

A critique of self-employment

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journals.sagepub.com/home/ell**Adalberto Perulli** 

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Abstract

Self-employed work participates, like subordinate work, in the logic of the capitalist social system of production. The legal system has built a false notion of autonomous work, that is, 'free' from heteronomous constraints and conditions, which does not correspond to the reality of social relations of production. Through a rereading of Marx's Trinitarian formula and of the Slave-Master relationship in Kojève's reading, the author proposes a critical reading of autonomous work, and, in a Weberian perspective, hopes for a progressive liberation of autonomous work through the intellectual work of science and politics.

Keywords

Self-employment, employment contract, recognition, master and slave, work of the spirit

In other words, the bourgeois Worker presupposes and conditions an *Entsagung*, an Abnegation of human existence. Man transcends himself, surpasses himself, projects himself far away from himself by projecting himself onto the idea of private property, of Capital, which – while being the Property-owner's own product – becomes independent of him and enslaves him just as the Master enslaved the Slave...

A. Kojève, *Introduction to the reading of Hegel*, Cornell University Press, 1969

I. Work, between the sphere of necessity and the sphere of freedom

The era we are living in presents an increasingly blurred vision of work and its legal categories. With the evolution of the capitalist system of production, work is becoming indistinct, and its uncertain identity is vaguely reflected in the distinctions between *negotium* and *otium*, between productive and unproductive activity, between *homo faber* and *animal laborans*. Intended in the scheme of the contract as an activity creating a real effect (the work of the *operari*, the *operae* of the *faciendi necessitas*), work – as a conscious and free activity of the subject – determines the status of humans on earth. The labour law system codified during the last

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century breaks up the conceptual unity of productive work that had been achieved (in the continental legal order) with the unitary category of the *locatio et conductio*, putting forward the difference between employment, subject to the power of the employer, and self-employment, devoid of subordination. However, this juridical construction, founded on an oppositional dualism, suffers from the progressive indistinction of work, its being part of a 'social space'¹ where the different forms of work are placed along a continuum rather than on opposite and non-communicating spheres. Those opposing legal categories thus show all their inadequacy: on the one hand, they conceal the contradictions of the regulatory system in its aspiration to implement justice, on the other hand, they distort the real forms occupying the social space of work in general.

Self-employment, in its various articulations, shows a progressive fracture between norms and social reality, with important consequences on the axiological level. The law, in its function of distinction, operates as a dissimulation relationship where self-employment, as an activity performed 'on one's own' and conceived in negative as being 'without the constraint of subordination',² masks the complexity of a category that does not correspond to any homogeneous positive reality.³ Such category cannot be confused with the notion of enterprise,⁴ as it happens in France with the notion of *contrat d'entreprise*,⁵ or within the jurisprudence of the European Court of Justice, which assimilates self-employed workers to entrepreneurs, denying their right to collective bargaining.

Paradoxically, this relationship of dissimulation is in its turn contradicted by the legal system itself, through the 'contracts of dependence', where the opposition between subordination and independence is denied by the multiple forms of 'imperfect subjection' that can be found in the field of self-employment.⁶ Moreover, this contradiction persists through the creation of intermediate categories, that reflect the hybrid forms of self-employment, characterised both by the subjection of the worker to the power of the client (as in the case of hetero-organised collaborations in Italy), and by situations of 'economic dependence' (as in the Spanish case of TRADE⁷ or in the German case of the Quasi-salaried Persons).⁸ Further, we have other characteristics which, even though not pertaining to the sphere of subordination, justify a partial extension of the typical protections relative to labour law (the English case of the Worker).⁹ To the point that Gerard

1. In the sense of P. Bourdieu, *Raison pratiques. Sur la théorie de l'action*, Paris, Seuil, 1994, p. 15 e ss.

2. For example, in Italian law, the self-employed worker undertakes to do work or perform a service 'without any constraint of subordination' (Art. 2222 civil code); but this construction 'in negative' is common to all systems of labour law that conceive self-employment as being work performed without the constraint of subordination which is therefore 'autonomous' (in the etymological sense of *auto-nomos*).

3. G. Lyon-Caen, *Le droit du travail non-salarié*, Paris, Éd. Sirey, 1991, p. 2.

4. G. Lyon-Caen, *Le droit du travail non-salarié*, p. 4.

5. Such contracts became 'la bonne à tout faire des contrats spéciaux', Ph. Malaurie, L. Aynes, *Droit Civil. Les contrats spéciaux*, Paris, LGDJ, 1991, p. 700.

6. Cfr. G. J. Virassamy, *Les contrats de dépendance*, Paris, LGDJ, 1986.

7. Cfr. J. Cruz Villalon, F. Valdés Dal-Ré, *El Estatuto del Trabajo Autonomo*, Madrid, Wolters Kluwer, 2008, p. 205.

8. See B. Waas, *The New Legal Status of Independent Contractors: Some Comments from a German perspective*, Comp. Labor Law&Pol Journal, Vol. 39, No. 3, 2018, p. 627.

9. A person is generally classed as a 'worker' if: they have a contract or other arrangement to do work or provide services personally for a reward (the contract does not have to be written); their reward is for money or a benefit in kind, for example, the promise of a contract or future work; they only have a limited right to send someone else to do the work (subcontract); their employer has to have work for them to do as long as the contract or arrangement lasts; and they are not doing the work as part of their own limited company in an arrangement where the 'employer' is actually

Lyon-Caen, the only European jurist able to conceive not only a legal theory of self-employment, but a labour law of self-employment, posed this question: ‘*L’idée même d’un droit du travail subordonné ne perd-elle pas du terrain devant celle d’un droit de l’activité, que’elle soit?*’¹⁰

Yet, within the juridical literature reflecting upon the categories of work, the simplification of the distinction prevails, rather than the opening to the universalistic complexity of work. The roots of this *modus procedendi* are deep, and concern the very conception of the organisation of work in a capitalist society, which is then reflected in the blurred relationship between democracy, distribution of work and social protection.

Confronted with the changes of contemporary capitalism, characterised by the transition towards the service and knowledge economy and the great technological-digital transformation, the labour market is filled with activities often qualified as independent, the expression of a new professional self-employment. The rhetoric on self-employment, at times pertaining to the legislation on ‘self-entrepreneurship’, intended as a positive tendency of post-industrial society to take advantage of the energies of subjects earning high incomes and independently providing for their own social security needs, acts as a counterpart to the critique of the notion of employee. This figure is now overcome by workers considered as ‘entrepreneurs of their own career’,¹¹ ‘*des travailleurs autonomes et responsables*’,¹² who are responsible for assuming market risks and defining strategies to cope with them.¹³

In both cases, these are partial, if not mystifying, visions. The new professional self-employment, generated by the outsourcing processes in addition to the effects of cognitive capitalism, is matter-of-factly characterised by conditions of economic dependence associated with the discontinuity of the activity, leading to an extreme need for social protection.¹⁴ On the other hand, employment, far from expressing the Hegelian logic of recognition and social freedom, persists in being subjected to the domination of others, in traditional or neo-modern forms of algorithmic governmentality.¹⁵

While it is true that the new sectors of the knowledge economy and digital platforms are creating new opportunities for self-employment, it must be recognised that they are often characterised by insecurity and income discontinuity, with very little or no chance of obtaining any social protection.¹⁶ Consequently, new labour law policies aimed at building social protections linked to personal work in

a customer or client. Regarding the notion of ‘worker’, see M. Freedland, N. Kountouris, *The Legal Construction of Personal Work Relations*, Oxford, OUP, 2011; A. Perulli, *Subordinate, Autonomous and Economically Dependent Work: A Comparative Analysis of Selected European Countries*, in G. Casale, ed., *The Employment Relationship*, Geneva, Hart Publishing and ILO, 2011

10. G. Lyon-Caen, *Playdoier pour le droit et le juristes*, in Etudes offertes à Marcel David, Quimper, 1991, p. 302.

11. See, in a critical sense, F. Le Bot, C. Didry, *Un dépassement capitaliste du salariat? Une sociohistoire en trois actes et impasses*, in *L’Homme et la société* 2015/1 (n. 195–196), p. 51.

12. Independent and responsible workers.

13. S. Bernard, *Le Nouvel Esprit du salariat*, Paris, PUF, 2020.

14. On the Italian legal system, see M. Del Conte & E. Gramano, *Looking to The Other Side of The Bench: The New Legal Status of Independent Contractors Under the Italian Legal System*, *Comp. Labor Law&Pol Journal*, Vol. 39, No. 3, 2018, p. 579.

15. For example, on ‘an increased real risk of intensified control and monitoring due to this technological connection’, see F. Hendrickx, *From Digits to Robots: The Privacy-Autonomy Nexus in New Labor Law Machinery*, *Comp. Labor Law&Pol Journal*, Vol. 40, No. 3, 2019, p. 365.

16. See B. Hirsch, *Dual labor market at work*, in *ILR Review*, 2016, n. 69, p. 1191 ss.; R. Semenza, F. Pichault (eds), *The Challenges of Self-Employment in Europe: Status, Social Protection and Collective Representation*, Edward Elgar Publishing, 2019.

favour of others should be advocated for, regardless of the contractual form and regardless of its attributability to the legal category of employment. This new expansive trend of labour law towards categories of work other than employment meets the resistance of those who, inspired by the rigid dualism of the legal categories, believe that labour law should protect those who work in favour of others only in conditions of subordination. Conversely, the sphere of self-employment, as it includes activities carried out ‘on one’s own account’ and without a bond of subordination, can be left to the dynamics of the market (except for some basic guarantees). However, perpetuating the contrast of working for others or working on one’s own is equivalent to not understanding that in the capitalist system of production, productive labour is, at all times, an activity performed in favour of others; it is, at all times, intended to an economic goal, and dependent on it. Even the work appearing to be directed towards freedom, and therefore legally classified as self-employment, consists in working for others, in an alienated work – to the extent that the object of production is taken away from the performer – therefore, its attribution to the scheme of the *locatio operis* conceals the illusory mirage of independence and juridical autonomy.

Let us take a step back. For an entire century, the indistinction related to working for others, together with its subjugation to the logic of production, found legal expression in the use of a unitary category, the *locatio et conductio operis*. Throughout the 19th century the legal system reflected, as in an opaque mirror, all the different activities done for others, finding their basic paradigm in the unifying scheme of the *lougae d’ouvrage* and the mandate: ‘faire quelque chose pour autrui’¹⁷ (Articles 1710 and 1784 *Code Napoleon*). The preparatory works of the Napoleon Code show that workers are paired with minors and servants, placed without a precise identity next to ancient and independent trades, while in the Articles of the code the word ‘ouvrier’ indicates an artisanal type of work, and limits the list of professions: ‘*Les macon, chapentiers et autres ouvriers*’ ... ‘*les architectes, entrepreneurs, macon et autres ouvriers*’, demonstrating that the word *ouvrier* is at the same time synonymous with ‘master’, to the extent that it is normally used to refer to anyone who has carried out a work whether as a manager or an employee, or as an *artifex*, that is, someone carrying out a job in a non-servile way, cultivating an art.

With the advent of the system of domination characterising the capitalist social form of production, the labour ‘liberated’ by the French revolution is again stuck within an axiological hierarchy where, for the first time in the history of civilisations, the dominant values are related to economy. This art, this intellectual work, this ‘free’ work is no longer an expression of what Aristotle called ‘active life’ directed by thought, the *ενεργεια* in a higher and fuller sense of those who manage work on the basis of their knowledge of the universal. For this reason, they can be defined as agents in a fuller sense with respect to those who are employed, and those who act without possessing the *διωτι*, the rational reason for their actions.

As the craftsman of the Platonic Republic is excluded from any directivity and is placed outside any immediate relationship with rational values and is therefore an employed *χειροτεχνης*, a mere agent incapable of true knowledge and virtue, the *homo faber* within the process of capitalist valorisation has lost his/her theoretical approach, his/her extraneousness to the productivity scheme, his/her freedom (since freedom is guaranteed only by knowledge, which belongs to the intellectual elite governing the issues related to the *polis*). Work is now part of what Marx associates with capital and land within the ‘Trinity formula’ described in the third Book of Capital, in the context of the ‘mysteries of the process of social production’: work is a ‘ghost’, an abstraction

17. Do something for others.

that in general does not exist per se, but one through which man makes possible 'the interchange with nature', 'as an expression and confirmation of life which the still non-social man in general has in common with the one who is in any way social'.¹⁸

Following Marx's analysis, this phantasmatic work lying in the sphere of necessity can by no means be limited to what we today qualify as employment to compare it to self-employment, that is, free work in its means and ends. In fact, the sphere of freedom begins only where the work determined by necessity and 'external purpose' comes to an end: it is a human condition placed by its very nature 'beyond the sphere of actual material production',¹⁹ and therefore not only beyond the sphere of employment, but also beyond the dimension of self-employment. According to Marx, just as the savage must struggle with nature to satisfy his/her needs, to preserve and reproduce life, the 'civilized' is also forced into this struggle, 'in all forms of society and under all possible ways of production'.²⁰ The term 'production' absorbs here that of work, in the philosophical-anthropological meaning of 'industry' (often employed by Marx in his writings, as well), and it indicates instrumental production, or work in its most developed stage: a productive activity equipped with the most advanced technology.

The sphere of natural necessities expands, because its needs expand; however, at the same time the productive forces that satisfy such needs expand. Freedom, in this 'sphere', can 'only consist in socialised man, the associated producers, rationally regulating their interchange with Nature, bringing it under their common control, instead of being ruled by it as by the blind forces of Nature'.²¹ However, even in the associated forms of production, the people 'achieve this with the least expenditure of energy and under conditions most favourable to, and worthy of, their human nature. But it nonetheless still remains a realm of necessity'.²²

It is now essential to observe that according to Marx, this process of subsumption of work within the capitalist production relationship concerns 'all work' regardless of its contingent social form: as a matter of fact, 'since wage-labour does not appear as a socially determined form of labour, but rather all labour appears by its nature as wage-labour (thus appearing to those in the grip of capitalist production relations), the definite specific social forms assumed by the material conditions of labour – the produced means of production and the land – with respect to wage-labour (just as they, in turn, conversely presuppose wage-labour), directly coincide with the material existence of these conditions of labour or with the form possessed by them generally in the actual labour-process, independent of its concrete historically determined social form, or indeed independent of any social form'.²³

This coincidence of work 'in general' with employment work is obviously an expression of the social reality that Marx had before his eyes, that is, the production and separation of free labour from the objective conditions of its realisation. However, Marx's reflection is, from this point of view, meta-historical, because it is valid for all ways of production; therefore, that coincidence must be referred to, like in a hermeneutic circle, the productive activity of man in general, deprived of any social form and any determined character. Consequently, those material conditions of production (capital and land) affect working conditions of all work, of work in general as natural forms. Marx seems to express this concept when, after writing that capital and monopolised land must

18. K. Marx, *The Capital, Volume III, International Publishers, 1995*, p. 560.

19. K. Marx, *op. cit.*, p. 562.

20. *Ibidem*.

21. K. Marx, *op. cit.*, p. 563.

22. *Ibidem*.

23. K. Marx, *op. cit.* p. 565.

appear as natural form of working conditions in general, he affirms that 'to be capital, then, appears as the natural form of the means of labour and thereby as the purely real character arising from their function in the labour-process in general.'²⁴ It is work as such, in its simple determination of productive activity corresponding to a purpose, which, when placed in relationship with capital, is affected in its material conditions, regardless of its social form, as a moment of the general working process. Capital thus becomes 'a very mystic being since all of labour's social productive forces appear to be due to capital, rather than labour as such, and seem to issue from the womb of capital itself.'²⁵

Therefore, all social productive forces related to work, and not only employment, participate in the mystique of capital. Self-employment within the sphere of necessity must therefore be included as well in this all-encompassing vision of capital and its omni-pervasive logic of domination. Self-employment, being involved in the social relations of production, shares the destiny of work in general, participates in the 'bewitched world' of the capitalist mode of production.

Moreover, if we look beyond the horizon of the manufacturing work at the time when Marx wrote his major work, we realise that even today it is work in general, inclusive of all the social productive forces of labour, to carry out a function of creating value for capital, and to be part of that 'Trinity formula' where the paradigm of work is outlined within the mystical womb of capital. In this perspective, even self-employment, like subordinate work, becomes forced labour, as demonstrated by the dynamics of labour market, where the legal form of independence, albeit the result of a free contractual agreement, is a condition often suffered by the worker for a lack of alternatives, a form imposed by capital extracting surplus labour from it in the same way as happens within employment, as in the forms of knowledge work, innovation, and even the work of start-ups, which create a value that is entirely absorbed by capital. Even self-employment is instrumental work, functional to the capitalist production process, and for this reason it can be considered alienated work, *entfremdete Arbeit*: 'up to now, any human activity has resulted as work, and therefore industry, that is, an activity made alien to itself'.²⁶ Only outside the sphere of necessity does the sphere of freedom begin, where human capabilities develop; a sphere which, however, can only thrive on the basis of the sphere of necessity.

In *Grundrisse*, Marx also deals with the matter by discussing the nature of the activity of the medieval craftsman, underlining the dimension of creativity, which substantially reduces such activity's instrumental character. Here, the work itself is still half artistic, half an end in itself (*Selbstzweck*)²⁷ In this Aristotelian excerpt, Marx defines artistic activity as having its own end in itself, that is, as a non-instrumental activity. If the non-instrumental production, that is 'free', should be in all respects of an artistic nature, it is evident that this *auto-tely* does not take place at all in the forms (even juridical-formal) of self-employment. The dissimulation relationship of legal categories operates on this level, breaking the unity of work in general on the false assumption of the total absence of dependence and subordination in self-employment. But it is, in fact, a dissimulation.

First of all, we cannot exclude, within the juridical-contractual dimension of self-employment, the dimension of power and heteronomy, that is, of the directive function in the broadest sense,

24. K. Marx, op. cit. p. 566.

25. K. Marx, op. cit. p. 569.

26. K. Marx, *Economic and Philosophic Manuscripts of 1844*, New York, International Publisher, 1964.

27. K. Marx, *Grundrisse. Foundations of the Critique of Political Economy*, London, Penguin Classics, 1993.

connected to the valorisation of capital.²⁸ With reference to the Italian legal system, such elements are the following: a) the presence of *ius variandi* (the power to modify the object of the obligation) within the managerial power (as the power to conform the performance of work); b) the presence of ‘instructions’ in the mandate, agency, shipment contracts; c) the general principle common to every performance of *facere* stating that the creditor’s power of will and choice guides the action of the debtor; d) the ‘power’ of coordination in contracts for continuative and coordinated services (Art. 409, n. 3, code of civil procedure; such contract typology has led to the definition of ‘para-subordinated’ work; e) the power to organise the ‘collaborations organised by the client’ (Art. 2, legislative decree n. 81/2015).

Furthermore, the dimension of the imbalance of power is also expressed in forms other than the power of the employer *vis-à-vis* the employee. However, such forms are no less meaningful and conditioning the social forms of self-employment ‘entangled’ in the capitalist production relations. Refer, for instance, to the power to impose commercial or financial policies, as happens in the context of franchising contracts, or to the clauses within the commercial distribution sector, which impose through the monopolist supplier the sales prices and commercial premises, hence the conditions of ‘professional subordination’ of the self-employed worker.²⁹

Finally, the ‘economic dependence’ increasingly emerging as a connotation of the new generation self-employment increases within supply chains.³⁰ However, this does not happen because dependence is inherent to the nature of the contract – which actually should exclude it – but as it derives from the deliberate will of the stronger party and/or from market conditions, which force the self-employed worker to operate on a single-client basis. This ‘economic dependence’ constitutes, as is well known, one of the main justifications for the transmigration of social protections from the sphere of employment towards self-employment in many EU countries,³¹ and beyond.³²

It is evident that this reflection on the powers to which the self-employed worker is subject cannot be traced back to the usual question of qualification, in more or less inclusive or

28. The predetermination of the result (*opus*) by no means excludes an orientation activity of the creditor through general directives. It is true that self-employed workers must (theoretically) be granted a certain degree of independence in the performance of the service, but it is also true that within a technological society, these modalities are in any case hetero-determined by programmes that make the activity dependent on automatic processes, which the self-employed worker cannot control, reproducing the conditions of subjugation to the technique typical of subordination.

29. Virassamy, *op. cit.*

30. See A.3, *Subordinate, Autonomous and Economically Dependente Work: A Comparative Analysis of Selected European Countries*, *supra* note 9.

31. According to the European Commission the concept of ‘economically dependent work’ is a way to cover ‘situations which fall between the two established concepts of subordinate employment and independent self-employment’, COM(2006) 708 final GREEN PAPER, *Modernising labour law to meet the challenges of the 21st century*. The document stated that those workers ‘occupy a “grey area” between labour law and commercial law. Although formally “self-employed”, they remain economically dependent on a single principal or client/employer for their source of income”. The Commission initiated a study by A. Perulli, *Economically dependent / quasi-subordinate (parasubordinate) employment: legal, social and economic aspects. Study for the EU Commission*, Brussels, 2003; see also A. Ariza-Montes, N. M. Muñoz-Rodríguez, V. Navajas-Romero, M. del Carmen López-Martin, *Working on your own: Comparing European dependent and traditional self-employment with salaried employment through personal, occupational, and self-perceptual features*, in *Journal of Management Studies*, Vol. 1, N1, Enero a Junio 2019.

32. See G. Davidov, B. Langille (Eds.), *Boundaries and frontiers of labour law: Goals and means in the regulation of Work*, Oxford, Hart Publishing, 2006.

exclusive terms;³³ rather, the acknowledgment of a much more articulated dimension of power than the binary system implies should open a specular reflection on how the power of workers in workplaces is organised even beyond the status of subordinate worker³⁴ (an issue that it connects to the prospect of a ‘liberation’ of work to which I will return to at the end of this article).

2. The Master and the Slave

The dichotomy between working for others and working on one’s own does not reflect the production’s social reality pertaining to employment and self-employment. These two spheres are increasingly communicating and are in a closer osmotic relationship, with their respective forms being decomposed and recomposed in an adjective-less ‘alphabet of work’, where the contractual typologies and the related differentiated statutes make up a puzzle of *obligationes in faciendo* that is remarkable for the need for social protection expressed, regardless of the performances’ contractual scheme. So, what is then the reason for this persistent misunderstanding, which counterposes independent and dependent/alienated work, that is employment on the basis of the fallacious alternative of working for others or on one’s own account?

On closer inspection, such misunderstanding between the *operari dipendente* (employment) intended as a form of work ‘for others’ (the *Estatudo de los Trabajadores* speaks of a ‘*servicio por cuenta de otro*’), and the performance of a service as the emblem of an activity ‘on one’s own account’ (the English Courts speak of ‘business on his own account’),³⁵ derives from a double conceptual assimilation of the self-employed worker and it involves the legal, sociological and economic culture. On the one hand, there is the concept of the *Beruf*, which dominates technology and organises the production on the market in view of profit (hence the assimilation of the self-employed to the entrepreneur), on the other hand, there is intellectual work, the *geistige Arbeit*, where Marx and Weber saw the real possibility if not of the overcoming, at least of the contestation of the ‘steel cage’ represented by the dependent and alienated form of work.³⁶

However, this erroneous dichotomy is totally compromised by the subsumption of self-employment – including intellectual work – within the capitalist social system of production, and by its reference to *banausia*, on a par with manual work.

The self-employed worker carries out an activity for others, like employees, and for this reason he/she is much closer to employment compared to the activity of the entrepreneur, who is not exempt from the logic of working for others in the field of forms of personal micro-entrepreneurship in a single-client and sub-contracting regime. Such forms decree the very end of the idea of independence by reproducing, at this level of generalisation, the subsumption of work in the exclusively instrumental and economic goal pursued by the capitalist social system of production (the very idea

33. A. Perulli, *The legal and jurisprudential evolution of the notion of employee*, in ELLJ, 2020, 1, 14; on the ABC test adopted in California, probably the most inclusive of the criteria for qualifying the worker as an employee, see G. Davidov and P. Alon-Shenker, *The ABC Test: A New Model for Employment Status Determination?* Forthcoming in the Industrial Law Journal.

34. For an original approach, which highlights some paradoxical aspects about the power of workers outside the status of subordination, see Gali Racabi, *Despite the Binary: Looking for Power Outside the Employee Status*, 95 Tul. Law Rev., 2021, p. 1167.

35. The judges introduced a so-called ‘business test’ or ‘economic reality test’, which aims to ascertain whether a person is in business on their own: *Ready-Mixed Concrete (SE) Ltd v. Minister of Pensions* [1968] 2 QB 497; *Lane v. Shire Roofing* [1995] IRLR 493 at 496.

36. See M. Cacciari, *Il lavoro dello spirito*, Milan, Adelphi, 2020, p. 91s.

of industrial ‘supply’ is based on this form of ‘dependence’, hence the need to also put forward rules against the abuse of economic dependence).³⁷

So, what is then the deepest ideological background of this distinction, and how should we understand – in this false alternative between working for others and working on one’s own – the logical-juridical – equally false – legal precondition of the great dichotomy between subordination and independence?

Such question takes us to the heart of the modern vision of work condensed in the famous Master-Slave paradigm in the *Phenomenology of the Spirit*, where, addressing the problem of employment, Hegel poses the theme of man’s self-realisation through work, by which consciousness ‘comes to itself’.³⁸ On this dialectical path, where work is the realisation of the project and the idea of humans, where with work, humans realise themselves ‘objectively’ (reflecting themselves in objectified work), in his *Introduction à la lecture de Hegel*,³⁹ Alexandre Kojève, reconstructs the passage from the pagan world of the non-workers-Masters-warriors to the bourgeois-Christian world, where the Masters have themselves become slaves, so are Pseudo-masters, as such.

Originally, ‘the Master is the Man who went all the way in a fight for Prestige, who risked his life in order to be recognized in absolute superiority by another man’.⁴⁰ This is recognised in the Work of the Slave, who is forced to work for the Master, to give him the result of his/her ‘Action’. Thanks to the service of the Slave, the Master realises his/her own natural desires, but he/she cannot be fully satisfied as he/she is recognised only by the Slave, and not by another person: only the Master, in fact, is a person, as he/she puts death before servile recognition of the superiority of another. While the Master lives this ‘existential impasse’, the Slave, with his/her transforming action of Nature, accomplishes History: ‘The human ideal, born within the Master, can be *realized* and revealed – can become truth – only in and by Slavery’.⁴¹ Within this fulfilment of History, the Master being its simple catalyst, the Slave fully participates in the social and historical nature of human work, in its specifically human activity, and by transforming Nature he also transforms his/her own Nature. Moreover, this happens as a function of an unnatural idea, that is, the possession of a technique, of a science, which the Greeks attributed both to the craftsman and to the artist (τεχνιτης).

Kojève, like Marx⁴² before him, raises the issue of self-realisation within work in these terms. Work should not be alienated, insofar as alienated work not only deprives the worker of the object of production, and therefore denies the form of the matter transformed through work, where the Servant finds the representation of his/her own consciousness,⁴³ but it also deprives the worker of his/her life, his/her generic objective activity (*Gattungsgegenstandlichkeit*).⁴⁴ The work of the Spirit, art and abstract thought arise from here, in the forced labour of the Slave, opening the

37. See M. Del Conte & E. Gramano, *Looking to The Other Side of The Bench: The New Legal Status of Independent Contractors Under the Italian Legal System*, supra note 14.

38. G.W.F. Hegel, *The Phenomenology of Spirit*, Cambridge, Cambridge University Press, 2018.

39. A. Kojève, *Introduction to the reading of Hegel*, which includes some lectures on the Phénoménologie de l’Esprit (1933–39), Ithaca, N.Y., Cornell University Press, 1980.

40. A. Kojève, op. cit., p. 44.

41. A. Kojève, op. cit., p. 45.

42. R. Sennet, in *The Craftsman*, New Haven, Yale University Press, 2008, speaks of Marx as a secularized Hephaestus who would be able to liberate the modern craftsman with his own writings. Marx defines in his *Grundrisse* the craftsmen’s work in the most general terms possible as "transforming activity".

43. G.W.F. Hegel, *The Phenomenology of Spirit*, supra note 36.

44. See G. Agamben, *The Man Without Content*, Stanford, Stanford University Press, 1999.

way to freedom or, more precisely, to 'liberation'.⁴⁵ The slave-worker, using thought, science and technology, and transforming nature into a function of an idea, 'gets to dominate nature and also his/her Nature', that is, that same Nature that he/she dominated in the moment of the Struggle and that made him/her the Slave of the Master.

The essential point in this process of self-awareness is constituted precisely by the trinomial Thought-Work-Independence. The Slave no longer depends on the given conditions of his/her existence, because he/she has modified them on the basis of an idea, and in this way he/she has become aware of his/her Freedom (*Freiheit*) and of his/her Independence (*Selbständigkeit*). The same progress towards Freedom can only be made by the Slave (and only by him/her) starting from an unrealised ideal of Freedom revealed by absolute Knowledge: according to the realisation of that idea, he/she will be able to transform the social conditions of his/her existence, to make historical progress. Having become other than what he/she was originally, the Slave can change and actually changes thanks to his/her work, to his/her *praxis* which has become free and conscious activity.

Now, this scheme of history fulfilment – which, in a Marxian way, is the fulfilment of the true natural history of man and society, which arises from *praxis* – changes with the acceptance by the Master of the ideology of his/her slaves. When the pagan man *de la Maitrise et de la Lutte* becomes a Christian man *de la servitude*, '*les Maitres sont devenue eux-memes des Esclaves*',⁴⁶ or more precisely, 'pseudo-Slaves' or pseudo-Masters, that is, Bourgeois. This is really crucial: 'This Slave deprived of the Master, this Master deprived of the slave – this is what Hegel defined as the Bourgeois, the private owner'; and by reason of private property – the result of the elaboration of Roman private law – we have the detachment of the Slave, who has become bourgeois-owner like his/her former Master. Here, the paradox is realised: the Bourgeois, who does not fight and does not risk anything, must work like the Slave in order to be a truly human being. However, not having a Master, the Bourgeois does not have to work for others. This is why he/she believes his/herself to be working for him/herself, '*pour lui-meme*'.⁴⁷ In the slave-master dialectic, in which Kojève summarises the struggle for recognition, work is assigned to the Slave, who is on the fringes of society and State, while the Master, who originally agreed to risk his/her life for recognition, thus becoming a pseudo-Slave, cannot experience what, in the path of liberation of the Slave, represented a competitive advantage over the Master, that is, the fact of working for others. In the Hegelian vision, work follows a project, a basic idea, which is that of Master and Service (*Dienst*), that is, the idea of Community and State: one works to perform a service for a Master, or for the State.

However, the Bourgeois can do neither of the above-mentioned. He/she does not have a Master to serve and does not have a State yet, because the Bourgeois world is an agglomeration of private individuals, isolated from each other and lacking a true community.

The Bourgeois' dilemma is therefore an insoluble enigma: he/she must work for others, but he/she can only work for him/herself. Kojève resolves such contradiction through the mediation of Roman law which, thanks to the principle of private property, allowed the Bourgeois to work for him/herself *as a legal person*, and at the same time for the Property, which has been transformed into money. The consequence is that the Bourgeois works for the Capital, which subjugates him/her as much as the Master subjugates the Slave.

45. A. Kojève, op. cit., p. 47.

46. The Masters have become Slaves themselves.

47. A. Kojève, op. cit., p. 65.

At this point, Kojève provides the keystone of the whole question, stating that according to Hegel, as well as Marx, ‘The core phenomenon of the Bourgeois World is not the subjugation of the worker, or the poor Bourgeois on the part of the wealthy Bourgeois, but the subjugation of both on the part of Capital’.⁴⁸ Kojève’s interpretation seems consistent with what Marx writes in the Capital with reference to the sphere of necessity, where work – all work, not just employment – is thought of in terms of techno-economical subjugation, while only crossing the boundary of that sphere the space of freedom might be reached, which for the Slave is an idea, a goal to be achieved at present (while for Marx it is an issue postponed to a later date).

As if to say that even the Bourgeois-self-employed worker works ‘for others’, in the economic order dictated by the Capital; he/she is neither Slave nor Master, but, as Slave of Capital, he/she is ‘son propre Esclave’.⁴⁹ Capitalism has made man a ‘useful thing for man’, defining a social space where all works have become commensurable and interchangeable,⁵⁰ they have been ‘equaled’.⁵¹ Workers, whether employed or self-employed, live in the sphere of necessity and produce in a universal way, within an instrumental dimension, attracted within the circuit of capitalist production, hinged in the Master-Slave relationship where the former no longer encounters resistance from the latter, but the latter, in the end, can build a positive relationship with work, and make it the cause of one’s freedom.

3. The employment contract

Now we should ponder the role of law, which seems to abandon its function as an impartial third party to formally build a relationship of dissimulation, which tends to hide the subjugating nature of working for others that characterises work in general, and therefore the sphere of self-employment, as well.

In a note from his great work on law,⁵² Kojève writes that bourgeois law tends to replace property with work, which is defined here as ‘effort in general’, as the property being legally valid (or just) ‘qu’en tant que fonction de cet effort’.⁵³ In this perspective, if the Master has created his/her humanity through the Struggle for recognition, the Slave, giving up the Struggle in order not to risk his/her life, bases his/her human value on the ‘devoir être’⁵⁴ of work and relates all human values to Work, or effort in general, except that of the Struggle, where what matters is essentially the risk.

What Kojève calls *Economic Society* therefore arises from the social interaction of individuals as Workers. This is possible to the extent that we differentiate the humanisation of man through the Struggle for recognition from the Struggle for Work. However, social interaction (not entailing any legal phenomenon) is not enough; the mediation of law is necessary. Workers become citizens to the extent that their ‘humanity’ is recognised by the State; a citizenship based on work (as stated in Article 1 of the Italian Constitution) and not on the Fight (as happens in the aristocratic state).⁵⁵

48. A. Kojève, op. cit., p. 66.

49. Its (the Capital’s) own Slave.

50. C. Laval, *L’homme Économique*, Paris, Gallimard, 2007.

51. J.-P. Vernant, *Myth and Thought among the Greeks*, Princeton, Princeton University Press.

52. *Esquisse d’une phénoménologie du droit*, Paris, Gallimard, 1981.

53. *Esquisse*, cit., p. 301 (as being the function of this effort).

54. ‘Must be’.

55. *Esquisse*, cit., p. 520.

We are therefore in the heart of the anthropogenetic (or sociogenetic) act of Work, and now it is very important to observe that, according to Kojève, the relationship between Master and Slave can – actually must – be interpreted as the result of a contract, which is not, on the other hand, identified as pertaining to a particular typology, but it is conceived in very general terms, as an employment contract ‘in the broadest sense’,⁵⁶ leading man, through the productive work that transforms Nature, to create an ‘artifact’, a technical and human reality. Translated into legal terms, this passage radically questions the alleged ‘ontological’ distinctions between working ‘for others’ and working ‘on one’s own’; it is a radical criticism, which from the theoretical level must also be able to be translated into positive, formal-juridical terms. The employment contract, as Lotmar already understood at the end of the 19th century, is a unitary concept, although differentiated.⁵⁷ A few years before *Esquisse*, this conception in the broad sense of the employment contract had been represented in the Report to the preliminary draft of the Italian Civil Code by the jurist Alberto Asquini,⁵⁸ who, describing the legislation on the employment contract, claimed to recognise ‘the existence of an unnamed category of *locatio operis*, qualified by the position of independence that the worker assumes with respect to the employer’. According to Asquini, this category ‘will be governed by the general principles of obligations and by *the rules of the employment contract which do not necessarily presuppose the subjection of the worker to the hierarchical and managerial power of the counterpart*’. The employment contract does not thoroughly exhaust the plethora of relationships concerning work performances ‘for others’: even self-employment must be regulated and socially protected by the rules conceived for the legal relationship that the legal practice designates *par excellence* as an employment relationship.

The fundamental category of work in bourgeois law is therefore unitary, and it coincides with what Kojève defines as the category of ‘effort in general’, or rather of a ‘denying act’. The latter denies the natural datum within a contractual relationship in which worker A exchanges with B a property (having become Work) for another property, according to a principle of equivalence of exchanged things and acts.⁵⁹

With the rhetoric of corporatism, this social vision of self-employment is described by the new Italian Civil Code that ‘assumes work as a living and perennial source of citizens’ rights’;⁶⁰ hence its particular ‘social profile’ that is mentioned in the ministerial report (no. 914), which, by informing the case related to Art. 2222 of the Italian Civil Code, requires its placement in Book V of the Civil Code, which is dedicated to labour.

However, the Civil Code will not valorise in regulatory terms the distinction between the procurement contract (characterised by the prevalence of the patrimonial and speculative element) and the self-employment contract (characterised by the actual work of the *artifex*), thus breaking

56. *Esquisse*, cit., p. 302.

57. P. Lotmar, *Der Arbeitsvertrag nach dem Privatrecht des deutschen Reiches*, I, Leipzig, Dunker & Humblot, 1902, places various types of work in the context of *Arbeitsvertrag* such as ‘the seafarer, the haulier on land, on water and at sea, the forwarder, the transporter, the agent in civil affairs and commercial agents, the commission agent, the depositary and the warehouseman, the lawyer, the commercial agent and the commercial auxiliary, the commercial and manufacturing apprentice, the industrial worker ...’; the *fil rouge* that connects them is the involvement of the worker, who ‘depends’ on the labour contract (in the sense that he must conclude it in order to live, and is therefore in a situation of ‘economic constraint’).

58. *Progetti preliminari del libro delle obbligazioni, del codice di commercio e del libro del lavoro*, Vol. I, Roma, La Libreria dello Stato, 1942, p. 3 ss.

59. *Esquisse*, cit., p. 303.

60. A. Putzolu, *Il libro del lavoro nel nuovo codice civile*, in DL, 1941, I, p. 275.

Asquini's promise. By constructing an evanescent *ad hoc* discipline for the self-employment contract (Articles 2222–2228 of the Civil Code) which excluded the extension of the protections attributed to the employment contract *par excellence* (due to the absence of the subordination constraint), the Civil Code matter-of-factly left self-employment in the hands of the market. Moreover, this happened despite the fact that there was a great abundance of situations where the absence of subordination was not synonymous with independence, so that the modalities of the *perficere opus* got close to, even though without overlapping, employment in all its forms.⁶¹

4. Self-employment and social class

As we have seen above, the fact that all the work is inserted in the capitalist social process of production seems to absorb, greatly reducing its oppositional character, the juridical-categorical distinctions between employment and self-employment, both on the purely normative level and on that of sociological analysis, referred to as the social 'class'. If in the analysis conducted by Marx employees, capitalists and landowners constitute the three great classes of modern society, founded on the capitalist mode of production,⁶² the analysis of the actual reality demonstrates a more complex and historically changeable situation, because such classes do not exhaust the complexity of the social stratification. As a matter of fact, between the two classes placed by Marx at the extremes of the social stratification, there are other 'middle' classes, made up of different social figures, connected to the self-employment of the time: small owners, small traders, traders, usurers, financiers, public service providers, artisans, etc. Analytically speaking, these social groups, consisting of capital and proletariat, move between the poles of social stratification, in accordance with the historical situations considered and according to the degree of development of capitalist production. Although lacking a unitary character – which cannot be traced in the identity of their incomes and their sources of income⁶³ – these classes are nonetheless functional to the existence of the system, in the sense that they respond in a diversified way in different historical moments, in order to preserve or revolutionise the system itself. Therefore, such groups are characterised as social groups, as well. However, they are no longer determined like capitalists and employees, but they are dynamically linked to the class structure existing in the capitalist mode of production. We might say that from an abstract perspective, these groups are the remnants of the medieval guilds. However, unlike these, which had their own unity of action against the power of the lordship, the middle classes do not move towards collective but individual interests. Moreover, only in moments of crisis can these individual interests connect with each other, starting movements towards one or the other side, towards the capital or the proletariat.

Therefore, belonging to a class does not determine the nature of work, but it is the nature of work that conditions the class structure. Austrian sociology of Marxist inspiration had individuated, in the material processes of production, a tendency of the middle class to gravitate towards the proletariat, thus decreeing the 'proletarianisation' of self-employed workers (defined as *Proletaroiden*) as early as the 1920s.⁶⁴ However, it is mostly Braverman's analysis in the middle of the 1970s which

61. See U. Romagnoli, *Arriva un bastimento carico di "A"*, in M. D'Antona, a cura di, *Politiche di flessibilità e mutamenti del diritto del lavoro: Italia e Spagna*, Napoli, ESI, 1990, p. 39.

62. K. Marx, *The Capital*, supra note 18.

63. K. Marx, *The Capital*, supra note 18.

64. S. Bologna, *Notes pour le séminaire sur 'post-operaisme'*, Université Paris VIII, 19 février 2021.

conceptualised the passage of the productive middle classes, self-employed workers, traders, professionals, artisans into the sphere of the ‘working class’ as a characteristic of monopoly capitalism.

Like the working class, the middle class category does not have economic and employment independence; it is ‘employed’ by capital and its branches, and in order to survive it must incessantly renew its work for the capital. In the wake of the Bourgeois-Capital relationship described by Kojève, self-employed workers now work for the Capital; they are themselves part of the class that embodies Capital and employs labour.

If in Marx, self-employment (in his meta-historical vision) is still ‘non-productive’ work to the extent that in a capitalist regime productive work creates exchange value and therefore surplus value (excluding any type of activity that is not exchanged for capital), the transformation of capital into monopolistic capital has changed the ‘social form’ of self-employment, transforming it from unproductive to productive. This means the passage from self-employed, placed by some Marxist sociologists even outside the distinction between productive and unproductive work as being extraneous to the capitalist mode of production, to capitalist work: the capitalist mode of production has subordinated to itself all forms of work, and by now all work processes are involved with capital, leaving behind them their own toll of surplus value.⁶⁵

In this transformation we can find the underlying pathology of contemporary humanity, subjected to productive rationality and to the processes of capital accumulation, with no more exceptions: with a semblance of pertaining to an independent workforce, the self-employed worker moves towards the condition of subjugation, with the false awareness (which today characterises the neo-plebs)⁶⁶ of being an independent subject of ‘one’s’ work.

The great processes of outsourcing that characterised the turn of the millennium, and subsequently, the advent of a project-based capitalism,⁶⁷ have continued this path, entailing the relational contestation of personal skills and the independence of subjects. Rather than a proletarianisation of self-employment, it was a continuous extraction of surplus value from forms of self-employment integrated into productive processes guided by cognitive capital,⁶⁸ where the subordination of the worker to the employer is replaced (but in fact maintained) through a contract for the supply of services regulated by commercial law. These self-employed workers now fully participate in what Marx called the ‘misfortune’ of being a productive worker. In its dissimulation, the juridical-capitalist system claims to have transformed the (adjective-less) ‘worker’ into an entrepreneur of him/herself, not participating in capitalist practices under the pressure of constraints or external stimuli, but by virtue of the strength of one’s own independent motivation to result, to performance.

In this ambiguous valorisation of people’s self-realisation, we find one of the most acute paradoxes of neoliberal capitalism. Self-employment accentuates its character of work ‘in production’, integrated into the production processes of others, coordinated and/or organised within spaces of fictitious freedom, economically dependent, subjected to excessive demands and insecurity, subsumed in a sphere of social de-solidarisation. It is as if to say, on the one hand, that the scope of self-employment shifts from being a free space of self-organisation to being eminently governed, ‘programmed’, coordinated, aligned with ‘projects’ which the sphere of production uses to satisfy the *homo oeconomicus* fundamental needs. On the other hand, we might say that in this

65. H. Braverman, *Labor and Monopoly Capital. The Degradation of Work in the Twentieth Century*, New York and London, Monthly Review Press, 1974.

66. P. Perulli, *Nel 2050. Passaggio al nuovo mondo*, Bologna, Il Mulino, 2021.

67. See L. Boltanski, E. Chiapello, *Le nouvel Esprit du Capitalisme*, Paris, Gallimard, 1999.

68. See Y. Moulieur Boutang, *Le capitalisme cognitif. La nouvelle Grande Transformation*, Paris, Editions Amsterdam, 2007.

reference of self-employment to the projects of the total market, the links connecting all forms of work (employed and self-employed) to social citizenship are being deconstructed.

In this process, we can now see the extreme negation of the social value of self-employment, which can be found both in the gradual decrease in professional work, in the work contract in favour of a rampant recourse to the *animal laborans*, and in the activity of 'dismantling of labour law', in the name of flexibility, suited to the instability of markets and the volatility of goods and services. Labour law itself, in its collective social components, has attempted to defend its traditional core, without understanding that the *animal laborans* could also be found in the sphere of the new generation self-employment, in the sectors of logistics and transport, of services, of care-giving work and in the various fields connected to industrial work.⁶⁹

That being said, we see self-employment losing its ideal-typical characteristics: the creation of exchange values whose fundamental and immediate purpose for the worker, Marx writes with reference to the city's crafts, is 'the subsistence of a man as an artisan, as a master craftsman, and consequently use value'.⁷⁰ Consequently, the self-employed will become the 'independent workforce' of small employers and freelancers, of professionals in the media sector, but also professional firms, individual artisan or services micro-enterprises: new individualised workers without recognition of their effective value - where the latter is not economic, but the moral value of being as an end in itself, of subsisting as a person and of self-realising one's being in work.

Persisting to believe that working for others constitutes the rationale of labour law only if the worker is legally employed is therefore equivalent, on the one hand, to forcibly including all productive work deserving protection in the category of subordination, thus reproducing the contradiction of the (social democratic) parties of the left of the 20th century, which instead of aiming to overcome subordination, advocated this phenomenon in order to establish a more just social order.⁷¹ On the other hand, it is equivalent to denying the possibility of de-proletarianising self-employment in order to make it authentic work - getting humans to externalise their own being - to make it work that can still be liberated, that is, 'in-operated' (*dés-ouvré*): not in the (even psychopathological) sense of non-work or of free time, but on the contrary, as Nancy indicates, of work that is not labour but *praxis* and which has as its end 'not to make an end of sense'.⁷²

Moreover, concerning the sphere of legal effects, subordination as a hegemonic category excludes from protection the workers who, although being integrated to different extents in the processes of production and valorisation of capital, do not match with the paradigm of a dependent activity performed under the direction of the entrepreneur, because, on the contrary, they are trying to realise their 'independence' by emancipating themselves from the exclusively economic aim of the capitalist social system of production.

Therefore, the true and original function of labour law should be the fulfilment of the Master-Slave dialectic within Work in general, through self-consciousness, which transforms servitude into its reverse, and makes it become actual independence. The Slave, with his/her service, has suppressed his/her servitude: the anthropogenic act has been fully accomplished, the worker has

69. See A. Perulli, *Economically dependent / quasi-subordinate (parasubordinate) employment: legal, social and economic aspects. Study for the EU Commission*, Brussels, 2003.

70. K. Marx, *Pre-Capitalist Economic Formation*, New York, International Publisher, 1964, p. 118.

71. See D. Meda, P. Vendramin, *Réinventer le travail*, Paris, PUF, 2013, p. 22; adde B. Stiegler, *La société automatique. 1. L'avenir du travail*, Paris, Librairie Arthème Fayard, 2015.

72. J-L. Nancy, *The sense of the World*, University of Minnesota press, 1997.

ceased to be the animal “he/she is for the Master and to his/her eyes”.⁷³ However, in order to do this the Slave, not having been recognized by the Master to the extent that he/she has not risked his/her life in the Struggle for recognition, must rise up against the Master, resume the fight and accept the risk. The same must be done by the Bourgeois self-employed worker, who believes him/herself to be working for him/herself while it is for the capital, in order to cease being a slave and become a citizen with rights and duties, dignity and virtue.

5. The work of the Spirit: a new alliance

Where, then, do we have to direct the Work (all its categories: manual and intellectual, employed and self-employed) to ensure that it is able to free itself and regain its independence? The answer can only be: towards the most accomplished form of independent work in history, that is the work of the spirit, namely, work as a profession and vocation that deals with science for itself and not only for the commercial or technical success that it might entail for people.⁷⁴ In the realm of science, Max Weber writes: ‘the only person to have “personality” is the one who is wholly devoted to his subject’.⁷⁵ Not only is scientific work – the *scientiam facere* – an expression of personality as not being an imposed work, but founded and guided by inspiration and *mania* (in the Platonic sense). This also happens in the artistic field, where ‘we know of no great artist who has ever done anything other than devoted himself to his art and to that alone’.⁷⁶

Therefore, the question we must ask ourselves today is the following: can the work of the spirit represent again the paradigm of a truly independent and utility-producing work, as being ‘harnessed to the course of progress’?⁷⁷ Is there, in this perspective, the real possibility of overcoming the steel cage represented by the dependent and alienated form of work? Or has the inexorable disenchantment of the world also overwhelmed the *geistige Arbeit* and definitively subsumed it into the technical-economic system as a functional substitute for what is technically employment?

As Nancy wrote, defining the contemporary economic sphere in terms of an ‘ecotechnics’, a global structuration of the world as the reticulated space of the capitalist, globalist and monopolist organisation *par excellence*, we are faced with an alternative that is as epochal as it is vertiginous: ‘either ecotechnics is the entire sense of work – of a work henceforth infinite, dazed by its own infinitude and by its indefinitely growing totalization – or else ecotechnics opens work up to sense, in-operates work unto the infinity of sense’. If the first hypothesis is the one we have

73. A. Kojève, *Esquisse*, cit., p. 256.

74. Scientific work and political work are both intellectual work, and together they represent the hegemonic form of work in the Modern. According to Massimo Cacciari, *Il lavoro dello spirito*, supra note 34, in the work of the spirit, a conatus persists to resist as an autonomous power with respect to all its economic, political and religious subsumption. In the perspective adopted here, in which the work of the spirit is an expression of the human person, with all the philosophical-juridical implications that this term entails, it is pertinent and useful to recall the philosophical anthropology of Max Scheler, where the person, as the centre of the acts in which the spirit concretely manifests itself in the finite being, is fundamentally characterised by the existential capacity to emancipate, free itself and free itself that it (spirit), or rather the centre of its existence, [Revise wording] possesses in relation to power, pressure and dependence on the work-force; such a being ‘has the world’: see M. Scheler, *The Human Place in the Cosmos*, Northwestern University Press, 2008 (first published 1928).

75. M. Weber, *Science as a Vocation*, in M. Weber, *The Vocation Lectures*. “Science as a Vocation”, “Politics as a Vocation”, Indianapolis/Cambridge, Hackett Publishing Company, 2004, p. 10.

76. M. Weber, *Science as a Vocation*, p. 10.

77. M. Weber, *Science as a Vocation*, p. 11.

before us, which continues the path of proletarianisation of self-employment described by Braverman and before him by the theory of the *Proletaroiden*, the second possibility refers to the non-economic paradigm of the *geistige Arbeit*. It is neither a matter of liberation of work, nor the liberation within work or of the access to 'leisure' as a return to the *scholé*,⁷⁸ given that in a complex society heteronomy cannot be completely suppressed in favor of autonomy.⁷⁹ Rather, thinking about this possibility, about this need to imagine another way of conceiving work, whose form is referred to as the work of the spirit, represents the *ex-static* and *ex-centric* sphere where the juridical reflection on self-employment and its critique lie.

However, in order to pursue this project to render work in-operative and make it really independent and liberated from the urgency of practical need without halting the general mechanisms of development, we must rethink the concept of work of the spirit, observing now the side of the political profession. The work of the politician is an expression of a profession as a vocation; even the work of the 'professional' politician (distinguished from the 'political amateur' that is content with 'sterile excitement') is independent work, because it is based only on 'passion' (understood as 'commitment to the matter in hand', to a 'cause'), on the 'sense of responsibility' (with respect to the cause) and the 'sense of proportion' (understood as the ability to distance oneself from people and things).⁸⁰

It is true that we are now far from the Fichtian idealism individuating in the Politician the highest form of Work in general, where the Ego expresses itself in its inter-subjectivity and liberates itself from any external authority or power. As a matter of fact, it seems that the disenchantment of the world has forced the politician to recognise how the capitalist social system of production now constitutes 'the fundamental pivot of its own authority, stability and duration'.⁸¹ And yet, even if Weber (like Kojève later) sees the work of the Spirit organised in the social system of production of Capital, in the form of the *geistige Arbeit* an 'active memory' of what characterised the original *Beruf* persists, with its elements of creativity and ethics irreducible to economic calculation⁸² (not to be confused with scientific calculation as the main result of intellectualisation and modern rationalisation).

This is basically the last possible scenario of the Weberian disenchantment: the possibility that the Slave, having an idea to realise and becoming aware of his/her independence, moves forward towards Freedom.⁸³ However, in order to move towards the freedom of self-liberated work, and in order to be objectively independent, work also needs new normative categories and an axiological project to get back on track. This normative project naturally presupposes the overcoming of the binary system of subordination/autonomy as a ratio of labour law, in favour of a wide array of work protections where universalism and selectivity are correctly delineated and mixed. Such protections should be characterised by the enhancement of autonomy of work in all its (contractual, social, economic, psychological) dimensions towards the liberation of work from the chains of heteronomy; the expansion of freedom conceived (in the republican sense) as non-domination in

78. As B. Stiegler advocates in *La société automatique. 1. L'avenir du travail*, supra note 67.

79. A. Gorz, *Métamorphoses du travail. Quête du sens*, Paris, Galilée, 1988, p. 119.

80. M. Weber, *Politics as a Vocation*, p. 77.

81. M. Cacciari, *Il lavoro dello spirito*, supra note 34.

82. With reference to the intellectual professions that go beyond the logic of the market, where the legal regime of work is not according to the market value, but according to the consideration of its meaning (and, I would add, of its social 'recognition'), see A. Supiot, *Le Travail au xxe siècle*, Ivry-sur Seine, Edition de l'Atelier, 2019.

83. A. Kojève, *Introduction*, cit., p. 177.

the places of production and in value chains, promoting freedom made up of capabilities; the development of self-determination power within work and within the control of production processes in order to make the worker a *homo faber* and not an *animal laborans*; the creation and recognition of collective power also in the areas of self-employment, removing all work from the domain of competition law; and finally, the mobilisation of innovative regulatory tools that are the expression of work characterised by ‘freedom’ rather than by ‘necessity’.⁸⁴

Only a new alliance between the two forms of the work of the spirit, the work of science and the work of politics, can carry out the project of removing Work (as a whole, including physical work, which has an absolutely equal value to that of art or science)⁸⁵ from the hegemony of the techno-economic sphere, breaking the chain that today binds science as a profession to capitalist development, in order to create a paradigm of work that is irreducible to pure economic calculation and to the mere reasons of trade exchange. A path requiring the ability of politics to be not only the art of the possible, but to be art of the possible achieving its purpose to the extent that it should try, ‘again and again, to achieve the impossible in this word’.⁸⁶

Outside this reasonably utopian perspective, we move away from any reflection on the fate of self-employment (but more generally about the fate of the work) in capitalist society.

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84. An example of a ‘norm of freedom’, which moves away from the realm of necessity, concerns the self-employment relationship via a digital platform. The Art. 47-quinquies of the Italian law n. 128/2019 prohibits the platform from excluding the worker or reducing his job opportunities due to the refusal to respond to a call by the rider. The rule is of capital importance, because it eliminates one of the main methods of controlling workers who operate via a digital platform, alternative to the traditional ‘command and control’ system based on the typical powers of the employer (directive-control-disciplinary), consisting in the exercise of a sanctioning power with which the platform implements the selection of riders, establishes their belonging (or not) to its internal labour market, and, together with digital reputation assessment mechanisms, exercises its domination over riders. Consequently, the platform will no longer be able to sanction the worker who refuses to respond to the call by excluding him from access to subsequent job opportunities, or by denying him entry to the ‘reward’ levels with better contract conditions, or by reducing job opportunities by banning the service provider with priority access due to the statistics on absence rates, putting in place retrocessions, deactivations, and so on.

85. S. Weil, *La personne et le sacré*, in *Écrits de Londres et dernières lettres*, Paris, Gallimard, 1957.

86. M. Weber, *Politics as a Vocation*, p. 93.