

SOLIDARITY AND CONFLICT

European Social Law in Crisis

The ongoing austerity crisis is being felt in all sectors of EU law, but has had a particularly severe impact on labour law. Silvana Sciarra, a leading judge and scholar of EU employment law, considers how solidarity regimes have been shaken by the crisis. She brings together existing European policies in social and employment law, to enhance synergies and developments in a post-crisis discourse. She looks at reactions of national constitutional courts to austerity measures and of international organizations in re-establishing respect of fundamental workers' rights. Criticizing soft law approaches in employment policies, she favours recourse to binding measures connected with selective financial incentives through European funds. She highlights developments in European sector social dialogue and new horizons of transnational collective bargaining in large multinationals. Taking a positive, practical approach, Sciarra shows how social policies can enhance solidarity and social cohesion, through European financial support.

SILVANA SCIARRA is a Judge at the Constitutional Court of Italy and was previously a Full Professor of Labour Law and European Social Law at the University of Florence and at the European University Institute. She is co-editor, with Rochelle le Roux and Bob Hepple, of *Laws against Strikes: The South African Experience in an International and Comparative Perspective* (2015).

Cambridge University Press
978-1-107-08606-7 — Solidarity and Conflict
Silvana Sciarra
Frontmatter
[More Information](#)

SOLIDARITY AND
CONFLICT

European Social Law in Crisis

SILVANA SCIARRA
University of Florence



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-107-08606-7 — Solidarity and Conflict
Silvana Sciarra
Frontmatter
[More Information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.
It furthers the University's mission by disseminating knowledge in the pursuit of
education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781107086067
DOI: 10.1017/9781316091104

© Cambridge University Press 2018

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published in 2013 as *L'Europa e il lavoro*.
Solidarietà e conflitto in tempo di crisi, Bari-Roma, Laterza.
First published in English in 2018

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library.

ISBN 978-1-107-08606-7 Hardback
ISBN 978-1-107-45053-0 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of
URLs for external or third-party internet websites referred to in this publication
and does not guarantee that any content on such websites is, or will remain,
accurate or appropriate.

To A. and V.
My 'twinkling stars'

Cambridge University Press
978-1-107-08606-7 — Solidarity and Conflict
Silvana Sciarra
Frontmatter
[More Information](#)

CONTENTS

Preface page xi

Introduction 1

1 Europe in Time of Crisis 8

1 Fear from Europe: A False Start 8

1.1 Wage Policies and Pay Cuts: Constitutional Courts
in the Crisis 11

1.2 Achievements of European Social Partners: Sector Social
Dialogue 19

2 The Fear of Europe: The Institutional
Framework 24

2.1 The European Semester and the Role of the Employment
and Social Affairs Council 29

2.2 The Euro Plus Pact: Wage Moderation and Decentralised
Bargaining 32

2.3 The ESM: Answers from Constitutional Courts and the
CJEU 33

2.4 The Fiscal Compact 39

2.5 Fiscal Councils and the European Fiscal Board 41

2.6 The Intuitions of the Barca Report: Social Cohesion
and Partnership Agreements 42

3 Concluding Remarks 45

2 Employment Policies 47

1 The 'Open Method of Coordination' 47

2 Europe 2020: The Uncertain Role of the European
Council 52

3 Monitoring: The Role of the Commission 57

- 4 Active Labour Market Policies 61
- 5 Concluding Remarks 63
- 3 Beyond European ‘Governance’ Inside the Global Crisis 65**
 - 1 Transnational Collective Agreements in a New Pluralism of Sources 65
 - 1.1 Some Examples of Transnational Collective Agreements 69
 - 1.2 An Optional Legal Framework for Transnational Agreements 75
 - 2 ‘Transnational Juridification’ 78
 - 2.1 Solidarity, ‘Social Dumping’, Productive Chains: The Quest for Fundamental Rights 82
- 4 Conflict and the Uncertain Shape of Transnational Solidarity: *Viking* and *Laval* 91**
 - 1 Social Rights and Economic Freedoms: A Preliminary Assessment 91
 - 1.1 *Viking*: Conflict in the Seas 94
 - 1.2 Solidarity and Competition: The Court of Justice’s Judgment in ‘3F’ 100
 - 2 *Laval*: The ‘Swedish Model’ Under Pressure 105
 - 2.1 A ‘Snowball’ Effect: Lawmakers and Judges after *Laval* 111
- 5 Voices from Global Law 118**
 - 1 The Strasbourg Court and Freedom of Association 118
 - 2 Conflict in the Skies: A Voice from Geneva 121
 - 3 Voices and Threats: An Unbalanced Conflict 125
 - 4 Pre-occupied Voices and Limits to Conflict 129

CONTENTS

ix

| | | |
|----------|--------------------------------------------------------------------------------------|------------|
| 6 | Integration and Disintegration: Concluding Remarks | 133 |
| 1 | Keywords: Solidarity and Conflict | 133 |
| 2 | Constitutional Adjudication in the Crisis | 135 |
| 3 | European Deliberative Processes Re-politicised: The European Pillar of Social Rights | 138 |
| | <i>Index</i> | <i>144</i> |

Cambridge University Press
978-1-107-08606-7 — Solidarity and Conflict
Silvana Sciarra
Frontmatter
[More Information](#)

PREFACE

The book I published in Italian (*L'Europa e il lavoro. Solidarietà e conflitto in tempo di crisi*, Bari–Roma, Laterza 2013) addresses issues which are still of dramatic relevance in the current discussion on austerity measures within the European Union, adopted during an unprecedented economic and financial crisis. Different discourses have been taking shape in European social law, starting from the institutional changes brought about by the Lisbon Treaty, moving to developments in the social dialogue, as well as in the implementation of employment policies. Social measures have also been at the core of emergency legislation adopted at national level.

As a consequence of all this, both the notion and the practice of solidarity have progressively changed. On the one hand, consolidated collective interests are represented by large and well-established organisations; on the other hand the aspirations of poor and socially excluded groups request to be addressed.

Contradictions, which have long been present in the European Union, are now exacerbated by the flow of immigrants and asylum seekers, escaping from wars and shortages of essential means for surviving. This is yet another difficult challenge for solidarity, which calls into question, in the first place, Member States' responsibilities.

Recourse to traditional forms of social conflict does not, by itself, unravel all such challenges, neither does it provide solutions. Therefore, solidarity and conflict carry with them new implications.

It is harder now, under such complex circumstances, to pull the red thread that keeps together my arguments, in search for alternatives, whenever the risk arises of marginalising social measures. This should be the time to thoroughly rethink the European architecture and find ways of reconciling European citizens with supranational institutions, perceived as distant and hostile. It is not my purpose to offer such a broad perspective. Neither do I intend to address the contentious topics connected with 'Brexit' and its implications in European social policies.

My intention is to show possible synergies among existing policies and to look at ways in which solidarity and conflict face new social demands. I do this looking at developments in recent years, well aware of the fact that there is a much longer history behind such events. Bibliography is intentionally selective and agile and precedence is given to documents and policy papers.

The preparation of this book, inspired by the Italian version, has been delayed, among other reasons, by a sudden change in my professional life. In November 2014 the Italian Parliament elected me to become a judge in the Constitutional Court. This meant that I had to give up my position as a Professor of European Labour and Social Law at Florence Law School and devote my energies to a new commitment.

The time lag between the Italian and the English book increases my debt of gratitude to Cambridge University Press, and in particular to Finola O'Sullivan for trusting me in the attempt to develop an updated and slightly different version of the book. I am also indebted to two blind referees who commented on my book proposal. I have taken their suggestions into account and changed in part the original structure of the Italian version.

Dr Giovanni Gruni, PhD at Oxford, now Assistant Professor, Europa Institute at Leiden University, provided a preliminary first draft of the translation from Italian into English, which I have revised, updated and, in substantial parts, rewritten. I am grateful for his initial help. However, all responsibilities for additions, omissions and mistakes are exclusively mine. Novella Caccavo, secretary at the Constitutional Court, helped me in arranging the final text, whenever we could find some time in between the preparation and editing of court cases.

The immense pride I carry with me for my new institutional responsibilities implies great respect for the Court and for all my colleagues. Opinions expressed in this book are the result of academic research I carried on. In no way do they involve the institution, which is now my home.

Rome and Florence, August 2017
S.S.