

Marco Biagi: The Man and the Master*

On the days immediately following the tragedy which took place on the evening of 19 March 2002, I repeatedly resisted the idea of writing a tribute to Marco, fearful that I could not pay due respect to my mentor. Yet it was not merely rejecting the idea of writing a commemorative piece in his memory. Perhaps Marco, just like his own Master,¹ would not have appreciated it. It was not even the vain attempt to stem the flood of intense and painful emotions and grief by someone who, like me, would have liked to wake up from a terrible nightmare. Someone who still today, whenever the phone rings, thinks it might be him, someone who thinks of him. I believe it was rather a sense of reticence towards my private and intimate suffering that needed to remain as such. It was as though talking about Marco would mean more than just severing the bond that closely tied us for more than a decade and that allowed us to rejoice in each other's achievements. In fact, it would also mean washing away part of our deepest feelings, memories and sacrifices that, day after day, gave rise first to a unique and unequalled friendship, and then to a professional relationship which would otherwise be lost forever. Marco Biagi had a profound impact on my life, and I believe I somehow too had an impact on his. My inspiration to write did not arise out of normal circumstances, but I

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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. Biagi, M. 2008. *Federico Mancini: un giurista "progettuale"*, The Johns Hopkins University Bologna Centre, No. 8:3. As he then told me, I would have been precluded from writing any kind of tribute given the age limitations and his intention – as he often repeated – to remain in charge of our Centre for International Studies in Modena for the next twenty years or so and, possibly, even more.

felt compelled to do so following numerous requests. Political manipulations, rhetorical memorials, reams of fine words did not impress me at all. Early feelings of anger soon turned into pain and then into sadness and loneliness. Only through commitment to slowly and silently putting back in motion the Centre for International Studies at the University of Modena – founded by Marco in 1991 – could Marco’s “children” (Riccardo Salomone, Alberto Russo, Olga Rymkevitch, Carlotta Serra and I) respond to so much injustice and manipulation. This would have been the only way Marco would have chosen to keep on living and to let others talk about his work as well as this little miracle, which took place over the past few years – referred to by Roger Blanpain² as the “Mecca of Comparative Studies”. As a young boy having already mourned the loss of a loved one, I thought I had already paid a high price. Unfortunately I was wrong. Today, as a mature man, I am not only left with a sense of emptiness concerning a past event, but also with the regret of arising from a new experience; the regret of having been interrupted in the middle of a conversation; the regret of a hurried goodbye at the railway station; the regret of a broken dream and so many projects swept away all of a sudden and with no reason; the regret of realizing what happened, which I did not experience when I was young. Now what? I am left with a new life, with a little girl who is about to be born; a daughter teaching me that I have to look ahead one more time, who gives a new sense to my life to fill the void that I had as an adolescent, which Marco helped me to overcome 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 a kind of love which is extraordinary: the love that is fed and nurtured in memory of Marco and all those little day-by-day events that apparently seem so trivial and taken for granted, but that actually 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 this not only to myself but also 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 with the passing of time.

In spite of our marked differences in temperament and personality, I shared with Marco a deep and instinctive faith in God. The explanation of what

² See Blanpain, R. 2002. “From the President of the International Society for Labour Law and Social Security,” *The International Journal of Comparative Labour Law and Industrial Relations*, 18, No. 2.

happened remains a mystery – and the same is true of our lives, of the great and small things of our daily routine, the precariousness of our existence, all the sacrifices made that now seem useless and meaningless. Yet I am certain that one day we will meet again! In the meantime, although from far away, I am 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 students from the Modena Centre for International Studies and all those who have truly loved you!

There have been at least two articles that moved me and prompted 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 of nervousness in my stomach, as soon as I started reading its 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 soon happen also to Prof. Marco Biagi and, thus, people will ask “Biagi, who was he?”. Massimo D’Antona’s murder is clear evidence of that;⁵ he left his family, his most intimate friends and his most extraordinary students with an everlasting memory, yet a sense of general indifference towards him can be felt among the public opinion at large, perhaps among many labour law experts too, not necessarily the youngest ones.

Even more significant to me was reading various drafts, submitted to my attention, of the magnificent article written by Marcello Pedrazzoli as a tribute to Prof. Biagi for the *Rivista Italiana di Diritto del Lavoro*.⁶ It was not merely because Pedrazzoli – beyond any academic reason – showed kindness and a

³ The bike: another regret. It was a common passion, although we never had the pleasure of cycling together.

⁴ Published in *L'Espresso*, No. 14, 2002.

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 panel, 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 Pedrazzoli, M. 2002. “Marco Biagi e le riforme possibili: l’ostinazione del progetto” *RIDL [Rivista italiana di diritto del lavoro]*, No. 2.

paternalistic attitude when he invited me to face my responsibilities as one of Marco's disciples and friends. It was first and foremost because the task to write a tribute in memory of Prof. Marco Biagi was undertaken by someone who was undoubtedly close to him, although being an "outsider".

At this stage, I feel not only able but obliged to put in writing the memory of Marco Biagi as a Man and as a Master from the point of view of an "insider", thus completing what Marcello Pedrazzoli wrote so effectively and what others will likewise write. No doubt this will contribute to provide a different perspective from which Marco's personality and academic contribution can be viewed and appreciated. I was persuaded that this might be a further way of recalling a name and a story, which goes far beyond listing his series of astounding academic and professional achievements. And this might be especially effective if recounted 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 a 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 joys and sacrifices that have laid the foundations for his extraordinary working method, in other words⁷, his forward thinking.

1. Marco Biagi and Federico Mancini: Forward-thinking Labour Lawyers

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To Marco, the student who has walked in my footsteps at 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 aims at decency. The Founder of the Labour Law School of Bologna".

In this dedication by Federico Mancini – the Founder of the Labour Law School of Bologna – which appears in the first page of *A Theory of Justice* by John Rawls,⁸ much can be found about Marco. Above all, his relationship with his Master. But also a pragmatist approach to reforming, longed for someone who, only with tenacity, obstinacy and a great deal of patience, aims at impacting the institutions and mechanisms governing a complex democratic

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

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

and pluralistic society. Marco, just like Federico Mancini, was a forward-thinking labour lawyer and this “professional” side can be considered as the completion of the work initiated by the Founder of the Labour Law School of Bologna.

In consideration of the various methodologies and inclinations, every member of the Labour Law School of Bologna is the follower of the work commenced by Federico Mancini. Unlike other students, Marco followed his footsteps not only in terms of methodology – that of comparative legal studies – but mainly as a political passion (as intense as their well-known liking to the Bologna football team) and more recently through his involvement in new projects, also thanks to the fundamental contribution by Tiziano Treu. Marco, too, was a jurist “with a project in mind” as he used to define himself.

Marcello Pedrazzoli has already written a brilliant article about Marco Biagi and some possible future reforms. In this regard I will add a few more things later on. Now I would rather draw a parallel between Federico Mancini and Marco Biagi. Not only because Marco always told me about his Master and what he would have done under similar circumstances. In this connection, one might find it useful to read the article titled *Federico Mancini: un giurista “progettuale”*⁹ to understand how Marco felt 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 – as a natural consequence – a reflection of himself and of his human and academic development: first of all, the comparative scholar, but also the Master of the school of Modena and then, the innovator, the modernist, the protagonist.¹⁰ Just like Federico Mancini, Marco Biagi was also a combination of all these aspects which turn a jurist into a forward-thinking jurist. And this is how I like remembering 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 not only be predictable, but also biased. Furthermore, the recent and increasingly less veiled controversy about the way Marco resorted to comparative analysis still echoes in my mind. Marco did not only know Otto Kahn-Freund’s classics on

⁹ Biagi, M. *Federico Mancini: un giurista “progettuale”*, cit.

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

the use and abuse of comparative law, but he also humbly borrowed that methodological approach: i.e. making a national system simply one of the various systems under comparison, in order to be analyzed solely on the basis of its intrinsic characteristics¹¹ – and that was unequalled experience in the Italian labour law arena.

It became natural to Marco to shift away from the centrality of the national legal system, not because of intellectual arrogance but due to his inborn farsightedness – that was also acknowledged by Federico Mancini – to look ahead and to foresee in advance future scenarios and events. Under certain circumstances, this attitude might have probably contributed to fuelling divergent views among those who, more or less consciously, were reluctant to walk away from the narrow focus provided by the national labour law perspective. Yet this is undoubtedly the precious legacy left by Marco Biagi as a 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 production and distribution of wealth did not worry those like Marco, who had long left the narrow perspective of national labour law. Indeed, it was thanks to his moving away from the different national systems that it was particularly easy for him to engage in benchmarking activities, which became a fixture of Marco's thinking and planning and ability.

Marco was not simply interested in transplanting overseas models. At least over the past decade, he believed that comparative analysis was the only possible way to foresee the implementation outcomes of regulatory mechanisms that are still at the preliminary stage.¹² Moreover, he contributed to dispel some misconceptions and ideological resistance towards the modernization of the employment relationship. The last joint work that we were involved in concerned new fixed-term work regulations.¹³ It is a clear example of how the comparative approach should lead to the analysis and to the pragmatic solution of labour market problems.

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

¹² Biagi, M. *Federico Mancini: un giurista "progettuale"*, 5.

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

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 other Master – strongly supported and encouraged him in adopting the comparative method, starting from the memorable 1983 Kyoto conference, Tiziano Treu represented an ideal guide for the practical application of the method itself¹⁵. Marco often told me about his willingness to help Tiziano Treu prepare his contribution for that congress: a feeling that was no less strong than the one accompanying him fifteen years later when he organized, once again in collaboration with Tiziano Treu, the 11th World Congress of the International Industrial Relations Association (IIRA)¹⁶ in his capacity as President.

At the Kyoto conference, he also met Roger Blanpain for the first time: a jurist and a man who was in many respects very different from Marco, but who has been for many years the repository of a highly sophisticated organizational method that has substantially influenced our working method at the 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 written something comparable to the monumental *International Encyclopedia 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 would deeply affect the development of our national labour law over the next few years. Yet, on close inspection, Marco’s cultural itinerary was likewise fascinating and outstanding, as one would expect from a talented comparative scholar as he was, most notably from someone who did not restrict himself to study other systems and experiences simply at a theoretical level, but who realized that a true comparative study can never be an activity to be carried out in isolation.

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

¹⁵ Cf. Treu, T. 1994. “L’internazionalizzazione dei mercati: problemi di diritto del lavoro e metodo comparato”, *Studies in Honour of R. Sacco*, (Milan: Giuffrè), 1:1117, which 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.

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.

As Marco wrote, comparative research requires that “most of the work (collecting bibliographical information and, above all, understanding how a system actually works) must be conducted in collaboration with other colleagues”.¹⁷

A cursory look at the programme of one of his traditional meetings in Modena, or at one of numerous introductory comparative contributions¹⁸ are enough to appreciate Marco’s extraordinary ability, resulting from his well-known reliability and seriousness, to bring together a varied group of authoritative labour law experts, among whom his ‘brother’ Yasuo Suwa, Lammy Betten and Alan Neal, to whom he 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, akin to Marco in his rigorousness and reliability, and with whom Marco had launched one of his several international projects. Under Manfred Weiss’s Presidency at the International Industrial Relations Association, Marco enjoyed the fleeting pleasure of being appointed as one of the five speakers at the international IIRA congress that was 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 another talent of his, typical of a true comparative scholar. A comparative scholar is never afraid of differences between models and systems, no matter how significant they are.¹⁹ In the same vein, Marco never posed barriers in terms of academic status, geographic origins, and cultural background. His Summer Schools, his lectures at the students of the John Hopkins and Dickinson University, the many international meetings, initially 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 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 circle. This allowed students and scholars to make a “live comparative analysis” as Marco had defined it.²⁰

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

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

¹⁹ As rightly pointed out by Sacco, R. *Introduzione al metodo comparato*, cit., 23.

²⁰ Biagi, M. *Federico Mancini: un giurista “progettuale”*, cit., 4.

I still remember one warm summer evening in July 1996, when during the ceremony for awarding attendance certificates at the Summer School in Labour Law and Industrial Relations, along with the all-present Tiziano Treu, Mr. Romano Prodi – the then Italian Prime Minister – suddenly arrived and did not hesitate to go and shake hands first with the younger foreign guests and students even before welcoming the authorities. One of Marco's pictures, showing him surrounded by Tiziano Treu, Romano Prodi, a young Japanese researcher, our first Modena student, Giulia Moretti, and a 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 to his "brother" Yasuo Suwa, and later on to myself for almost one year and a half while I was still trying to find my own place in Bologna. Enrico Traversa's guitar and songs, which turned that event into a magical evening, still echo in my mind, overcoming the melancholy of these past few years with sounds and feelings.

3. Marco Biagi, the Master

Whereas extreme informality marked both Marco Biagi and Federico Mancini's relationships, the same cannot be said of his role as "Master". Marco Biagi never had his own School and perhaps only now conditions in Modena have been adequate to make it possible for the creation of an extremely ambitious and important project to be completed in a few years. It was not until 2000 and 2001 that a group of young scholars began to emerge, among others Riccardo Salomone, Alberto Russo, Olga Rymkevitch and Carlotta Serra.

Until then, Marco's dimension has always been like that of the "craftsman's workshop". He liked this expression and frequently repeated it, proud of the fact that, although assisted by an inexperienced apprentice from Bergamo, he was nevertheless able to carry out an incredible number of studies, both at a national and international level, thus giving the impression that he could indeed avail himself of a long-established Modena School. But this was far from the case. We were supported only by some students in political economics and business economics who were in their final year and were attracted by Marco's fascinating human qualities.

Our office soon became well-known within the whole faculty. Different factors proved to be successful, such as the informal nature of the relationships, the professor's renowned availability, the careful supervision of

dissertations, the opportunity to use a few computers thanks to the support of a talented computer engineer, Vincenzo Salerno, always ready to give a hand, Marco's ability to make connections with employers, thus testing pioneering attempts of the company-based apprenticeship system, which would help so many young graduates to gain access to the labour market. All these factors allowed us to set up an extraordinary group of people, willing to help and devote their precious time and energy to support our project on a voluntary basis. 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 academic career, these students have continued to attend our offices and to collaborate with us for months, a year, or even more. Yet, the relationships that have been established have often gone far beyond the informal collaboration and some of them still continue in the more genuine form of friendship. From this point of view, Marco was a true Master: not just the 'founder of the school' strictly speaking, but a guide who has always tried to be surrounded by a group of young people who shared mutual esteem and the involvement in the project. Furthermore, one of Marco's greatest qualities was his ability to rejoice with sincerity at these youngsters' early achievements, either as a group or individually.

I would not do justice to Marco and to the people who have worked with us if I overlooked the fact that this form of group work could sometimes degenerate, causing disillusion and tension, and sometimes giving rise to a number of misunderstandings. At times, the obstinacy put in our work led to certain insensitiveness towards the undeniable merits of some of our younger collaborators. In this case I 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 particular position within the Bologna School, or because of the fragile legal background of our students at the Faculty of Economics. It is from this awareness that early and more stable collaborations came about, beginning with Nicola Benedetto and Giuseppe Martinucci and then with some of my latest students in Milan, and in particular with Giuseppe Mautone and Marina Mobilia. It is from there that the idea of setting up a group originated, as soon as Riccardo Salomone was appointed researcher and Alberto Russo received a research grant. 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 strong personality, and then a little later 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 matter of time.

Marco has certainly been a Master in the true sense of the word, at least for me. I owe him a lot, and not just in the academic field. It was he who believed in me and in 1992, on Stefano Liebman's advice, brought me to Modena from Milan, after a year-long stay at the Labour Law Institute of the Catholic University of Leuven under the supervision of Roger Blanpain. It was he who taught me the job in his 'craftsman's workshop' and encouraged me day after day, by entrusting me with increasingly demanding and stimulating tasks. Our collaboration then turned into a strong friendship, into a kind of symbiotic relationship that did not allow 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 relationships that matter in one's life, could not simply be defined in these terms.

As a Master he astonished me not only 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 pivotal in 1991, when this form of employment was not only prohibited by law in our country but totally unknown, except for a few experts in the field. Or in 1998, well ahead of completing my first monograph, when he asked me to start working on such issue as employment incentives and the European law on competition. After a thorough revision and reading by Tiziano Treu and Mario Rusciano, I sent it to press on Monday 18 March. On the previous day, Sunday afternoon – alongside the scheduling of the following week's agenda, which I was usually sent after the football match – Marco delivered an attachment containing his introduction to my book.

He used to send me detailed memos to supplement the weekly schedule of the Sunday. This was one of the things which characterized our working method. I received his last memo 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 concerning me sending the book to press simply with: "Excellent!" This is the last memory 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 monograph on the "Workers'

Statute”, on which I had started working with him in 1997, as part of our collaboration with Tiziano Treu.²¹

4. Marco Biagi, the Innovator

If Federico Mancini was one of the first examples of modern labour law experts, Marco Biagi can certainly be regarded as his ideal follower, although in a completely different social, economic and institutional context. He too was firmly determined in changing the direction taken in this area, particularly by providing a fundamental contribution to the Europeanization process of 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 appeared in one of the next issues of the journal *Diritto delle Relazioni Industriali*.²² This paper should not be mentioned simply because of his attempt to refine some sections of the October 2001 White Paper on the labour market, drafted and supported principally by Marco, but rather because of some deep-rooted convictions of European and federal origins. 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 and federal legal institutional framework. As usual, time will prove him right on this issue as well.

In this sense, especially over the past few years, Marco’s commitment was to prove that, unlike what commonly held, it is not a lack of ideas and projects that prevents the launch of a complex labour law reform. “What still needs to happen” – he recently wrote²³ – “is to overcome ideological prejudice and blinker that slow down for no good purpose the evolutionary process that is taking place as well as necessary reforms, in order to prevent de-structuring and deregulating mechanisms from spreading throughout the labour market: these phenomena are, in turn, the cause and the result of an emerging hidden

²¹ Cf. Biagi, M. 2001. “Progettare per modernizzare”, *Politiche del lavoro. Insegnamenti di un decennio*, ed. Treu, T. (Bologna: il Mulino), 269-280 and also Biagi, M., and M. Tiraboschi. 1999. “Le proposte legislative in materia di lavoro parasubordinato: tipizzazione di un *tertium genuso* codificazione di uno Statuto dei lavoratori?” *LD [Lavoro e diritto]*, 4.

²² Biagi, M. 2002. “Federalismo e lavoro. Il lavoro nella riforma costituzionale,” *DRI [Diritto delle Relazioni Industriali]*, No. 2:157-164.

²³ Cf. for a synthesis, Biagi, M. “Progettare per modernizzare”, *op. cit.*, 270.

economy in our country, which is two or three times bigger than in other countries”.

Marco was motivated by his desire to prove that simple and effective ideas are indeed in place to promote the necessary reforms in Labour Law; it was with this spirit that, though fully involved in his activity as legal advisor for the centre-right Government, he once again agreed to collaborate with Tiziano Treu. Along this collaboration, he gathered and classified the main labour market modernization projects that had characterized the last seven years of a hectic activity of project developments. With different roles and attitudes, they have both played a pivotal role in shaping the national labour policies.

“It was a really fascinating and unique experience” – Marco wrote²⁴ – “marked by important successes (such as the case of Act n. 196, dated 24 June 1997, on employment incentives)”,²⁵ “but also by inevitable compromises (e.g. the case of work regulations for members of co-operatives) and sometimes even by certain disillusionment (e.g. in the case of a reform bill for the 35-hour week that prematurely put an end to the government coalition led by Romano Prodi)”.

Much 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 word would be superfluous. Once the rhetoric and sensationalism of the first few months after his passing died away, I was convinced that his thinking and planning activity would 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 the vantage point of an “insider”, let me highlight one innovative side of Marco’s character: his exquisite aptitude for dialogue enabled him to communicate easily with many different people, from the most authoritative officer to the youngest student here in Modena. Marco was an innovator also in terms of style: elegant and simple at the same time, direct, without any cultural or mental prejudice or barrier. I still remember how during the breaks at the courses held at the various Summer Schools organized by Sinnea

²⁴ *Ibidem*, 271.

²⁵ Strong evidence of this success can be found in the note to Act No. 196/1997 entitled *Markets and Labour Relations*, edited by M. Biagi for Giuffrè in 1997. This again is a true methodological innovation in the academic domain in Italy and beyond, for the fact that – as can be read in the introduction by Marco Biagi – “for the first time, a provision is assessed and discussed by authors within relevant authorities who are also in charge of its preparatory work. In addition, these authors work at the Ministry for Employment and Social Security engaged in the implementation and enforcement of the law itself”.

International, he would sit on a low wall or on a desk eating a sandwich while chatting with his students.

In my view this was a true innovation – the ideal way to establish first of all a human and then a professional relationship, as a precondition leading to the establishment of a community, beyond any academic or educational logic.

Over time I also learnt to appreciate his simplicity of language as well as his natural ability to be brief– 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 long-winded style, along with a large number of references. This shows the readership 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 legal and conceptual system was not seen as an obstacle to dialogue, but only a necessary starting point in his work as a forward-thinking jurist.

As an innovator, Marco was first and foremost a great communicator, more than a forward-thinking reformer. His great skills in establishing a dialogue with political leaders and industrial relations practitioners stemmed from his immediate and simple language, as well as from the modesty with which he addressed his readership and audience – despite his long-standing experience as a jurist and an advisor – whether through an Editorial or an academic paper. Complex reform projects and articulated reform bills were made incredibly easy to understand also to non-specialists. 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 certain reliability, forthcoming events that would become central in the political and trade union debate, Marco also distinguished himself for his plain and direct writing style that helped people understand problems and fuel debate. He was not the kind of person who loved abstruse conceptual arguments or complex analytical historical and legal 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 this project because he made his point clearly and never stepped back, while always ready to experiment and innovate. This is also why Marco has been one of the few Italian labour

law jurists who were able to communicate easily not only with overseas colleagues but also with the most prestigious European and international institutions, be they the International Labour Organisation, the European Commission, the Dublin European Foundation or the Aspen Institute.

He was also an innovator in the way he ran his Journals (*Diritto delle Relazioni Industriali* and, more recently *The International Journal of Comparative Labour Law and Industrial Relations*), and its Associations (since 1994 the *Associazione Italiana di Studio delle Relazioni Industriali* (AISRI) and, since 2000, also ADAPT, an association started from scratch, which soon 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 management approach: he had an extraordinary ability to assign precise tasks to everyone and to make anyone feel important, but also a master of maieutics, being able to draw the best out of each one of us.

Despite the idea one might have from the outside²⁶ – which can nevertheless be partly justified – Marco was not in favour of the revision of 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 in the field’. Working with him side by side I realized how indefatigable he was. He was animated by inexhaustible energy, the fruit of a true passion or vocation, which led him to move relentlessly back and forth Rome, Milan, and Brussels, patiently engaged in weaving a network of consensus around the goal to modernise labour law, yet without ever neglecting any of his academic commitments. Not only did he join the activities of our Faculty, but he was also one of those jurists who attended several meetings, without missing important national or international events.

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

In opposition of many people claimed or thought, there was no tacit agreement between the “prince’s counsellor” and the “prince” himself. This was often said to raise the tone around the reforms or simply out of provocation, in order to question Marco’s power and the undeniable heightening of reputation. This is because Marco while writing about Federico Mancini was thinking to himself, and was not the “prince’s lawyer”, but indeed – as he himself put it –

²⁶ Cf. i.e. Carinci, F. 2002. “Dal Libro Bianco alla Legge delega,” *Dir. Prat. Lav. [Diritto e pratica del lavoro]*, No. 11:732.

a “lawyer with a project in mind”.²⁷ It is enough to go through the White Paper, with his grand project carried out in collaboration with the Prodi Government²⁸ 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 individual, political party, or Government.

Marco has always worked with an approach based on forward thinking – helped in this task by the patent fragility of political and institutional bodies that in turn addressed themselves to him – without ever yielding to the temptation of pleasing those in charge. We have never been influenced or pressured while carrying 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, qualities which are few and far between in any other working environment.

5. Marco Biagi, the Modern Man

Marco’s objective was to devise new projects with a view to modernize.²⁹ Although he never relinquished his academic rigour, Marco was never obsessed with the perfect presentation. Instead he was obsessed with promptness, care for detail and the quality of the overall project. His modernity mainly lies in his pragmatic approach. Marco was not keen on complicated and abstruse projects that were an end in themselves, nor did he ever like to indulge in self-celebration for whatever had been accomplished so far, no matter how significant the results were. He never allowed himself 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 effectively and who set the pace for our work. 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 legal

²⁷ Biagi, M. *Federico Mancini: un giurista “progettuale”*, *op. cit.* 9.

²⁸ Cf. Treu, T. *Politiche del lavoro. Insegnamenti di un decennio*, *op. cit.* 269-395.

²⁹ Biagi, M. “Progettare per modernizzare”, *op. cit.*

developments underlying the social and economic processes currently underway. His fondness of soft-laws and his enthusiasm for Europe and federalism are a clear indication of a renewed concept 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 humbly tried to put his visions of the future at the service of a project. Of course, Marco, just like any other man, had a combination of passions and instincts and perhaps was also ambitious. Yet one thing is certain: he applied the method that he had developed and passed it on to all of us. The meticulous way in which he always gathered the documentation and the accuracy through which he worked on even the less important projects were typical of a young scholar who is fully aware of his limits when faced with demanding academic tasks 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 withdraw to Pianoro to become a full-time scholar, just like the old days.

Once again it is his modernity that explains the difficulty to interact with other experts in the field and, in particular, with CGIL. Marco would complain about the real matter, rather than the tones – often inexcusably violent – of the controversy. An example is the decision on the part of CGIL not to take part in any of his conferences and meetings, and even before that the sudden withdrawal of CGIL from the academic arena, chiefly from 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 am also aware many of the historical reasons and political argument that may lead CGIL to resist change. Yet, I know that rejecting dialogue, the lack of respect for one's opponent are the opposite of modernity, but also of those traditional values that are at the basis of a democratic and pluralistic society, which help us make cohabitation among human beings slightly more 'decent'.

To him, the present frontiers of modernity consist in the issues of the federal reform of the State, techniques for building a relationship of trust with employees and the 'Workers' Statute'.

6. Marco Biagi, the Protagonist

Marco has therefore been a major figure in our times and certainly not a mere spectator. Over a relatively short period he completed works of great value and significance, 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 has profoundly changed us and 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 beloved ones and students. As he himself wrote in his tribute to Federico Mancini³⁰, 'this is what our Master would have expected from all of us'.

Not only that. I think that Marco Biagi also helps 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 the people who surround and love us. I really wish that the look of sadness on all our faces might be turned into practical 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.

³⁰ Biagi, M. *Federico Mancini: un giurista "progettuale"*, *op. cit.*, 11.