

Marco Biagi: the Man and the Master

In the days immediately following the tragedy on the evening of 19 March 2002, I repeatedly rejected the idea of writing a tribute to Marco out of fear that I could not give due merit to my mentor. It was not merely a question of rejecting the idea of writing a paper in his memory but rather that Marco, just like his own Master¹, would probably not have appreciated it. It was not even a vain attempt to stem the flood of intense and painful waves of emotion and grief of someone who, like myself, would have liked to wake up from a terrible nightmare – someone who still today, whenever the phone rings, thinks it might be him... who thinks of him... Instead, it was, I believe, a feeling of reticence towards a private and intimate suffering that needed to remain as such. It was as though by talking about Marco it would mean for me not just permanently severing that bond that had closely tied us for more than a decade and that had led us to rejoice on each other's achievements. But, it would also mean selling off part of our deepest feelings, memories and sacrifices that, day after day, had given rise, first of all, to a unique and unequalled personal relationship and then to a professional relationship which would thus be lost forever. Marco Biagi has had a profound impact on my life and I believe that in some ways I too had an impact on his.

The inspiration to write did not arise out of normal circumstances but I felt compelled only after several pleas for me to do so. Political manipulations, rhetorical memorials, reams of fine words did not impress me. The early feelings of anger soon changed into pain and now into a feeling of sadness and loneliness. Only by deeds, by slowly and silently putting back into motion the Centre for International Studies at the University of Modena – founded by Marco back in 1991 – could Marco's 'children' (Riccardo Salomone, Alberto Russo, Olga Rymkevitch, Carlotta Serra and myself) respond to so much injustice and manipulation. This would have been the only way Marco would have chosen to continue to live and to let others talk about his work as well as this little

* In *The International Journal of Comparative Labour Law and Industrial Relations*, vol. 18, 2002, n. 3, 231-249.

¹ In this regard, Marco and I exchanged a few comments that seemed to me at the time to be light-hearted, when he was writing his tribute to Federico Mancini to be presented at the John Hopkins University in March 2001, cf. M. Biagi, *Federico Mancini: un giurista 'progettuale'*, The Johns Hopkins University Bologna Centre, n. 8, 2001, p. 3. As he then told me, I would have been precluded from writing any form of tribute given the limits of age and his firm intention – as he often repeated – to remain responsible for running our Centre for International Studies in Modena for the next twenty years or so and, possibly, even more.

miracle, which had come about over the past few years – what Roger Blanpain² had referred to as the ‘Mecca of Comparative Studies’.

As a young boy, having already had the experience of death, I believed that I had already paid a high price, but unfortunately I was wrong. Today, as a mature man, I am left not just with the emptiness of that past event but also with the regret of this present experience – the regret of having being interrupted in the middle of a conversation; the regret of a hurried good-bye at the railway station; the regret of a broken dream and of so many missed projects that have been swept away with one blow and with no justification; the regret of an awareness about what had happened, which I did not have as a young boy. Now what? I am left with a new life, that of a little girl about to be born: a daughter who teaches me that, in any event, I have to look ahead once more and give a new sense to my life to fill that adolescent gap that Marco had helped me to bridge and that now inexorably tends to re-emerge.

I hope – indeed I am sure – that along with feelings of anger, sadness and loneliness, Marina, Francesco and Lorenzo will very soon learn to feel and nurture an extraordinary love: the love that is fed and nurtured in the memory of Marco and of all those little daily episodes that apparently seem so trivial and taken for granted, but that actually, day after day, make up our lives.

No, I do not want to yield to the temptation of thinking that everything is now meaningless – and I am saying that not just to myself but also and especially to Lorenzo. If we had never existed it would have been worse, because we would not have had the good fortune to meet and know Marco; we would have never had the privilege of laughing, playing, rejoicing and also arguing with him. And this – I am sure – is something that we will all understand only with the passing of time.

In spite of our strong difference in temperament and personality, I shared with Marco a deep and instinctive faith in God. The explanation of what has happened remains a mystery – and the same is true of our lives, of the greatness and smallness of our daily routine, the precariousness of our existence, all the sacrifices made that now seem useless and meaningless. I am certain, though, that one day we will meet again! And in the meantime, although from far away, I’m sure, Marco, that you will follow us while riding who knows what sort of bike (because no doubt you must by now have already found a new bike!)³, and from there you will accompany all of us: your family, your kids from the Modena Centre for International Studies and all those who have truly loved you!

There have been at least two articles that have moved me and induced me to write a tribute to Marco as a Man and as a Master.

The first one is a powerful editorial by Gianpaolo Pansa in *L’Espresso*. I immediately felt a pang in my stomach, as soon as I started reading its very title: ‘Biagi, who was he?’⁴ Pansa reveals a bitter truth when he states: ‘Taliercio, Rossa, Casalegno, Tobagi: all names and stories that no longer have any resonance today. It will also soon happen to Prof. Marco Biagi and, thus, people will ask ‘Biagi, who was he?’. Massimo D’Antona’s

² See R. Blanpain, ‘From The President of the International Society for Labour Law and Social Security’, *IJCLLIR [The International Journal of Comparative Labour Law and Industrial Relations]*, vol. 18, n. 2, 2002.

³ The bike: another regret. A common passion that we shared, but we never had the pleasure of going cycling together.

⁴ Published in *L’Espresso*, n. 14, 2002.

killing is clear evidence of that⁵ – on the one hand, remaining an everlasting memory in the hearts of his family, his most intimate friends and his most extraordinary students and, on the other hand, the general indifference towards him by the public at large, probably, but also undoubtedly by many labour law experts and not necessarily the youngest ones.

Even more significant to me was the reading of various drafts, submitted for my attention, of the magnificent article written by Marcello Pedrazzoli in tribute to Prof. Biagi for the *Rivista Italiana di Labour Law*⁶. It was not merely because Pedrazzoli gently (and paternally) invited me, not simply out of any mere academic motive, to acknowledge my responsibilities as one of Marco's disciples and friends, but first and foremost because the mission to write a tribute in memory of Prof. Marco Biagi had been undertaken by an observer who undoubtedly was close to him, but was nevertheless an 'outsider'.

At this point I feel not only able but obliged to put into writing the memory that I keep of Marco Biagi as a Man and as a Master from an 'insider's' point of view, thus completing what Marcello Pedrazzoli had written so effectively and what others will write (equally well) about him. No doubt this will contribute to provide different angles from which Marco's personality and scientific contribution can be viewed and appreciated. I was persuaded that this might be a further way of echoing a name and a story that go much beyond his series of many astounding academic and professional successes. And this might be especially effective if told from the point of view of someone – like me – who worked side by side with him (as Gigi Montuschi pointed out to me, by arousing and freeing my emotions, thus healing an infected wound as though by the touch of a magic wand). This might be an unavoidable starting point to give a new sense to Marco's life and also to the lives of the people who as 'insiders' have lived and worked with Marco on a daily basis, by sharing with him those joys and sacrifices that have formed the foundations for his extraordinary working method, or in other words⁷, of his farsighted project.

1. Marco Biagi and Federico Mancini: 'project-oriented' jurists

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To Marco, the student who has walked in my footsteps from a close distance, a book in which the liberal minded can find the explanation of his liberalism: namely in his respect for the societies that simply aim at decency. The Founder of the Labour Law School of Bologna'.

⁵ One of my most beautiful memories of Marco is linked to Massimo D'Antona. I still remember the simplicity and discretion with which Marco reacted – during one of the sessions at the 6th European Congress of the Labour Law and Social Security International Association (Warsaw, 13-17 September 1999), outside any official protocol or tribute (which had not been envisaged in that venue). While sitting at the centre of the panellists' table, between Paul Davies, on his left, and Alain Supiot, on his right, he suddenly asked the audience to stand up and be silent for one minute to pay tribute to Massimo D'Antona. It was a spontaneous and sincere gesture in front of a totally foreign audience (apart from Matteo Dell'Olio and one of his young collaborators), for whom the memory of the name and history of D'Antona had already faded away.

⁶ M. Pedrazzoli, 'Marco Biagi e le riforme possibili: l'ostinazione del progetto', *RIDL [Rivista italiana di diritto del lavoro]*, n. 2, 2002.

⁷ As Marcello Pedrazzoli guessed perfectly, *op. cit.*

In this dedication by Federico Mancini (the Founder the Labour Law School of Bologna), which appears in the first page of *A Theory of Justice* by John Rawls⁸, much can be found about Marco. Above all, his relationship with his Master. But also the reforming pragmatism of someone who, armed only by tenacity, obstinacy and a great deal of patience, aims at creating a strong impact upon the institutions and mechanisms governing a complex democratic and pluralistic society. Marco, just like Federico Mancini, was a ‘project-oriented’ jurist and his ‘professional’ side can rightly be read, from this point of view, as the completion of the work initiated by the Founder of the Labour Law School of Bologna.

Every member of the Labour Law School of Bologna undoubtedly is, according to the various methodologies and inclinations, the ideal follower of the work initiated by Federico Mancini. As against the other disciples, Marco had followed his footsteps not just from the point of view of the method chosen – that of comparative juridical studies – but mainly of his political passion (as strong as their common fondness for the Bologna football team) and more recently, also thanks to the fundamental contribution by Tiziano Treu, of the involvement in new projects. Marco, too, was a jurist ‘with a project in mind’ – *un giurista ‘a progetto’* – as he used to define himself.

Marcello Pedrazzoli has already written a brilliant article about Marco Biagi and the possible reforms. In this regard I will add a few more things later on. Now I would rather emphasize the parallel between Federico Mancini and Marco Biagi. Not just because Marco always told me about his Master and about what he would have done under similar circumstances. Suffice it to read the article named Federico Mancini: *un giurista ‘progettuale’*⁹ to understand how Marco felt in being Federico Mancini’s living follower – in spite of a clear and unequivocally different personality and of what he defined the ‘uniqueness’ of his Master.

By recalling Prof. Mancini, Marco saw a reflection of himself – and that was a natural consequence – and of his human and academic development: first of all, the comparative scholar, but also the Master (of the embryonic school of Modena) and then, the innovator, the modernist, the protagonist¹⁰. Just like Federico Mancini, Marco Biagi was also the summation of all these expressions that turn a jurist into the a ‘project-oriented’ jurist. And that is how I like to remember him.

2. Marco Biagi, the comparative lawyer

It is not for me to say whether or not Marco was a great labour law and industrial relations comparative scholar. My view would be not only predictable but also biased. Furthermore, the very recent and increasingly less veiled controversies about the way in which Marco used the comparative method still echo in my mind. Marco did not only know all too well the classic essay by Otto Kahn-Freund on the use and abuse of comparative law but he also had humbly borrowed that basic methodological approach: i.e. make one’s own national system simply one of the various systems under comparison

⁸ J. Rawls, *Una teoria della giustizia*, Feltrinelli, 1984.

⁹ M. Biagi, *Federico Mancini: un giurista ‘progettuale’*, cit.

¹⁰ These are the paragraphs around which the tribute to Mancini had been written. Cf. M. Biagi, *Federico Mancini: un giurista ‘progettuale’*, cit.

for it to be analyzed solely on the basis of its intrinsic characteristics¹¹ – and that was an unequalled experience in the Italian labour law arena.

It had become quite natural, for Marco, to shift away from the centrality of the national law system, not because of a sort of intellectual arrogance but due to his inborn far-sightedness – that was also acknowledged by Federico Mancini – to look ahead and to foresee well in advance future scenarios and events. Under certain circumstances, this attitude might have probably contributed to fuelling a few disagreements with those who, more or less consciously, were reluctant to walk away from the narrow focus provided by the national labour law perspective. Yet, on the other hand, this undoubtedly is the precious legacy left by Marco Biagi, the comparative lawyer.

The increasingly pervasive European and community labour law dimension, the internationalisation of markets and the complex processes that have recently led to the substantial loss of national sovereignty over the rules regulating the wealth production and distribution mechanisms did not worry someone who, like Marco, had already left the narrow national labour law perspective for a long time. Indeed, it was thanks to his equal distance from the different national systems that it was particularly easy for him to carry out a benchmarking exercise, which became a feature of Marco's project designing skills and thinking.

Marco was not – merely – interested in the transfer of models. Over at least the past decade, he believed that the comparative approach was the only possible way to foresee the implementation outcomes of regulatory mechanisms that are still at the drawing board stage¹². Moreover, he contributed to dispel a few false problems and ideological resistance towards the modernization project of employment relationships. The last joint work that he was committed to concerned the new fixed-term work regulations¹³. It is a clear example of how in his opinion the comparative approach should lead to the analysis and to the pragmatic solution of the labour market problems.

As Rodolfo Sacco wrote in one of his books – which is particularly dear to us – 'Comparison is history: it is this history that sweeps false concepts away and thus leads to knowledge'¹⁴.

From this point of view, Tiziano Treu's contribution has also been fundamental. If Gigi Montuschi – Marco's second Master – had strongly supported and encouraged him in the choice of the comparative method, starting from the memorable 1983 Kyoto conference, Tiziano Treu has represented for him the ideal guide for the concrete and pragmatic application of the method itself¹⁵. Marco often told me about his intense excitement in helping Tiziano Treu prepare his contribution for that congress: a feeling that was no less strong than the one that accompanied him fifteen years later when he

¹¹ Cf. in particular, M. Biagi, *Rappresentanza e democrazia in azienda. Profili di diritto sindacale comparato*, Maggioli, 1990, p. 3.

¹² M. Biagi, *Federico Mancini: un giurista 'progettuale'*, cit., p. 5.

¹³ M. Biagi, *Il nuovo lavoro a termine. Commentario al D.Lgs. 6 settembre 2001, 368*, Giuffrè, 2002.

¹⁴ R. Sacco, *Introduzione al metodo comparato*, Giappichelli, 1990, p. 18.

¹⁵ Cf. T. Treu, 'L'internazionalizzazione dei mercati: problemi di diritto del lavoro e metodo comparato', in *Studies in Honour of R. Sacco*, Giuffrè, 1994, vol. I, p. 1117, that represented a sort of cultural manifesto for all those who were committed in the activities of the Modena Centre of International Studies set up by Marco.

organized, once again in collaboration with Tiziano Treu, the 11th World Congress of the International Industrial Relations Association¹⁶ in his capacity as President of IIRA. In Kyoto he had also met Roger Blanpain for the first time: a jurist and a man who was very different from Marco from many points of view, but who has undoubtedly been for many years the repository of a highly sophisticated organization method that has substantially influenced our working method at our Modena Centre. From this point of view, Marco considered himself also to be one of Roger Blanpain's disciples and over the coming years he would have undoubtedly written something comparable to the monumental *International Encyclopaedia for Labour Law and Industrial Relations* edited by Blanpain for Kluwer.

The overall picture that I have just outlined might probably appear less emblematic and significant than the legendary sea journey made by Federico Mancini and Gino Giugni to the United States to study the American model, which was to so deeply affect the development of our national labour law over the next few years. Yet, at a closer view, Marco's cultural itinerary has been no less fascinating and outstanding, as one would expect from a talented comparative scholar as he was, namely from someone who did not confine himself to studying other systems and experiences simply from books, but who humbly realized that a true comparative study can never be an activity to be carried out individually in isolation. As Marco wrote, comparative research requires that 'most of the work (the collection of bibliographical information and, above all, knowing how a system actually works) must be conducted in collaboration with other colleagues'¹⁷.

It is enough to make a rapid search through the scientific programme of one of his traditional Modena meetings, or one of the many introductory comparative contributions¹⁸, to realize about Marco's extraordinary ability, deriving from his proverbial reliability and seriousness, in bringing together a varied group of authoritative labour law experts, among whom his 'brother' Yasuo Suwa, Lammy Betten and Alan Neal, from whom he had recently succeeded in the management of the *International Journal of Labour Law and Industrial Relations*.

Finally, another important figure has been that of Manfred Weiss, another great Master, particularly similar to Marco for his rigorousness and reliability, with whom Marco had recently launched one of his several international projects¹⁹. Under Manfred Weiss's Presidency at the International Industrial Relations Association, Marco had just enough time to enjoy the fleeting pleasure of being named as one of the five speakers at the forthcoming international IIRA congress to be held in Berlin in September 2003. The congress would also have been different from the previous ones because, for the first time, not just Marina – who is usually reluctant to fly – but also the whole Modena team would have taken part in it.

Yet, it would not be fair towards Marco if I did not mention one of his further great talents, typical of a true comparative scholar. A comparative scholar is never afraid of dif-

¹⁶ *Sviluppare la competitività e la giustizia sociale: le relazioni fra istituzioni e parti sociali*, Proceedings of the 11th World Congress of the International Industrial Relations Association, Bologna 22-26 September 1998, Sinnea, Bologna, 1998.

¹⁷ Cf. Foreword to M. Biagi, *Rappresentanza e democrazia in azienda etc.*, cit.

¹⁸ A list can be found at the Internet site of the Modena Study Centre: www.economia.unimo.it/Centro_Studi_Intern/home.htm [n.d.r.].

¹⁹ M. Biagi, M. Weiss (eds.), *Employee Involvement in Europe*, Kluwer Law International, (forthcoming) [n.d.r.].

ferences between models and systems, no matter how big they are²⁰. Similarly, Marco never posed limits or barriers related to academic status or to geographic and cultural background upon himself or others. His Summer Schools, his lectures to the John Hopkins and Dickinson students, the frequent international meetings, first organized at Sinnea International and then, starting from 1994, at the new venue of the Centre for International Studies at the University of Modena, were above all a thriving human and scientific think tank. It is there that graduates and students could meet prestigious international scholars, government ministers, EU commissioners, etc., in an extraordinarily informal atmosphere that cannot usually be found in any other Italian academic circles. This allowed students and scholars to make a ‘live comparative analysis’ as Marco had defined it²¹.

I still remember one warm summer evening back in July 1996, when during the attendance certificate award ceremony of the Summer School in Labour Law and Industrial Relations, along with the ever present Tiziano Treu, Mr. Romano Prodi – who then was the Italian Prime Minister – suddenly arrived and did not hesitate to go and shake hands first with the young foreign guests and students even before welcoming the authorities present. One of Marco’s pictures, showing him surrounded by Tiziano Treu, Romano Prodi, a young Japanese researcher, our first Modena student, Giulia Moretti, and the Canadian colleague, Véronique Marleau, still hangs at the entrance of his office in via Valdonica, close to the bed which had for a long time provided accommodation for his ‘brother’ Yasuo Suwa and, later, myself for almost one year and a half while I was still trying to find my own place to settle down in Bologna. Enrico Traversa’s guitar and songs, which had turned that event into a magic evening, still echo in my mind and fill the melancholy of these past few days with sounds and feelings.

3. Marco Biagi, the ‘master’

If an extreme informality characterized both Marco Biagi and Federico Mancini’s relationships, the same does not apply to his role as ‘Master’. Marco Biagi never had his own School and perhaps only now conditions in Modena were beginning to make it possible for the creation, in a few years time, of an extremely ambitious and important project. It was not until 2000 and 2001 that a group of young scholars began to establish itself, including Riccardo Salomone, Alberto Russo, Olga Rymkevitch and Carlotta Serra.

Until then, Marco’s dimension had always been like that of the craftsman’s workshop. He liked that expression a great deal and would often repeat it, proud of the fact that, assisted by a rough and inexperienced apprentice from Bergamo, he was nevertheless able to accomplish an astonishing set of studies, both at a national and international level, thus giving the impression that he could indeed avail himself of a long-established and thriving Modena School. But this was far from the truth. We were supported only by our final-year students in political economics and business economics, attracted by Marco’s fascinating and human qualities.

Our office soon became well-known within the whole faculty. Different factors proved to be successful, such as the informality of relationships, the teacher’s extreme accessi-

²⁰ As rightly pointed out by R. Sacco, *Introduzione al metodo comparato*, cit., p. 23.

²¹ M. Biagi, *Federico Mancini: un giurista ‘progettuale’*, cit., p. 4.

bility, the thorough supervision of the university degree dissertations, the availability of a few computers and of a talented computer engineer, Vincenzo Salerno, always ready to give a hand, Marco's ability in establishing contacts with companies, by testing the first pioneer attempts of the company-based apprenticeship system, which would serve as a first bridge for so many young graduates to gain access to the labour market. All these factors allowed us to set up an extraordinary group of people, always ready to help and devote their precious time and energies on a free basis, to support our project. These included Serena Vaccari, Giulia Moretti, Emanuela Salsi and Ylenia Franciosi, as well as Giorgia Verri, Silvia Spattini, Elisa Pau, Barbara Maiani, Gianluca Nieddu, Anna Simonini, Francesca Crotali, Paolo Fontana, Federica Rossi, Federica Gambini, Alessandra Lopez, Federico Bacchiega, Cinzia De Luca, Lucia Mangiarelli, Luana Ferraro, Sabrina Guerzoni, Giuseppe Bertoni and Massimo Morselli.

At the end of their course, these students have continued to attend our offices and to collaborate with us either for six months, or a year, or even more. Yet, the relationships that have been established have often gone much beyond the informal collaboration and some of them still continue in the more genuine and free dimension of friendship. From this point of view, Marco was a true Master: not just as the 'founder of the school' in the true sense of the term, but undoubtedly as a guide who has always tried to be surrounded by a group of young people linked by a strong sense of mutual esteem and involvement in the project. Furthermore, one of Marco's greatest qualities was his ability to rejoice with sincerity at the first successes of these youngsters and of the group as a whole.

I would not do justice to Marco and to the various people who, in turn, have worked with us if I hid the fact that this form of group work could sometimes degenerate, causing disillusion and tension, and sometimes giving rise to a few myths. At times, the obstinacy of the project led to a lack of sensitivity towards the undeniable merits of some of our young people. But in this case I myself take full responsibility for it, because I always yielded to the temptation of believing that every collaborator might be turned into a budding scholar, thus unconsciously fuelling academic expectations that could not be met, probably either because of Marco's special position in the Bologna School, or because of the fragile juridical background of our students from the Faculty of Economics. It is from this awareness that the first more stable collaborations started, beginning with Nicola Benedetto and Giuseppe Martinucci and then with some of my latest Milan students, and in particular with Giuseppe Mautone and Marina Mobilia. It is from there that the idea of setting up a group came about, as soon as Riccardo Salomone was appointed researcher and Alberto Russo received a research scholarship. Olga Rymkevitch joined us later from St. Petersburg, full of hopes and enthusiasm, followed by Carlotta Serra, who soon became the Master's favourite, thanks to her powerful personality, and more recently by Flavia Pasquini. It was therefore easily foreseeable that it would not have taken much longer for a true Modena School to be set up. It was just a question of time.

Marco has undoubtedly been a Master in the true sense of the word, at least for me. I owe him a great deal, and not just in the academic field. It was he who believed in me and in 1992, on Stefano Liebman's suggestion, he brought me from Milan to Modena, after a year-long stay at the Labour Law Institute of the Catholic University of Leuven under the guidance of Roger Blanpain. It was he who taught me the job in his 'craftsman's workshop' and who encouraged me day after day, by entrusting me with increasingly demanding and stimulating tasks. Our collaboration then turned into a very strong

bond, into a relationship of virtuous symbiosis that did not provide for any rest or indecision. I believe that we complemented each other perfectly, or this is at least what I thought. We were friends. But I knew well that this bond of friendship, like all the important relationships in one's life, could not simply be defined in these terms.

As a Master he astonished me not just because of his scrupulous reading of my papers, but especially because of his extreme clear-sightedness in assigning me a task, foreseeing well in advance the issues that a few years later would have become topical. For instance, temporary agency work was already the object of study back in 1991, when this form of employment contract was not only prohibited by law in our country but totally unknown, except for a few experts of the field. Similarly, in 1998, even before completing my first monographic study, when he asked me to start work on the issue of incentives to employment and of the European law on competition. I completed this research work only a couple of months ago. After a thorough revision and reading by Tiziano Treu and Mario Rusciano, I delivered it to the printer on Monday 18 March. On the previous day, Sunday afternoon, with the usual post-football e-mail scheduling the week's agenda, Marco had sent me an attachment containing his introduction to my book.

He used to send me detailed daily 'memos' to supplement the Sunday schedules on the week's agenda. That was the practice that characterized our working method. I received the last memo from Marco by fax on 19 March at 10.50 a.m., a few hours before leaving home to join us in Modena. He replied to my message about the fact that I had just taken the book to the printers with a simple comment: 'Excellent!' This is the last memory that I keep of Marco as a Master. Yet, I have also been left with a legacy. As usual, he had already long entrusted me with a third monographic study: on the 'Workers' Statute', on which I had started working with him back in 1997, within the framework of our collaboration with Tiziano Treu²². This will be my main task over the next few months.

4. Marco Biagi, the innovator

If Federico Mancini had been one of the very first modern labour law experts, Marco Biagi is his ideal follower, although in a completely different social, economic and institutional context. He too was firmly determined in changing the direction followed in this area, by providing, in particular, a fundamental contribution to the Europeanization process of the labour law.

The challenge posed by the recent reform of Title 5 of the Constitution would have undoubtedly been a further and decisive turning point in his work of re-examining and modernizing labour law, as shown by an unpublished – and not yet complete – work that will appear in one of the next issues of the journal *Diritto delle Relazioni Industriali*²³. This paper should not be highlighted simply because of his effort to change

²² Cf. M. Biagi, 'Progettare per modernizzare', in T. Treu, *Politiche del lavoro. Insegnamenti di un decennio*, il Mulino, 2001, pp. 269-280 and also M. Biagi, M. Tiraboschi, 'Le proposte legislative in materia di lavoro parasubordinato: tipizzazione di un *tertium genus* o codificazione di uno Statuto dei lavoratori?', *LD [Lavoro e diritto]*, 4, 1999.

²³ M. Biagi, 'Federalismo e lavoro. Il lavoro nella riforma costituzionale', in *DRI [Diritto delle Relazioni Industriali]*, n. 2, 2002, pp. 157-164.

a few inevitable excesses in the October 2001 White Paper on the labour market, created and propounded principally by Marco, but rather because of his deep-rooted European and federalist convictions. Marco, just like Mancini, was also convinced that a more just – or at least more ‘decent’ – society could be created only in a broader context, such as the European federalist juridical and institutional framework. As usual, time will prove him right on this issue as well.

From this point of view, especially over the past few years, Marco’s commitment was to prove that, unlike what one usually might think, it is not a lack of ideas and projects that prevents the launching of a complex labour law reform. ‘What still needs to happen’ – he recently wrote²⁴ – ‘is to overcome ideological prejudice and obstructionism that slows down for no good purpose the evolutionary process that is taking place as well as necessary reforms, in order to avoid the creeping destructuring and deregulating phenomena from spreading throughout the labour market: these phenomena are, in turn, the cause and effect of a flourishing hidden economy in our country, which is two or three times as big as that present in other countries’.

Marco was motivated by his desire to prove that simple and effective ideas are indeed available to promote the necessary reforms in Labour Law; it was with this spirit that, though fully involved in his advisory activity to the centre-right Government, he agreed to collaborate once again with Tiziano Treu. It is in the framework of this collaboration that he gathered and classified the main labour market modernization projects that had characterized the last seven years of hectic project developments. In spite of their different capacities and attitudes, they have both played a leading role in shaping the national labour policies of our country.

‘It was a really fascinating and unique experience’ – Marco wrote²⁵ – ‘marked by important successes (such as the case of Law n. 196, dated 24 June 1997, on employment incentives)’²⁶, ‘but also by inevitable compromises (such as the case of work regulations for members of co-operatives) and sometimes even by bitter disillusionment (such as in the case of the legal reform bill for the 35-hour week that prematurely put an end to the government coalition led by Romano Prodi)’.

A great deal has been said and written about Marco, the innovator and the reformist, though not always correctly. However, his several articles are there to speak for him, and any further words would be superfluous. Once the rhetoric and sensationalism of these first few months has died away, I am convinced that his thinking and projects will be fully acknowledged. No resistance to change and modernization – just like the false problem of the reform of Article 18 of the Workers’ Statute – can prevent Marco’s enlightened and effective proposals from emerging.

From an insider’s vantage point, let me highlight one side of Marco’s innovative character: his exquisite skill for dialogue enabled him to communicate easily with the most diverse people, from the highest officials to the youngest students here in Modena.

²⁴ Cf. for a synthesis, M. Biagi, ‘Progettare per modernizzare’, cit., p. 270.

²⁵ *Ibidem*, p. 271.

²⁶ Ample evidence of this ‘success’ can be found in the ‘internal commentary’ of the Law n. 196/1997 entitled *Markets and Labour Relations*, edited by M. Biagi for Giuffrè (Milan, 1997). This again is a true methodological innovation in the scientific domain in Italy and beyond, given the fact that – as can be read in the introduction signed by Marco Biagi – ‘for the first time, a law is assessed and discussed by authors belonging to the Authority also charged with its preparatory work. Not only that, but the authors are at the same time the officials working at the Ministry for Employment and Social Security engaged in the implementation and enforcement of the law itself’.

Marco was an innovator also from the point of view of his style: elegant and simple at the same time, straightforward, direct, without any cultural or mental prejudice or barriers. I still remember how during the breaks at the courses held at the various Summer Schools organized by Sinnea International, he would sit on a low wall or on a desk while eating a sandwich and chatting at the same time with his students.

In my view this was a true innovation – the ideal way to establish first of all a human relationship and then a professional one, being the precondition that would then lead to the setting up of a true group, beyond any academic or educational logic.

Over time I also learned to appreciate his simplicity of language as well as his natural skills of synthesis – two basic qualities that should govern the innovation processes underlying the 21st century labour market regulatory mechanisms which, at the beginning of my career, I had substantially underestimated. I was then firmly convinced – as can be seen all too frequently in my work – that jurists needed by necessity to use a complex and detailed style, backed up by a large number of bibliographical notes. This shows readers the wide range of interpretations and exhaustive thinking behind each individual sentence or idea. But I was wrong. Marco's essential and clear style was the expression of the enlightened ideas of an intellectual, put at the service of society. Marco was a true innovator because he went straight to the heart of the problems, in search of their solution. The juridical and conceptual system was not seen as an obstacle to the dialogue, but only a necessary starting point in his work as a 'project-oriented' jurist.

As an innovator, Marco was first and foremost a great communicator, more even than a project-oriented reformer. His great skills in establishing a dialogue with the political and industrial relations leaders stemmed from his immediate and simple language, as well as from the modesty with which he addressed his readership and audience – in spite of his long-lasting experience as a jurist and as an advisor – whether through an Editorial or an academic essay. Complex reform projects and sophisticated law reform bills were made incredibly easy to understand also to non-experts. That is why Marco soon became one of the columnists for the newspaper *Il Sole 24 Ore*. In addition to his well-known ability to foresee, with a certain reliability, forthcoming events that would become central in the political and trade union debates, Marco also distinguished himself for his sober and direct style that helped people understand problems and encouraged debate. He was not the kind of person who loved obtruse conceptual arguments or complex analytical historical and juridical reconstruction. He was instead a simple and pragmatic person.

That is why in 1999 Marco was invited to go to Milan to participate in a daring and ambitious reform project, which eventually led to the well-known 'Milan Employment Pact'. He was involved in it because he expressed himself clearly and never stepped back, always ready to experiment and innovate. This is also why Marco has been one of the few Italian labour law jurists who was able to communicate easily not only with foreign colleagues but also with the most prestigious European and international institutions: ranging from the International Labour Organisation to the European Commission, the Dublin European Foundation or to the Aspen Institute.

He was also an innovator in the way he ran his own Journals (*Diritto delle Relazioni Industriali* and, more recently *The International Journal of Comparative Labour Law and Industrial Relations*), and of its Associations (since 1994 the Associazione Italiana di Studio delle Relazioni Industriali (AISRI) and, since 2000, also ADAPT, an association started from scratch, which in a very short time has pooled together a large number of

enterprises and all the main employers and employees' associations, except for CGIL). But his true innovative nature emerged in his group management approach: he had an extraordinary ability to assign a precise objective to everyone and to give a sense of importance to the youngest students who asked for nothing more than a dream or an ideal to live for. Marco was not only a mentor for all of us, but also a master of the maieutic art, being able to draw the best out of each one of us.

Despite certain external impressions²⁷ – and which can nevertheless be partially justified – Marco was not in favour of a project aimed at the revision of the Italian labour law to be carried out 'within the closed circles of the Ministry, rather than by opening a debate that might involve all the experts of the field'. Working side by side with him I realized how indefatigable he was. He was animated by an inexhaustible energy, the fruit of a true passion or vocation, which led him to shuttle relentlessly back and forth between Rome-Milan-Brussels, engaged in the patient work of weaving a network of consensus around the labour law modernization project, yet without ever neglecting any of his academic commitments. He was not just present in the life of our Faculty, but he was also one of those jurists who would attend several meetings, without missing any important national or international event.

Hence, his reform project stemmed, indeed, from a serious – although not always fruitful – dialogue with the various experts in the field. The AISRI and ADAPT membership is a clear evidence of that.

There was no tacit agreement, therefore, (as many people claimed or thought) between the 'prince's counsellor' and the 'prince' himself, aimed at heightening the tone, if not the purpose, of the reforms and simply for the enjoyment of provocation, the intoxication of power and the undeniable heightening of reputation. Because Marco, as he wrote of Federico Mancini though also thinking of himself, was not the 'prince's lawyer', but indeed – as he himself put it – a 'lawyer with a project in mind'²⁸. It is enough to compare the White Paper, with his huge project carried out in collaboration with the Prodi Government²⁹ to realize Marco's absolute consistency. Just like Federico Mancini, Marco Biagi, too, gave his sword to the service of the projects he believed in, be they right or wrong, but never to the service of any person, political party, or Government.

Marco has always worked with a 'project-oriented' attitude – helped in this task by the extreme fragility of political and institutional interlocutors that in turn addressed themselves to him – without ever yielding to the temptation of pleasing this or that powerful person in charge.

We have never been subject to any influence or pressure in working out our projects. And if one of our assumptions did not work we were always ready to start anew, motivated by our usual patience, passion and enjoyment, that are unequalled in any other working environment.

²⁷ Cf. i.e. F. Carinci, 'Dal Libro Bianco alla Legge delega', *Dir. Prat. Lav. [Diritto e pratica del lavoro]*, n. 11, 2002, p. 732.

²⁸ M. Biagi, *Federico Mancini: un giurista 'progettuale'*, cit., p. 9.

²⁹ Cf. T. Treu, *Politiche del lavoro. Insegnamenti di un decennio*, cit., pp. 269-395.

5. Marco Biagi, the modern man

Marco's objective was the design of new projects with a view to modernization³⁰. Although he never relinquished his scientific rigour, Marco was never obsessed with the search for the perfect presentation. Instead he was obsessed with an urge for promptness, care for detail and the quality of the overall project. His modernity mainly lies in his pragmatic and essential approach. Marco was not keen for complicated and abstruse projects that were an end to themselves, nor did he ever like to indulge in self-congratulation for whatever had been accomplished so far, no matter how great the results were. He never allowed himself a rest, or time to celebrate, as he indeed deserved. His continuing dissatisfaction sometimes really exasperated us. But that was his way of being modern: he had fully accepted the challenge launched on a daily basis by our hectic and irrational modern times.

Marco did not fully master technology and the Internet, but he immediately understood its huge potential. It was he who advised us on how to use it in the most effective way and who set the pace for our work: both for me and the group. His close relationship with young people, his daily exchange with the American students from the Dickinson Institute and his love for his two sons made him a man who was particularly attentive to social changes and a talented interpreter of the regulatory developments underlying the social and economic processes currently under way. His fondness for soft-laws and his enthusiasm for Europe and federalism are a clear indication of a renewed notion of law as a technique for regulating society and managing conflict in complex post-modern societies.

Marco was a precursor in the present labour law trends. He tried with modesty to put his vision of the future at the service of a project. Of course, Marco, just like any other man, had a combination of passions and instincts, good and bad, and was probably also ambitious. Yet, one thing is certain: he humbly applied the method that he had developed and passed it on to all of us. The meticulous way in which he always gathered together the documentary material and the precision with which he worked on even the smallest project was, to my eyes, typical of a young scholar who is fully aware of his limits when faced with a demanding scientific task and tries to overcome them. I do not know whether he truly believed it or not, but he often told me about his wish to close himself away in Pianoro to become a full-time scholar, just like in the old days.

Once again it is his modernity that explains the difficulty of dialogue with other experts in the field and, in particular, with CGIL. Marco would complain about the substance, rather than the tones – often inexcusably violent – of the controversy, just like, for instance, the CGIL decision not to take further part in any of his conferences and meetings, and even before that the sudden withdrawal again of CGIL from a scientific debate, such as the Associazione Italiana di Studio delle Relazioni Industriali. It is not up to me to say whether Marco or his opponents were right or wrong and I also understand much of the historical reasons and political argument that may lead CGIL to oppose change. Yet, I know that the rejection of dialogue, antagonism as such, the lack of respect for one's opponent are the opposite of modernity, but also of those 'natural' values that are at the basis of a democratic and pluralistic society, which help us make the possible forms of cohabitation among human beings slightly more 'decent'.

³⁰ M. Biagi, 'Progettare per modernizzare', cit.

His present frontiers of modernity for him were the issues of the federal reform of the State, techniques for building a relationship of trust with employees and the 'Workers' Statute'. The task now passes to Riccardo Salomone, to Alberto Russo and to myself, respectively, and these will be the next scientific commitments at the service of our project.

Carlotta Serra, on the other hand, was recently assigned to carry out a few preliminary studies on the new work-placement rules, with special reference to farming. As for Olga Rymkevitch, in addition to an attempt to reconstruct the very recent Russian codification of labour law, she had been entrusted with the study of migration policies in Europe, a further especially relevant issue in the development of an increasingly multi-ethnic society.

6. Marco Biagi, the protagonist

Marco has therefore been a major figure of our time and certainly not a mere spectator. Over a relatively short period he has accomplished works of great value and importance, as will become evident over the next few years, when the importance of his work has been properly assessed. Many people, some with an abrupt turn of opinion, have already emphasized Marco Biagi's powerful and fruitful dialogue with political authorities and institutions, at a community, national and local level.

What I would like to point out is that Marco Biagi has been a protagonist in our lives. Our encounter with him has profoundly changed us and has left a seed that will soon bear fruit. Continuing our work as 'protagonists', each one of us following our own inclinations and commitment, is the response we must give to his death, and even more so, given the brutality and absurdity with which a still young life has been torn away from the love of his dear ones and students. As he himself wrote it in his tribute to Federico Mancini³¹, 'this is what our Master would have expected from all of us'.

Not only that. I think that the 'comet' Marco Biagi must also help us understand much more than that, going beyond the issue of labour law and its modernization. I really wish that his sacrifice will not be useless for us, as people, as human beings, all too often affected by petty and selfish feelings, which do not let us fully appreciate the beauty of life and of the people who surround us and love us. I really wish that this look of sadness on all our faces might be regenerated and transformed into a concrete and humble commitment to continue making our own lives and the lives of those who accompany us along this mysterious and often too cruel pathway slightly more decent.

³¹ M. Biagi, *Federico Mancini: un giurista 'progettuale'*, cit., p. 11.