Stato sociale. Dalla legislazione operaia ai dilemmi del welfare ‘senza legge’ *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 103, 127-130, 132-137 (2017). (Arguing that the social paradigm of ‘tutela’, applied to multiple constituencies has not sufficiently transformed the structure of private law).

⁶⁶ See J. Stone, n 55 above, 186-188. (Discussing the likely connections between fascism and the social solidarity of Emile Durkheim and Leon Duguit, in which social function replaces the will theory and rights as the quintessence of law. Under these new theories, the social function of enterprises is efficiency).

⁶⁷ J.L. Esquirol, ‘Formalizing Property in Latin America’, in M. Graziadei and Collegio Carlo Alberto eds, *Comparative Property Law* (Cheltenham: Edward Elgar, 2017). (Discussing the Colombian implementation of ‘social function’ of property in the countryside, requiring land cultivation by owners at the risk of losing their property without compensation).

⁶⁸ P. Grossi, n 62 above, 232-234. (Property was not principally the rights of an identifiable owner but the duties owed by the holder).

⁶⁹ *ibid* 207-214.

⁷⁰ A. Somma, ‘Il diritto fascista dei contratti: un confronto col modello nazionalsocialista’, in A. Mazzacane ed, *Diritto Economia e Istituzioni nell’Italia Fascista* (Baden-Baden: Nomos,

way to interject the state's over-riding policy objectives within private law transactions – with whatever proposals the state decided constituted the 'social function' or 'social interests' at the time.

b) The 'Productivist' Social

Indeed, labor law in Italy was born in this environment. Its quintessential creations are the 1926 Fascist labor laws and the 1927 Labor Charter. The latter proclaims: 'the consequences of crises in production and in monetary phenomena must be divided equally among all factors of production'.⁷¹ This was the formal bargain enshrined in the 1942 civil code.⁷² According to noted Italian labor scholar Mario Casanova, what it produced in effect was:

'An intransigently statist ideology reflexively [that] inspired the entire legal system even labor law. That ideology was met, in the political arena, with the gradual eclipse of all personal liberties of individual citizens before the power of the State'.⁷³

But, it was not limited to Fascism or to Italy alone. Corporativism, social protection, and the Labor Charter were influential the world over.⁷⁴ They provided the main sources of ideas and policies constituting the globalized 'social', which remains a significant part of Western legal thought today.⁷⁵ Yet, the labor protections of the 'productivist social' were not primarily designed to benefit workers.⁷⁶ They were intended to promote industrial peace, productivity, and Italy's place in the world. The 1942 Civil Code embodies this structure. It separates labor contracts from regular contracts under the heading of *tutela* for workers – while simultaneously mandating the hierarchical superiority of entrepreneurs, as essentially *pater*

2002), 205-210.

⁷¹ Carta del Lavoro, Art 13.

⁷² A. Somma, 'Fascismo e diritto, una ricerca sul nulla' *Rivista trimestrale di diritto e procedura civile* (2001). (Discussing the studied neglect and denial by Italian legal scholars of the fascist, or productivist social, elements of the 1942 Italian Civil Code).

⁷³ M. Casanova, 'Il diritto del lavoro nei primi decenni del secolo: rievocazioni e considerazioni' *Rivista italiana di diritto del lavoro*, 231, 253 (1986).

⁷⁴ M. Pasetti, 'The Fascist Labour Charter and its Transnational Spread', in A. Costa Pinto ed, *Corporatism and Fascism* (Oxfordshire: Taylor & Francis, 2017), 61 ('while Fascism had a 'temporary' effect, corporatism had an epochal dimension'); see also A. Santos, 'The Trouble with Identity and Progressive Origins in Defending Labour Law', in G. De Burca et al eds, *Critical Legal Perspectives on Global Governance: Liber Amicorum David M Trubek*, (Hart Publishing: Oxford, 2014) (on the social's influence on legendary Mexican labor laws and their originality).

⁷⁵ See generally, D. Kennedy, n 30 above (describing hodge-podge of current globalization which included classical legal thought and the social).

⁷⁶ N. Ridolfi and A. Di Nucci, 'Il corporativismo: un paradosso della politica economica dello Stato fascista' 19 (1) *Pecunia*, 61, 64 (2014). (Describing fascist labor legislation as excluding internal union committees on the shop floor, thereby reinforcing the power of owners over which there was no effective control in the enforcement of labor contracts).

familias of their enterprises.⁷⁷

Moreover, these socially ‘protective’ ideas were implemented by a totalitarian regime.⁷⁸ What should have been institutions of the social, the intermediate associations in between the state and the individual, were highly centralized within the state itself – ultimately disempowering workers and illegitimately discriminating against certain groups.⁷⁹ The micro-requirements of social function on the shop floor were exacting and hierarchical.⁸⁰ The Fascist social was ‘a model rendering law apt to the dispensation of *tutelas* and super-*tutelas*, maybe even favors, but incapable of redistributing power’, in the words of noted Italian labor scholar Umberto Romagnoli.⁸¹ This explanation is the standard reconstruction for those seeking to salvage ‘the social’ from the wreckage of fascism. In this reading, the social introduced many positive ideas, but they were instrumentalized and distorted.

The 1942 Italian Civil Code still in effect constitutes only a small aspect relevant to workers today. And the fascist labor legislation has since been repealed, of course. Other more recent laws and regulation, discussed below, take a more important role. Still, that era’s code reveals the multiple meanings of the social and the productivist form of *tutela*.⁸² Since then, commentators have noted the splintering of the legal subject in contemporary times.⁸³ Instead of a unified historical subject like labor or the enterprise, multiple identities or interests figure as differential bearers of legal personality. Consumers, people of color, gender identities, the environment, foreign investors, undocumented aliens, heteronomous workers all have their own differential status in law. And, indeed, one way to conceptualize this – and the main mode in which it is publicly articulated, especially in Italy – is by types and degrees of *tutela*.

In this connection, the high point of worker interests *specifically* was the

⁷⁷ See discussion of fascist era framing of corporate law privileging the entrepreneur as hierarchical leader, in F. Ferrara and F. Corsi, *Gli imprenditori e le società* (Milano: Giuffrè, 1994).

⁷⁸ G. Negri, ‘The Rise and Fall of the Fascist Constitution’ *Il Politico*, 449, 465-467 (1982).

⁷⁹ I. Stolzi, ‘Politica sociale e regime fascista: un’ipotesi di lettura’ *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 241, 262-264 (2017). (Describing shift between unionist and corporatist phases of Italian fascism and the latter’s only instrumental reliance on ‘social policy’ and bottom-up steering of society and its total disregard for ‘social rights’. According to the author, syndicalism (unionism) was only a phase to more effectively access the protected sphere of private or individual rights and protections).

⁸⁰ R. D’Alfonso, n 58 above, 341, 345. (Referring to the legal architect of Mussolini’s industrial policy, ‘Rocco’s corporatist conception has its model in the ideal structure of a modern and efficient monopolistic enterprise, characterized by a rigid hierarchical organization of professional roles and capable’); U. Romagnoli, n 48 above (‘labor law (in the law of 3 april 1926, no 563) encountered certain death by overdose of state protectionism. Even if all was attempted, after the end of its historical cycle, to hide its demise and make it appear in good health, many subsequent generations of legal operators are forced to deal with it’).

⁸¹ U. Romagnoli, ‘Il diritto del lavoro durante il fascismo: Uno sguardo d’insieme’ *Lavoro e diritto*, 77, 87 (2003).

⁸² See J. Stone, n 55 above, 186-188.

⁸³ E. Laclau and C. Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (New York: Verso, 2001).

1970 Workers' Statute.⁸⁴ This piece of legislation drew on the same conceptual basis for legal protection. However, it was significantly severed from productivism. It set the ground rules for more adversarial relations between unions and capitalist associations, workers and employers. By then, labor strikes were no longer a crime and instead were given constitutional protection. The legislation includes both substantive rights and safeguards for union representation. Labor unions gained greater autonomy to set their own goals. This period of Italian legal history cannot be separated from the mass mobilization of the left, including armed insurgency. The Italian economic miracle of the 1960's was accompanied by a heightened consciousness of class warfare, both figurative and literal. The Worker's Statute, if anything, reflects a return – or progression – to a more partisan notion of worker interests, transcending its 1942 civil code tutelage of private enterprises generally.

Still, the productivist social reappears in some unexpected ways. It is manifest, for example, in the Italian Constitutional Court decisions upholding the decrees overturning of the judicial closure of the ILVA plant in 2012 because of environmental crimes.⁸⁵ These latter cases preceded the sale to ArcelorMittal but occurred after the plant's privatization in 1995. National prosecutors convinced the local courts to shut down the plants based on continuing environmental damage. The plants emit an extraordinary amount of iron-ore dust and other gases and vapors into the air that harm the health of workers and residents of Taranto. The closures were subsequently countermanded by government orders.⁸⁶ Executive decrees, later converted to law, authorized the re-opening of the plants and criminal and administrative liability shields, citing strategic national interests in employment and production. These executive orders were reviewed by the Italian Constitutional Court for their compatibility with fundamental rights and separation of powers.⁸⁷ The Court engaged in a balancing of the interests of employment and production against the right to health and derivative environmental interests.⁸⁸ It sided with employment and production, delegating the management of environmental concerns to the administrative board established by law to mandate precautions at the plant.⁸⁹

As commentators have noted, the Court unjustifiably juxtaposed employment – employment no matter how unsafe – with health.⁹⁰ The decisions were also read

⁸⁴ Statuto dei Lavoratori, legge 20 May 1970 no 300, 'Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell'attività sindacale nei luoghi di lavoro e norme sul collocamento'.

⁸⁵ Corte costituzionale n 19 above.

⁸⁶ Decreto legge 3 December 2012 no 207, converted to legge 24 December 2012 no 231 'Disposizioni urgenti a tutela della salute, dell'ambiente e dei livelli di occupazione, in caso di crisi di stabilimenti industriali di interesse strategico nazionale'.

⁸⁷ Corte costituzionale n 19 above.

⁸⁸ See C. Crea and L.E. Perriello, 'Health, Environment and Economic Interests: From Balancing to Ensuring Effective Remedies' 11 (3) *Journal of European Tort Law*, 247-285 (2020).

⁸⁹ A third case by the Italian Constitutional Court found the authorization unconstitutional due to lack of administrative oversight, which in this case was not included in the law.

⁹⁰ T. Guarnier, 'Della ponderazione di un 'valore primario'. Il caso ILVA sotto la lente della Corte Costituzionale' *Diritto e Società*, 173, 183 (2018).

as a throwback to the ‘entrepreneurial state’.⁹¹ Not unlike the Civil Code, that approach fuses the interests of workers to private enterprise under the mantle of strategic national interests. And, in the process, worker interests are reduced to productivity. The mayor of Taranto again attempted to shut down the plant based on his emergency powers based on ongoing environmental harm.⁹² That order was rescinded by the Council of State, Italy’s highest administrative tribunal, due to insufficient evidence of an emergency thus precluding the mayor from exercising his powers.⁹³

2. Narrowed Legal Protections

Another drawback of the productivist social is the receding actual protections. Indeed, in the protests of ILVA workers, one can hear echoes of the type of *tutela* that had traction in an earlier era of labor mobilization – whether of the type integral to national enterprise as in fascism or competing with capitalist accumulation as in the Workers Statute. Faced with only bad options, they can at best hope the government will succeed in imposing the national productivist social over private enterprises – to keep their jobs despite health and environmental costs and foreign investor prerogatives.

Under either paradigm, whether productivist or social welfare, heteronomous workers are unpropertied claimants in the process of national production,⁹⁴ with contractual claims for hours worked or items produced as negotiated by unions,⁹⁵ limited say in comparison to other claimants and creditors,⁹⁶ and protected mostly by legislated floors on employment terms and conditions. Even these minimums have been eroded in recent laws on ‘for cause only’ dismissals,⁹⁷ pension reform,⁹⁸ increased leverage of multinational firms, as well as the limited ability for democratic

⁹¹ F. Di Cristina, ‘Il decreto “salva ILVA”. Decreto legge 3 dicembre 2012, n. 207 convertito dalla legge 24 dicembre 2012, n. 231’ *Giornale di diritto amministrativo*, 369 (2013).

⁹² Comune di Taranto, Direzione Ambiente, Salute e Qualità di Vita, Ordinanza no 15, 27 October 2020.

⁹³ G. Foschini, ‘Ex Ilva, no allo stop degli impianti dell’area a caldo: il Consiglio di Stato tiene aperto il siderurgico’ *La Repubblica*, 23 June 2021, <https://perma.cc/J7NS-NGYP>.

⁹⁴ Regio Decreto 16 March 1942 no 262 ‘Approvazione del testo del Codice civile’ *Gazzetta Ufficiale* 4 April 1942 no 79, Art 832 (owners enjoy absolute legal rights over production machines and work product ‘full and exclusive’).

⁹⁵ *ibid* Art 2060. (Adopts a ‘protective’ or social model of industrial relations).

⁹⁶ The situation in Italy – where workers are recognized a legal privilege for past wages – are far better off than in the US for example where no such priority obtains.

⁹⁷ Legge 10 December 2014 no 183 (the ‘Jobs Act’); A. Pizzoferrato, ‘Economic Crisis and Labour Law Reform in Italy’ 3(2) *International Journal of Comparative Labour Law and Industrial Relations*, 187, 205 (2015). (Offering an extensive overview of the history and characteristics of the ‘Jobs Act’).

⁹⁸ Decreto legge 6 December 2011 no 201, converted with amendments by legge 22 December 2011 no 214 (so-called ‘legge Fornero’) (set the requirements for old-age pensions until 2050); decreto legge 28 January 2019 no 4 – converted with amendments by legge 28 March 2019 no 26 – provides for new provisions to access early retirement, in force from 1 January 2019; F. Barbieri, ‘Pensioni, con quota 100 salgono a 12 le possibilità di uscita dal lavoro’ *Il Sole 24 Ore*, 12 September 2019, <https://tinyurl.com/2vj5tn3r> (last visited 31 January 2026).

change due to the EU rules, international treaties and contractual guarantees for foreign investors. Indeed, international institutions like the WTO Dispute Resolution Bodies, the European Commission and the European Court of Justice have the power to invalidate national legislation contrary to their preferred model of political economy. Especially in Italy's case, EU fiscal spending caps and limits on state aid greatly affect social policy alternatives.⁹⁹ And this is just a partial listing of the background legal architecture, painting worker interests into a corner.¹⁰⁰ It does not even begin to address the reduction of job supply generally through artificial intelligence and worldwide trends toward monopoly production.

Moreover, whatever *tutela* obtains for subordinate workers is assigned to national public law institutions that are underfunded, less than effective, and culturally expected to fail.¹⁰¹ The Italian Constitution of 1948 recognizes the right of workers to take part in management.¹⁰² This constitutional right however has had minimal practical effect.¹⁰³ No implementing law has ever specified its scope.¹⁰⁴ And no firm has ever been required to re-organize its corporate structure as a result of this constitutional provision.¹⁰⁵ Worker participation through 'management councils' in business decisions, distribution of profits, and ownership participation has never succeeded nor been seriously pursued by most labor unions. Its prototype during the inter-war years, in the form of internal workers' commissions in Torino factories, was stanchied by fascism. And the 1970's Workers Statute limited itself to strengthening union representation by imposing requirements of information

⁹⁹ A. Seifert, 'European Economic Governance and the Labor Laws of the E. U. Member States' 35(3) *Comparative Labor Law and Policy Journal*, 312 (2014). (The EU's overall effect described as: 'a progressive deterioration in working conditions as a way of ensuring the stability of financial markets. In Italy, the impact has been greater than in other European countries'); see generally, for example, legge no 26/2019, of conversion of decreto legge no 4/2019, Citizenship Income are established; compare G. Cazzola, 'Il reddito di cittadinanza' *Il lavoro nella giurisprudenza*, 446-460 (2019).

¹⁰⁰ See Official Journal of the European Communities, STATE AID C 29/97 – C 30/97 – C 31/97 (ex NN 125/96) Italy, <https://tinyurl.com/ytnrk7tz>; see generally, M. Vieta, 'The Italian Road to Creating Worker Cooperatives from Worker Buyouts: Italy's Worker-Recuperated Enterprises and the Legge Marcora Framework' 78 *Euricse Working Papers* (2015).

¹⁰¹ See eg, S. Rodotà, *Il diritto di avere diritti* (Roma-Bari: Laterza, 2012), 232; M.R. Marella, 'Il diritto all'esistenza' *Rivista critica del diritto privato* (Napoli: Jovene, 2012), 673-678 (critiques of conditional basic income schemes, like the *reddito di cittadinanza*).

¹⁰² Italian Constitution of 1947, Art 46.

¹⁰³ G. De Ferra, 'La partecipazione dei lavoratori alla gestione delle aziende (*rectius* delle imprese)' *Rivista delle società*, 1298 (2015). (Italian S.p.A.'s [stock companies] are even prohibited from having workers on their 'supervision boards' – one of the two corporate boards required for certain statutory corporations – unless they are publicly traded.)

¹⁰⁴ F. Caporale and E. Frediani, 'La Costituzione «dimenticata» dai consigli di gestione alla partecipazione di rischio delle imprese' *Rivista trimestrale di diritto pubblico*, 279, 293, 297-298 (2021).

¹⁰⁵ *ibid* 299 (Describing how the few worker-participation schemes in effect today are voluntary on the part of management and mostly intended to strengthen employee loyalty but not involving them in investment decisions or production methods).

and consultation on management,¹⁰⁶ shifting some of the power from entrepreneurs to labor.¹⁰⁷ More recently, the government of Matteo Renzi of the Democratic Party introduced a neoliberal labor flexibility law in 2014 to reduce costs, eliminating even some of the protections of the Workers Statute.¹⁰⁸ Certainly, the few cases of limited profit-participation and stock option plans for workers may be a sign of a certain type of participation, yet one translating simply to increased remuneration and a vote on exceptional types of decisions placed collectively before shareholders.¹⁰⁹

Finally, enforcement of public law regulation on businesses – perceived as added costs to be borne by private employers – is perennially under-effective. There are never enough agents and controls, and incentives for corruption are high. Indeed, all of these labor protections operate strictly within a national frame of interests and pressure points.¹¹⁰ The globalization of capital and international economic institutions, on the other hand, adds different parties to the table. National labor is confronted by mobile foreign investors armed with special rights – a modern version of Italian national syndicalism's *tutela* for entrepreneurs, this time for foreign investors and their enterprises.

Indeed, investor protections in the form of international treaties, European Union causes of action, and negotiated concession agreements skew the traditional negotiating table. Faced with this imbalance, collective bargaining is not principally a matter involving national labor and capital. It is national governments, in the best of cases, negotiating on behalf of labor. The most relevant collective bargaining regulations in this case are, in effect, bilateral investment treaties and foreign investor special rights. Yet, no careful balance between government/labor interests and foreign investors exists. No national labor law is capable of establishing that. The scales tilt heavily in favor of foreign industrialists and like-minded governments. The only leverage at ministry tables is the prospect of loss of future business in the country, the threat of national legal process over remaining corporate assets

¹⁰⁶ G. Proia, 'La partecipazione dei lavoratori tra realtà e prospettive. Analisi della normativa interna' *Diritto delle relazioni industriali*, 60 (2010).

¹⁰⁷ See generally, L. Stanghellini, 'Corporate Governance in Italy: Strong Owners, Faithful Managers. An Assessment' 6 (1) *Indiana International & Comparative Law Review*, 91-159 (1995); L. Segato, 'A Comparative Analysis of Shareholder Protections in Italy and the United States' 26 (2) *Northwestern Journal of International Law and Business*, 373-379 (2006).

¹⁰⁸ Legge no 183/2014 (so-called 'Jobs Act') provides for numerous and wide-ranging delegations to the Government for reforming the labor market. Eight legislative decrees (and a corrective decree) have followed; M. del Conte, 'Re-structuring the Standard Employment Relationship: Italy and the Increasing Protection Contract', in E. Ales et al eds, *Core and Contingent Work in the European Union: A Comparative Analysis* (London: Bloomsbury Publishing, 2017), 111-128.

¹⁰⁹ G. Proia, n 106 above, 60.

¹¹⁰ See K. Rittich, 'The Future of Law and Development: Second Generation Reforms and Incorporation of the Social', in D. Trubek and A. Santos eds, *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006). (Arguing that a weak version of the 'social' incorporated within the remit of international financial institutions works to give the appearance of addressing social protection without making any significant changes in policy).

and executives, and general international reputation.

However, not all the routes to be taken by labor need line up neatly with altruism or protection, while not all market capitalism lines up with individualism or autonomy.¹¹¹ It is not as determinate as that.¹¹² The grammars may be scrambled.¹¹³ Indeed, that is the point here: an overemphasis on labor laws as solely national government ‘protection’ may skew the possible legal alternatives into an overly narrow range of options. Moreover, viewing ‘free’ market actors, foreign investors, and multinational corporations as operating in the realm of individualistic rights also obscures the many ways in which *they* are the beneficiaries of legal protection, state welfare, and other special rights.

3. Racialized Levels of Protection

Finally, the social has been historically intertwined with race. Turning more squarely to the *Diciotti* case as a prime example, it is not as if Italy had no use for migrants. For those migrants hoping to remain in Italy, rather than the majority heading elsewhere in Europe, they predominantly engage in manual work. Indeed, a large part of agricultural and other forms of ‘usurious’ work are performed precisely by people like those disembarking from the *Diciotti*. Accepting jobs that native Italians will not take. Their lack of effective *tutela* is a result of the racial limits of social protection. These are effectively withheld from migrants from the Global South and increasingly diminished for newly racialized Italian workers.

It is interesting to note that among the survivors of the *Diciotti* were many citizens of Italy’s former colony, Eritrea. That area was colonized in the late nineteenth century, but Mussolini made it a central part of his imperial productivist regime.¹¹⁴ In fact, the fascist government was not content with its long-standing colony in Eritrea alone in East Africa, and it invaded neighboring Ethiopia in 1935. The few Italian colonies that already existed including Libya and Somalia were there to expand productivist opportunities for Italian colonists.¹¹⁵ Colonized natives were

¹¹¹ See eg, the long history of worker-owned cooperatives in Italy, which predated fascism and survive through today. Essentially, these are private entities whose scope is mutual support and salaries rather than profit maximization.

¹¹² For example, E. Pashukanis, *The General Theory of Law and Marxism* (1st ed, 1924; London: Taylor & Francis, repr, 2017) (critique of bourgeois legal form (and Soviet-state legal form) as determined by the underlying characteristics of commodity exchange, presuming individuals equally entitled to an equivalent exchange).

¹¹³ On *relative* indeterminacy, F. de Saussure, *Course in General Linguistics* (New York: Philosophical Library, 1959) (linguistic structuralism reveals seemingly transcendental meanings as human-developed conventions, fitting nonetheless within a finite pattern of permutations); C. Levi-Strauss, *Structural Anthropology* (New York: Basic Book, 1963) (maintaining the existence of common relational archetypes across groups that are differentially expressed as distinct cultures).

¹¹⁴ A. Del Boca, ‘Le leggi razziali nell’impero di Mussolini’, in Id et al eds, *Il Regime Fascista: Storia e Storiografia* (Roma: Laterza, 1995), 339.

¹¹⁵ V. Deplano, ‘Dalla colonia all’impero: l’Africa e il progetto nazionale fascista’, in G. Albanese ed, *Il Fascismo Italiano* (Roma: Carocci, 2021). (Describing the self-proclaimed fascist identification with an ‘empire of labor’ as based on increasing racialization and racial hierarchy compared to

increasingly racialized and marginalized under fascism.¹¹⁶ Education levels were kept minimal so that natives would not be able to compete with Italian workers.¹¹⁷ Targetted by imperialism and racism, the colonized were geographically segregated, limited to three years of schooling, and politically disenfranchised by a combination of direct colonial rule and complicit chieftains handpicked by Italy.¹¹⁸ Eritrean men, for example, were mostly recruited as fighters for the Italian colonial forces. For the most part, it was dictatorial apartheid military rule.

The colonies served *rhetorically* as ‘social protection’ for excess labor within Italy.¹¹⁹ To the extent they emigrated, working class Italian colonists were assured stable employment and worker housing.¹²⁰ However, the anticipated emigration shift to the colonies – away from third countries – fell short of expectations.¹²¹ *Practically*, the colonies served as opportunities for Italian businesses and imperial power. Rather businesses were the beneficiaries. They were incentivized with subsidies and state contracts for ports, roads, railroads, and infrastructure.

Indeed, the characteristics of productivist *tutela* become even more evident when considered in light of colonialism. In the inter-war period, the paradigm of ‘the social’ did not prioritize better working conditions or social and racial justice.¹²² Rather, its main imperative was productivism.¹²³ Where it did provide ‘social protection’, it operated in disparate ways. For example, racial laws in 1938 and 1939 mimicking Nazi Germany, instituted the state policy of anti-Semitism and the domination of so-believed inferior races.¹²⁴ Such laws quite literally sent those populations to their deaths. The experience in the African colonies was a precursor.¹²⁵

previous Italian colonial period).

¹¹⁶ C. Giorgi, ‘Borders and Boundaries in Italy’s Colonial Administration’ in *Mussolini’s National Empire* (Cambridge: Cambridge University Press, 2017). (Describing extreme segregation of indigenous population – residential, occupational, and political under Italian colonialism and the lack of intervening associations between the colonizing state and indigenous Africans.)

¹¹⁷ G.P. Calchi Novati, n 52 above, 226.

¹¹⁸ *ibid* 183-228.

¹¹⁹ Compare ‘Labor Conditions’ n 56 above, 921. (Citing relatively low numbers of Italians in East Africa: ‘the total number going to Italian East Africa in 1938 was 5,795, making a total of 199, 382’).

¹²⁰ G.P. Calchi Novati, n 52 above, 110.

¹²¹ *ibid* 110 (Despite doubling of Italian population in Libya from 1936 to 1940).

¹²² *ibid*

¹²³ See eg, E. Fiochi Malaspina, ‘Techniques of Empire by Land Law: The Case of the Italian Colonies (Nineteenth and Twentieth Centuries)’ 6 (2) *Comparative Legal History*, 233, 241, 249-250 (2018). (Arguing Italian law in the colonies shifted from providing for registrable property to promote settlement to one of continuing state control over land in the form of concessions to promote productivist goals.)

¹²⁴ Decreto legge no. 1728, 17 November 1938 no 1728 and decreto legge 29 June 1939 no 1004; M. Siems, ‘Malicious Legal Transplants’ 38 (1) *Legal Study*, 103, 105-106 (2018). (Arguing conflicting theories behind racial laws: political expediency vis-a-vis German allies; anti-Semitism as a strategy for dictatorial consolidation; Italian ‘spiritual’ racism as opposed to German ‘biological’ racism). See O. De Napoli, ‘The origin of the Racist Laws under Fascism. A problem of historiography’ 17 (1) *Journal of Modern Italian Studies*, 106-122 (2012).

¹²⁵ Mussolini himself denied imitating Germany. He associated racism with a necessary

Italian citizenship was denied to colonized peoples of color, although it was initially granted to mixed-race children of Italian-Eritrean unions. By 1936 even they were excluded from citizenship, and mixed-race unions were criminalized.¹²⁶ A virtual system of apartheid was instituted.¹²⁷

In those later years, Fascist colonial policy turned away from any semblance of either assimilation of native populations or indirect rule. Rather, it aimed at segregating and dominating colonized peoples and ultimately replacing them with peninsular Italians and presumably their progeny. The concept of *tutela* was made applicable to the colonized in a perverse way.¹²⁸ It was the kind of ‘protection’ afforded to individuals permanently lacking legal capacity, those incapable of ever reaching any level of autonomy.¹²⁹ Thus, in the colonies, *tutela* meant promoting Italian enterprises and securing markets for increased production and oversupply in Italy. For Eritreans, Ethiopians, and colonized others, it meant keeping them out of the way, under a regime of oppressive tutelage.

Italy lost its colonies after World War II, and the racial laws were dismantled. However, neocolonial paradigms still structure much current thinking. Contemporary policies toward global South migrants reveal two perverse epistemic legacies. It visits the need for the policies to repel them, and the exacerbation of their negative effects in society, on this class of workers. And, two, it reinforces the systemic marginalization of worker interests by polarizing types of workers: a parallel labor market of others whose lack of *tutela* is invisibilized through racial prejudice and the construction of immigration illegality, contrary to principles of equality and real demand for labor. As such, the limited scope of guarantees reinforces the marginality of a class of workers through race and law.

Notably, the immigration policies during the Salvini regime entailed a reduction of intermediate legal statuses, like humanitarian permits to remain in the country legally. And Italian citizens and officials formally and informally assisting irregular immigrants were criminalized.¹³⁰ These irregular workers were thus left in the hands of informal employers, often those who already operate organized crime structures. In the Italian context, these workers fall prey to already highly developed and entrenched mafias. The institution of gang-mastering is thriving in the country,

element of imperialism which he vigorously championed. B. Mussolini, *Scritti e discorsi* (Milano: Hoepli, 1939), XII, 46.

¹²⁶ Legge 13 May 1940 no 822.

¹²⁷ A. Del Boca, n 114 above, 336.

¹²⁸ Mussolini’s regime defended the invasion of Ethiopia on humanitarian grounds as *protecting* against on-going slavery, while forced labor was accepted in European colonies and League mandates elsewhere in Africa. See also A. Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton: Princeton University Press, 2019), 64-66.

¹²⁹ See L. Cipriani (one of the theoreticians of Italian racism), cited in A. Del Boca, n 114 above, 334-335.

¹³⁰ A. Candito, ‘Riace, il sindaco Lucano arrestato per favoreggiamento dell’immigrazione clandestina’ *La Repubblica*, 2 October 2018, <https://tinyurl.com/34yw9rrh> (last visited 31 January 2026).

particularly in the Southern agricultural areas.¹³¹ The gang-masters round up illegal immigrants and recruit them for day labor. Laborers are paid a fraction of the amount the gang-master negotiates with the farm owner or other employer. It is a criminal practice but one that is nonetheless widely tolerated.

IV. Conclusion

Advancing worker interests principally as claims for *tutela* granted by the state is a strategy of the ‘social’. Its invocation today erroneously assumes the same historical pressure points among labor, capital, and governments of another era. In the current moment, these are no longer configured the same way. Instead, the political economy has changed and claims of *tutela* – when articulated by the unemployed and laid-off factory workers – appear merely anachronistic or wishful thinking. Representatives of the state, who know better, have not been sufficiently forthcoming to dispel this myth – declarations of Giuseppe Conte to ILVA workers notwithstanding. That is, in fact, why his comments were so jarring. They cut through the collective suspended disbelief. To whatever degree Conte was correct, he expressed an increasingly common perception: the state does not have ready solutions for worker demands.

By contrast, populist pretensions to ‘full powers’ episodically emerge as the alternative: a sovereigntist, anti-democratic, authoritarian regime. Pulling out of the European Union, the end of the Euro monetary union, and xenophobic racist action become part of the new form of *tutela* envisaged. And in the current political economy of dead ends and blind alleys for workers, these may very well seem acceptable. However, the ultimate untenability of holding African migrants hostage indefinitely equally demonstrates the impossibility of the state lending ‘protection’ to nativists opposed to migration. International migration flows, Italy’s demand for manual labor, the porousness of borders, freedom of movement within the EU, and current migration accords within the Union all make it quite unlikely. That makes the task of thinking about options all the more crucial.

One possible route, suggested here, is to extend beyond a restricted notion of *tutela* as state protection – whether left- or right-wing versions. Instead, it may require more thoroughly exploring the mechanisms identified with individualism, autonomy, and formalism: reconfiguring the terrain of baseline private law rules, corporate regulation, international norms, and constraints. The full map of those critical nodal points must remain for another day. However, the references above in this essay to some of the main laws and institutions provide an initial sketch of the key points for intervention.

¹³¹ T. Ferrando, ‘Gangmastering Passata: Multi-Territoriality of the Food System and the Legal Construction of Cheap Labor Behind the Globalized Italian Tomato’ 14(3) *FIU Law Review*, 521 (2021).