

# **Labour and Environmental Sustainability**

**Literature Review – Italian Texts**

by  
**Paolo Tomassetti**

# agreement!

*A Green Mentality for Collective Bargaining*

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**Agreement – A Green Mentality for Collective Bargaining** aims at investigating how and why collective bargaining can contribute to embed the principle of environmental sustainability into labour relations, without abandoning but reinvigorating the ideals of justice, equality and democracy that justify the traditional and selective goals of the EU social model and collective bargaining regulation. The research project is based on the idea that there is no contradiction between environmental sustainability and the fundamental ideals and functions of labour law and industrial relations. The project covers 6 EU countries: France, Hungary, Italy, the Netherlands, Spain and the UK.

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## Types of literature

Italian literature on the intersections between labour and environmental sustainability (LES) can be divided into two groups:

1. Articles and books directly focused on LES;
2. Articles and books concerned with other aspects, but indirectly linked to LES.

These groups can be further classified according to their discipline:

1. Labour law, civil law or constitutional law doctrine;
2. Industrial relations theory.

## Epistemological aspects

In most cases, legal contributions focus on epistemological implications of LES, and are based on a *law and economics* perspective:

- In his seminal labour law text-book, Vallebona explicitly lists environmental protection among labour law goals<sup>1</sup>. Vallebona conceptualises labour law in connection with competition law. Since both legislation on labour and the environment affects production costs, he argues that labour law and industrial relations should consider the environmental effects of labour regulation and *vice versa*. Vallebona focuses on both micro and macro-economic aspects. He argues that, in a globalised economy, environmental and labour legislation in Western jurisdictions might have the effect to incentivize the establishment of the most polluting production activities where labour and environmental costs are lower.
- Del Punta made a similar claim in a research published in 1999<sup>2</sup>. He observes that the two values – labour and the environment – in capitalist economies and societies tend to be considered as costs, therefore they are put in competition. Trade unions have traditionally embraced the capitalistic growth mantra on their DNA, neglecting the implications of productivity and wage growth on environmental sustainability. The author makes the case for a rethinking of the value of labour and its regulation in the light of other social

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<sup>1</sup> A. VALLEBONA, *Lavoro e spirito*, Giappichelli, 2011, at 16.

<sup>2</sup> R. DEL PUNTA, *Tutela della sicurezza sul lavoro e questione ambientale*, in *Diritto delle relazioni industriali*, 1999, n. 3, 160.

values and rights, among which environmental sustainability should be considered as a priority.

- Luciani argues that the constitutional emphasis on work and labour protection might hinder the importance to consider the preservation of the environment and natural resources for the quality of life of present and future generations (of workers and citizens)<sup>3</sup>.

In a monograph<sup>4</sup> and an article published on the *Comparative Labor Law and Policy Journal*<sup>5</sup>, I analysed how and why the notion of decent work can be enlarged from the quality, safety, and justice dimensions to the paradigm of environmental sustainability. I argue that there is no contradiction between environmental sustainability and the fundamental principles of labour law, although some normative adjustments are needed to put labour regulation at work for sustainability and the environment. My research shows how several traditional provisions and practices related to the employment relationship (occupational health and safety measures, wages, compensation and benefits, working time, participation rights etc.) can be revised in the light of the principle of sustainability. The main conclusion that can be drawn from this research is that there is no need for new epistemic statutes specifically aimed at contrasting the environmental crisis and supporting the transition towards sustainable economies and societies. What is needed, in contrast, is a different way to think about labour law. Both selective and universal goals of labour law converge with the principle of sustainability to the extent that they have an impact on the root causes of the environmental crisis, i.e. human and social hierarchies and vulnerabilities. Hence, in principle, sustainability of work is equal to sustainability of the environment. The alignment between traditional functions of labour regulation and the principle of environmental sustainability can be done with few policy and normative adjustments that incorporate environmental concerns into the traditional dynamics of labour law as aimed at combining efficiency/productivity with decent work.

### **The distinction between working environment and natural environment is deeply flawed**

Many authors recognise the importance to overcome the distinction between working environment and natural environment. However, in line with the Western approach to law, most of the following ideas assume an anthropocentric point of view, according to which the ultimate goal of environmental protection is the protection of humans and communities.

<sup>3</sup> M. LUCIANI, *La produzione della ricchezza nazionale*, in *Costituzionalismo.it*, 2008, n. 2, 10.

<sup>4</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, ADAPT University Press, 2018.

<sup>5</sup> P. TOMASSETTI, *Labor Law and Environmental Sustainability*, in *Comparative Labor Law and Policy Journal*, vol. 40, 2018, 101.

- Caruso observes that EU policy documents emphasize the connection between labour and environmental protection. He argues that this is due to two reasons: the importance to duplicate policies and normative interventions; the circularity of environmental problems<sup>6</sup>.
- Del Punta recalls the importance that both the legislator and social partners embrace a modern and more integrated vision of the working environment, one that could reconcile occupational health and safety with the environmental and ecological issues. He maintains that the work environment is just a part of the overall environment<sup>7</sup>.
- In his analysis of the so-called “Ilva case”, Pascucci argues that in modern, integrated and complex societies, it doesn’t make sense to distinguish between different dimensions of the environment, i.e. the internal vs. external dichotomy<sup>8</sup>.
- Similarly, Tullini argues that Italian occupational health and safety legislation is already set to overcome the internal-external divide<sup>9</sup>. She maintains that from a legal point of view, labour and the environment cannot be in competition. In this respect, she recalls that Decree n. 81/2008, the Italian consolidated act on health and safety at work, at Article 2, Paragraph 1, letter n) defines “prevention” as “the set of norms or measures that, considering the peculiarities of work, the experience and the technique, aims to avoid or diminishing professional risks, by respecting the health of *population* and the integrity of *external environment*”.
- According to Loy<sup>10</sup>, the evanescence and disarticulation of workplaces today requires going beyond the flawed distinction between internal vs. external protection against environmental risks. He makes a parallel with modern wars, where soldiers are more protected than civil society.
- I analysed the historical and doctrinal evolution of Italian environmental law (1948-1990) in parallel with labour law, highlighting how legislation on

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<sup>6</sup> B. CARUSO, *L'Europa, il diritto alla salute e l'ambiente di lavoro*, in L. MONTUSCHI (a cura di), *Ambiente, salute e sicurezza. Per una gestione integrata dei rischi da lavoro*, Giappichelli, 1997, 1 e ss.

<sup>7</sup> R. DEL PUNTA, *Tutela della sicurezza sul lavoro e questione ambientale*, cit.

<sup>8</sup> P. PASCUCCI, *La salvaguardia dell'occupazione nel decreto “salva Ilva”. Diritto alla salute vs diritto al lavoro?* (commento a C. cost. 9 aprile 2013, n. 85, in *DLM*, 2013, n. 3, at 673.

<sup>9</sup> P. TULLINI, *I dilemmi del caso Ilva e i tormenti del giuslavorista*, in *Ius* 17, 2012, n. 3, at 164.

<sup>10</sup> G. LOY, *Al principio, sta il principio della fatalità*, in L. GUAGLIANONE, F. MALZANI (a cura di), *Come cambia l'ambiente di lavoro: regole, rischi, tecnologia*, Giuffrè, 2007, at 52.

occupational health and safety and collective bargaining contributed to the materialization of the environmental protection at a Constitutional level<sup>11</sup>.

### The principle of sustainable development

Civil law, constitutional law, and administrative law doctrine is more concerned with the principle of sustainable development, which involves the combination of the three dimensions of economic growth, environmental and social sustainability<sup>12</sup>. Some environmental lawyers are claiming that environmental law is fated to disappear as a discipline, “because the study of the environment will simply become the study of the evolution of social, economic and normative systems”<sup>13</sup>. Others argue that the three dimensions of sustainable development cannot be separated: they all together must be balanced also when conflicts arise only between two of the three<sup>14</sup>.

A group of leading civil law scholars proposed an analysis of contractual obligations in the light of the principle of sustainable development<sup>15</sup>. Based on the principle of sustainability, Pennasilico conceptualised the idea of an “ecological contract” under which when the parties regulate their own interests they should take into account of the effects of the contract on the environment<sup>16</sup>.

Trade unions research centres and activists have promoted several studies on how social partners might adjust their strategies according to the principle of sustainable development.

- Falasca explored how and why environmental concerns have been gradually included in CGIL logic of collective action<sup>17</sup>. He analyses trade unions documents, congresses’ documentation and collective agreements to show the increasing attention of Italian trade unions, especially the CGIL, to

<sup>11</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, cit.

<sup>12</sup> M. PENNASILICO (a cura di), *Contratto e ambiente. L’analisi “ecologica” del diritto contrattuale*, ESI, 2016.

<sup>13</sup> G. ROSSI, *L’evoluzione del diritto dell’ambiente*, in *Rivista quadrimestrale di diritto dell’ambiente*, 2015, n. 2, at 3.

<sup>14</sup> F. DE LEONARDIS, *La disciplina dell’ambiente tra Unione europea e WTO*, in *Dir. Amm.*, 2004, n. 3, at 533.

<sup>15</sup> M. PENNASILICO (ed.), *Contratto e ambiente. L’analisi “ecologica” del diritto contrattuale*, ESI, 2016.

<sup>16</sup> See, *ex multis*, M. PENNASILICO, *Contratto e uso responsabile delle risorse naturali*, in *Rassegna di Diritto Civile*, 2014, n. 3, 753-769; M. PENNASILICO (ed.), *Manuale di diritto civile dell’ambiente*, ESI, 2014; M. PENNASILICO, *Sviluppo sostenibile, legalità costituzionale e analisi “ecologica” del contratto*, in *Persona e Mercato*, 2015, n. 1, 37-50.

<sup>17</sup> C. FALASCA, *Lavoro e ambiente. La CGIL e la transizione alla sostenibilità*, Ediesse, 2006.

environmental sustainability. He contributes to deconstruct the idea that in a market economy labour unions cannot be allied to environmental movements.

- In an interview released to Carla Ravaioli, a radical environmentalist close to the Italian general confederation of labour (CGIL), Bruno Trentin (one of the most influential and charismatic intellectual leader and activist of CGIL), stressed the importance for the confederation to combine economic growth with social justice and environmental sustainability. A key argument made by Bruno Trentin was that the three dimensions of sustainability must be pursued in parallel as they have reciprocal influences<sup>18</sup>.
- Battaglini, a researcher from the main CGIL research centre (Fondazione Di Vittorio), argued that time has come for trade unions to enlarge their action and innovate the related procedures of representation considering not only workplaces and the workers, but the society at large, the communities, the commons<sup>19</sup>. A new model of development based on social cohesion, economic and environmental quality, necessitates the rethinking of workers protection in a life course perspective that considers his/her life as a person, citizen, consumer and user of common resources that are limited.
- Gianni Alioti, former responsible of the occupational health and safety department at FIM-Cisl (one of the most representative trade unions organisations in the Italian metalworking industry), wrote several books on the implication of production activities on the environment<sup>20</sup>. His analysis focuses on resource productivity as a key concept for a future sustainable production model that workers should contribute to shape. The concept of resource productivity, as defined by the OECD, contains both a quantitative dimension (producing more with a given amount of natural resources), and a qualitative dimension (reducing the environmental impacts of natural resource use).

I also defined and conceptualised the idea of “green pay”, i.e. negotiated pay rises linked to green targets<sup>21</sup>. I focused on how and why in the analysed companies trade unions and collective bargaining contribute to ensuring that the ecological conversion of workplaces has a positive impact on wages. As cost savings can be fed into gain-sharing or ring-fenced schemes for investment in environmental

<sup>18</sup> C. RAVAIOLI, B. TRENTIN, *Processo alla crescita. Ambiente, occupazione, giustizia sociale nel mondo neoliberista*, Editori Riuniti, 2000.

<sup>19</sup> E. BATTAGLINI, *Ambiente e società nella tarda modernizzazione: le sfide per il sindacato*, in *Quaderni di rassegna sindacale*, 2010, n. 2.

<sup>20</sup> G. ALIOTI, *Chico Mendes. Un sindacalista a difesa della natura*, Edizioni Lavoro, 2009; G. ALIOTI, *Salute e sicurezza. Guida al settore siderurgico*, Edizioni Lavoro, 2004.

<sup>21</sup> P. TOMASSETTI, *Ecological conversion of workplaces, trade unions and wages*, in E. DAGNINO, S. FERNANDEZ MARTINEZ, K. STONE (a cura di), *Labour in the 21st Century: Insights into a Changing World of Work*, Cambridge Scholars Publishing, 2016, 209-223.

improvements, his case study research shows that including green targets in staff bonus schemes is practicable through collective bargaining. I argued that negotiation on green pay might be regarded as a form of integrative bargaining in principle, since management and workers share a common interest in saving energy and minimizing waste. However, it emerges that the distributive approach rather than the integrative one is the main driver of collective bargaining on green pay. In my article on *Wages and the Environment*<sup>22</sup>, I explored how wages and the environment might interact positively. The article shows how wages can be used both as mechanisms to prompt energy efficiency and conservation at workplace and as a lever to promote fair trade and sustainable business. Non-market work is a further paradigm where an alliance between labour, wages and the environment might be turned into reality.

### The commons

Linked to the discourse on sustainable development, there is a growing discussion in private law doctrine about the evolution (or the return) of property towards *the commons*<sup>23</sup>. For some, the commons are considered as a concrete alternative to capitalism decline<sup>24</sup>. Others emphasise the transformative power that the idea of the commons drives on traditional socio-legal categories that have characterised the Nineteen century<sup>25</sup>. A shared doctrinal assumption of the Italian doctrine on the commons is the need to look beyond the divide between public and private (law).

A recent book by Mattei and Quarta tries to rethink all the Italian civil law discipline and regulation in the light of the commons ideal-type, as opposed to an extractive legal setting based on property rights, that was meant to transform commons into capital. They argue that this was acceptable when commons were abundant and capitals scarce, but not in modern societies where the relation between the two factors is reversed<sup>26</sup>.

<sup>22</sup> P. TOMASSETTI, *Wages and the Environment*, in VV.AA., *Health at Work, Ageing and Environmental Effects on Future Social Security and Labour Law Systems*, Cambridge Scholars Publishing, 2018.

<sup>23</sup> See, ex multis, G. FIDONE, *Proprietà pubblica e beni comuni*, ETS, 2017; L. RAMPA, Q. CAMERLENGO, *I beni comuni tra diritto ed economia: davvero un tertium genus?*, in *Politica del diritto*, 2014, 253 ss.; L. NIVARRA, *La democrazia dei beni comuni. Nuove frontiere del diritto pubblico*, Laterza, 2013; M.R. MARELLA, *Il diritto dei beni comuni. Un invito alla discussione*, in *Rivista critica del diritto privato*, 2011, 1, 110 ss.; U. MATTEI, *Beni comuni. Un manifesto*, Laterza, 2011; F. CASSANO, *Homo civicus. La ragionevole follia dei beni comuni*, Bari, 2004; S. RODOTÀ, *Il terribile diritto. Studi sulla proprietà privata e i beni comuni*, Il Mulino, 2013.

<sup>24</sup> U. MATTEI, *Beni comuni. Un manifesto*, Laterza, 2011; F. CAPRA, U. MATTEI, *Ecologia del diritto. Scienza, politica, beni comuni*, Aboca, 2017.

<sup>25</sup> S. RODOTÀ, *Vivere la democrazia*, Laterza, 2018, at 103-107.

<sup>26</sup> U. MATTEI, A. QUARTA, *Punto di svolta. Ecologia, tecnologia e diritto privato. Dal capitale ai beni comuni*, Aboca, 2018, especially 123-125.

I looked at the alternative of the commons as the preferred socio-economic paradigm under which an alliance between labour and the environment might be turned into reality<sup>27</sup>. However, the alternative of the commons poses challenges to traditional, pluralistic ideas of labour law, in both its individual and collective dimensions. Conflict of interests underpinning the employment contract might disappear in the context of an ideal-type of production and work activity based on collaborative commons. The same goes for trade unions logic of collective action in building solidarity to coordinate individual interests towards general interests.

### Green jobs and the green economy

Within the debate on the just transition, Rustico and Tiraboschi analysed the employment prospects of the green economy<sup>28</sup>. Building upon the still uncertain estimates of the green economy's occupational impact, the Authors focus on two main issues: the potential exclusion of the female workforce from green jobs, and education and training as strategic assets to foster the transition to a low-carbon economy. According to the authors, the industrial relations system can play a leading role in the transition to an economy with a lower environmental impact by supporting the reorganization and the restructuring of production, as well as in promoting skills adaptation. They conclude that collective bargaining could develop new ways of providing incentives to support the transition towards the green economy.

### Natural and environmental disasters

Tiraboschi studied the implications of labour law and industrial relations systems with both natural and environmental disasters. He argues that social partners can play a major role in terms of prevention and pro-active management of natural and environmental disasters<sup>29</sup>. This argument is based on the following two broad propositions:

- First, complex set of initiatives in place to support communities affected by disasters (the right to time off from work, income support, suspension of tax obligations, unemployment benefits, placement services etc.) depend on the

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<sup>27</sup> P. TOMASSETTI, *Diritto del lavoro e ambiente*, cit.

<sup>28</sup> L. RUSTICO, M. TIRABOSCHI, *Employment Prospects in the Green Economy: Myth and Reality*, in *International Journal of Comparative Labour Law and Industrial Relations*, Issue 4, 2010, 369–387.

<sup>29</sup> M. TIRABOSCHI, *Preventing and Managing Natural and Environmental Disasters: Employment Protection, Welfare and Industrial Relations Systems*, in *E-Journal of International and Comparative Labour Studies*, Volume 4, No. 3 September-October 2015, at 6.

welfare and industrial relations systems of each country. In the same way, occupational health and safety (OHS) systems can lay down strategies to tackle natural and environmental disasters which might include the obligation to establish prevention and protective measures, to promote individual and collective protection, to inform and train workers on the general and specific risks related to their working activity and on protection equipment etc.

- Second, forms of involvement of the social partners, employers and employees in the planning and implementation of prevention, mitigation and reconstruction initiatives, are associated to an overall reduction of factors of economic and social vulnerability and to an increase in the levels of community resilience.