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## FROM THE NEOLIBERAL TO THE PARTICIPATORY FIRM

A comparative study of the institutional context for  
employee participation in organisational governance  
in Australia and Italy

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**Abstract**

The current paper is a comparative analysis of employee participation in organisational governance in Italy and Australia. Cultural values determine the expression of institutional configurations, and to this end, we have adopted Hall and Soskice's Varieties of Capitalism and the Theory of the Firm as informing theoretical frameworks for our comparative study. Hall and Soskice represent Italy as a hybrid economy, and Australia as a liberal market lead economy. The main theoretical contribution of our paper is twofold. First, we hypothesize that the Australian Liberal Market Economic Configuration offers fewer opportunities for employee participation in organisational governance. Second, we critique mainstream Theory of the Firm on the ground that it is inadequate in explaining the phenomenon of employee participation across both economic configurations. We tested our hypotheses on some crucial institutional dimensions: (i) the role of the industrial relations system; (ii) the nature of corporate law; (iii) and the relative diffusion of different organisational forms with participative *vis à vis* exclusionary governance (although we acknowledge that participatory organisational forms are rare in both Italy and Australia) . We find support for differential facilitation of employee participation across Australian LME and Italian Hybrid economies.

**Key words:** worker cooperatives; worker control; third sector; neo liberal firm; industrial relations; labour law; corporate law; Australia; Italy

# **FROM THE NEOLIBERAL TO THE PARTICIPATORY FIRM**

## **A comparative study of the institutional context for employee participation in organisational governance in Australia and Italy**

### **1. Introduction**

Hall and Soskice's work on varieties of capitalism offers insights into the competitive advantage of organisational structures being aligned with an institutional context. It grows out of the organisation's ability to manage relationships as a means of accessing resources and market share for the firm. The last decade has produced a renewed interest in institutional frameworks. Hall and Soskice (2001) maintain that different economic configurations, (these can be either market lead or coordinated economic configurations), can confer a competitive advantage to organisations operating with congruent governance systems. Liberal Market Economies (LMEs) are characterised by well capitalised share markets, promotion of common law, deregulation of industrial relations and finance, and a marketization of employee education, industrial relations and employment opportunities (Hall and Soskice, 2001). Market led economic structures favour discontinuous leaps in product improvement. Extreme responsiveness to volatile markets results in externalisation of an organisation's internal labour market- employment security and a firm based career path are possible, but increasingly rare. This system places to a great extent the burden of accumulation of human capital and of the costs of lay-offs and relocation on workers because of the pronounced liberalization of the labour market and the necessity to relocate employment towards more dynamic and growing firms.

In contrast, Coordinated Market Economies (CMEs), such as Germany and the Scandanavian countries, are said to promote tight knit structure and demonstrate a high degree of integration between vocationally oriented education, job/career opportunities, industrial and labour protections, banking and industry policy (Hall and Soskice, 2001). Coordinated economies are said to reward cooperative rather than competitive mechanisms. Among the main features of coordinated economies, it is often stated that labour is not any more a simple factor of production, but instead it becomes an active and equal stakeholder through mechanisms of participation, such as the formation of unions and the related industrial action, of workers' councils in systems of codetermination and of worker cooperatives.<sup>1</sup> Coordinated systems tend to better internalize the processes of human capital accumulation and are less mediated in favour of workers interests in terms of lay-offs and relocation. It is our contention that there is a cascading effect from these national cultures, down to legal frameworks, and to the working mechanisms defining the firm itself. This has implications for the context of employee participation, and it is our view that a hybrid mediteranean economy such as Italy will offer greater opportunities for employee participation in organisational governance than Australia's LME style economy.

The cultural contexts of Australia and Italy show markedly different relationships in terms of the role of labour within the economic context. In Italy labour has a significant degree of involvement in organisational strategy through the two main channels of unionization and worker representation at the plant level. Furthermore,

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<sup>1</sup> Worker cooperatives are here defined as mutual benefit entrepreneurial organization owned or otherwise run by the workers categorized as members on the basis of the "one member, one vote" rule.

contrary to Australia, Italy records a significant number of worker cooperatives.<sup>2</sup> In Australia, on the other hand, there is a trend for a clear distinction between managerial decision makers and labour in the organisation's strategic process (Insert reference). This is influenced again by the form of governance, which can be a proxy for organisational structure and private ownership.

We start from organisational ownership itself, the design of which reflects governance mechanisms that determine the role, power, rights and degree of involvement of different groups of patrons (stakeholders), typically investors *vis à vis* workers (Hansmann, 1996; Williamson, 2000). The organizational governance perspective is taken with the aim of exploring the role of labour in the strategic organisational process. The central question of this paper is drawn out of this comparison and revolves around the role of labour in the organisational governance process. To this end, we consider the two extremes of the organizational spectrum, with corporations in neo liberal economies at one extreme, and worker owned enterprises or worker cooperatives at the other extreme. We then also consider the analogies and differences in both categories and in intermediate cases in the two national cases of Italy and Australia. Studying the two extremes of the spectrum allows to better evidence the different features of different ownership and organizational models. On the other hand, the reality of economic systems often shows hybrid more than pure forms, and advises a more nuanced approach in which intermediated cases are carefully considered as well.

Addressing this central question requires consideration of the macro-economic context and of institutional and legal systems in terms of the main arrangement that allow labour to be active participant in the development of the economy. The general expression of the ownership forms and of other institutions regulating industrial relations and industrial action determines the degree of strategic involvement by labour. This is true both in Australia and in European countries, even if the two areas differ widely in the degree of the involvement of labour. In Australia this is restricted to limited forms of unionization and industrial action, while exclusionary governance and ownership arrangements corresponding to exclusionary relationship between labour and capital are dominant. The involvement of labour is wider in European CMEs, where it is often accompanied by the presence of work councils in Europe.

## **2. Critique of the mainstream Theory of the Firm**

Neoliberal thought became dominant over the last decades of XXth century and beginning of the XXIst in LMEs. This protracted dominance led to institutional reconfiguration, which in its current form can be explained as representative of a power shift in favour of market lead economic policies, at the cost of policies of democratic or social inclusion. Under this system, labour, along with other collective organisations is generally absent from the strategic decision making process, which is subordinate to economic growth. The ability of organisations with exclusionary governance to lead economic growth in LMEs relies on the wide availability of a qualified labour force, which is often recruited from other companies and other countries. Such a labour force does not need the lengthy and uncertain processes of

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<sup>2</sup> The Italian National Association for Worker and Producer Cooperatives - Ancpl-Legacoop – recorded, in 2010, 893 cooperatives and 5 consortia, reporting a consolidated turnover of 12,87 billions euros, employing more than 36.000, of whom about 24.400 are worker-members (ANCPL LegaCoop, 2012).

intra-organizational training and human capital accumulation via internal labour markets. Under these stringent conditions, the intensive use of high powered monetary incentives can sharply boost productivity also in limited duration employment, for example by resorting to piece rates contractual structures (Lazear, 2000; Lazear and Shaw, 2007). Recourse to high-powered monetary incentives on spot labour markets is, by its very nature, a short-term solution that does not support the long-term growth needs of workers in terms of knowledge and competencies. Obsolescence of labour skills can be especially dangerous in presence of volatile demand and significant discrete technological shifts. Relocation processes are likely to lead to premature skills obsolescence and greater socio-economic vulnerability amongst unskilled and semi-skilled workers. Heightened uncertainty can be partially compensated by increased monetary remuneration, as demonstrated by recent experimental results, (Bartling, Fehr and Schmidt, 2012; Dohmen and Falk, 2011). However, key findings from the different fields of economics, management, and psychology lead to the conclusion that reductionist framing of labour as a generic production factor on spot labour markets is only effective in short term productivity increases (Zamagni, 2012). The focus on outcomes depending almost exclusively on monetary incentives does not account for longer term and intrinsic worker expectations, which refer to employment stability, professional and personal growth, and happiness (Depedri, Carpita, Tortia, 2012; Olsen and Peters, 2005, Schellenberg, 2004). Furthermore, in these circumstances the linkages between labour and the internal workings of the organization are substantially weakened, and the employee becomes literally ‘a human resource’, or an interchangeable component with no conceivable role in governance up to the point of labour being a sheer and impersonal factor of production, more than an active stakeholder (Sacchetti and Tortia, 2013).

This critique calls for a broader perspective around the role of the organisation and organisational governance, the objective being a reconciliation of economic and productivity growth, on the one hand, and of worker welfare and the involvement of labour as an active stakeholder of the employing organization, on the other hand. We then test our framework with the prevailing systems of institutional configuration in Australia and Italy.

Throughout this process we strive to be aware of the difficulties in assuming that one inclusive worker oriented organisational model can provide the solution to exclusionary governance and socioeconomic inequity. Among the many critiques addressed to the possibility of creating and developing organizational forms in which workers are active stakeholders, we will here focus on the three most serious ones that concern governance. First, the new institutionalist approach to the study of the firm has highlighted the risk of inflated organizational costs in terms of inflated decision making costs when a hierarchical governance structure based on concentrated ownership is substituted by an horizontal one, in which workers become active actors, and interact with managers also in the formation of strategic decisions. This risk can become especially serious when workers are heterogeneous and characterised by heterogeneous motivations, preferences and objectives (Hansmann, 1996). Second, the mainstream institutional literature has evidenced the risk of bilateral or multilateral opportunism, such as ‘lock-in’, when pure market transactions are overcome in hierarchical or coordinated organizational relations (Williamson, 1973, 1975; Hansmann, 1996; Grillo, 2012). ‘Lock-in’ occurs when contractual parties make transaction-specific investments allowing the opportunistic exploitation of information or positional advantages. Proponents of the neoliberal firm have been

particularly sensitive to this risk from organised workers to capital, or in organisational forms based around a substantial degree of worker involvement (Hayek, 1944, Friedman, 1962). The risk of ex-post opportunism (workers' exploitation of capital) is presented as the most powerful justifications around investor ownership in most corporations. It is argued that investors make the most strategic investments for the survival and expansion of the firm, hence they are most vulnerable to exploitative behaviours by the other constituencies, mainly workers and customers, but also managers in the literature on the separation between ownership and control (Berle and Means, 1932). This literature represents investor ownership, via residual control and residual rights of appropriation, as the best guarantee against the risk of ex-post opportunism around firm-specific capital investments, when employees' role in governance increases. Third, free-riding and shirking on effort is depicted by mainstream institutionalist theory as an insurmountable form of opportunism in organizations in which workers are left free to organize their work. Each individual worker has a clear convenience in reducing his/her effort and in exploiting the better performance of fellow workers, especially if these workers are skilled (Alchian and Demsetz, 1972, Kremer, 1997).

Our answer to these serious challenges addressed against the possibility of involving workers as active stakeholders of the organization also in decision making processes is based on the idea of institutional evolution and of the possibility to set up and modify governance (Ostrom and Basurto, 2011). In very simple terms, inflated organizational processes can be faced by designing adequate mechanisms of representation and delegation, and by defining the scope and limits of decision making power held by cooperative managers. The opportunism of workers against capital can be addressed in cooperatives by developing already existing financial mechanisms, for example the accumulation of indivisible reserves of capital that are owned by cooperatives themselves, and the development of loans financing mechanisms by specialized intermediaries. Finally, free riding and other forms of peer to peer opportunism can be halted by peer monitoring, and by forms of graduated punishment of defectors (Ostrom, 1990; Ostrom and Basurto, 2011).

### **3. Towards a new conception of the firm**

A new conception of the firm is beginning to emerge whereby it is seen that the corporation should have some social purpose beyond maximising returns to shareholders (Blair, 1995). The modern corporation has been aptly described as “a constellation of interests rather than the instrument of the acquisitive individual” (Votaw, 1965, p. 28) where the purpose of the corporation is seen as “not individual but social” (Blair, 1995). This approach brings into question the theoretical foundation of the distribution of ownership rights within market lead economies. Investor owned firms represent the dominant, but by no means the only, and in any case a specific form of enterprise, while other forms, that at times have shown to be economically and financially viable and sustainable, are present as well, and can be developed (Borzaga, Depedri and Tortia, 2011). Still, it is important to rebut the argument that worker run enterprises are inferior solutions because they rarely appear in market economies (the number of entries is much lower than in the investor ownership case), and their total number is much lower as well.

Ben Ner (1988) challenges this proposition, arguing in his life cycle model that the investor-managed firm is chosen because it has certain advantages over the labour managed firm (LMF) in the start-up period but after this, in the early mature phase,

the LMF demonstrates its superior performance due to allocative and distributional efficiencies. Our interpretation of this position is that the entry of for profit companies is favoured by and it is more expedite in the existing institutional and cultural contexts, while entry by cooperatives needs new institutional solutions which are not established yet and need in depth refinements. More specifically, to exemplify, financial mechanisms and labour contracts cannot be isomorphic when investor owned companies and worker cooperatives are considered, while instead the tendency in most countries over the last decades has just been to apply the same institutional mechanisms to the finance and labour relations of both types of firm.

To regenerate the theory and practice of the firm from a worker perspective it is necessary to refer to labour as a specific and strategic asset of the organization. Workers make firm specific investments in terms of human capital and specialized skills. This implies that are not only investors that can undergo ex-post contractual opportunism from workers, but also workers can undergo forms of opportunism from the employer, for example in terms of exploitation, or in terms of lack of professional growth and optimal accumulation of human capital (Navarra and Tortia, 2012). Yet, the analysis of the risk of lock-in and ex-post opportunism is usually not extended to these transaction-specific investments of workers. When workers carry out specific and non-contractible investments their entitlements require governance considerations, and an organisational framework that bestows substantial shares of ownership and control rights upon these patrons (Borzaga and Tortia, 2010).

Among established economic theories, new institutionalist writers have indeed taken important steps towards an analysis of the firm that explicitly considers the role of labour as strategic and potentially controlling stakeholder (Hansmann, 1996), though this analysis need to be developed further in the direction of workable institutional solutions that favour the viability and sustainability of worker run enterprises. On the other hand, new institutionalism and new liberal thought often fail to acknowledge the context specific nature of investments conducted by different constituents, as ownership and governance define the field of permissible transactions. Groups of controlling patrons are in a better position to derive higher expected benefits from specific investments. Further the governance rules set by controlling patrons, may preclude minority shareholders from pursuing investment opportunities aligned with their own objectives (Marglin, 1974; Pagano, 1989; Borgaza and Tortia, 2010).

In summary, inclusive and democratic governance forms, which could accommodate the monetary and non-monetary effects of labour relations, need to face arguments connected with ex-post opportunism in contractual relations in terms of moral hazard and free riding, and arguments evidencing the cost inflating features of such governance forms. These challenges appear to have been accurately described by Hansmann (1996), albeit that this is an under-researched area of scholarship. Given the two highlighted counter arguments, ex-post opportunism arguments fail to deliver compelling reasons against workers being actively participating or controlling stakeholders of the firm (Jensen, 2012).

### 3.1. Market *versus* non-market transactions. *The nature of third sector and membership based organizations*

In the foregoing sections we highlighted the shortcoming of the dominant theories of the firm and took initial steps towards the formulation of an alternative theory. In this

section we concentrate instead on non-conventional forms of firm ownership and governance, which are usually grouped under the umbrella concept of the third sector, which is intended to include those organizations that are characterized by either public or private investor ownership. Among third sector organizations cooperatives and other membership based organizations play a crucial roles. These organizations are interpreted as mutual benefit entrepreneurial organizations that are controlled by non-investor stakeholders. Among third sector organizations, in this work we concentrate on worker cooperatives and employee owned companies, as our substantive focus of interest is the role of labour as active stakeholder in the organization.

To overcome the existing shortcomings in the explanation of third sector organizations by mainstream and neoliberal economics, we start from a reinterpretation of their economic nature in connection with the dichotomy between market and organization.<sup>3</sup> We then proceed to deepen the understanding of how governance features are adapted to the specific nature of third sector organizations and how the dichotomy is resolved, not through the absolute domination of one factor, but by managing the tensions involved in this dichotomy (Jensen, 2012).

In third sector organizations markets are present as interfaces connecting the organization to input and output markets. Organisational survival still requires market leadership, or niche dominance, but the market/profit imperative is not mandated as is the case for incorporated organisations (Valentinov, 2007). Third sector organisations endeavour to balance the tension between the market and their democratic values by addressing customer needs, enhancing performance and minimising conflict. Unlike in investor owned firms, the production process largely works as an administered process which is only weakly connected with market exchanges (with the exception of dealing with inputs of raw materials, financial flows and final outputs of the process). As the third sector firm is required to succeed both economically and socially, administered organizational processes respond to rules that can be at odds with the logic of the exchange of equivalents on the market. For example, factors can be remunerated at non-market prices if this is required by the achievement of mutual benefit or social goals.

In cooperatives and other membership based organizations in the third sector governing bodies such as the board of directors are elected by members and govern the organization with the aim of fulfilling members' expectations and satisfying their needs which are both social and economic. This implies that governance is directed to the enforcement and protection of members' participatory rights or beneficiaries' welfare.

Membership rights are most often interpreted as personal rights, which cannot be traded on the market. This also implies that third sector organisations do not take the profit and the market values of tradable shares as their main aim. In conjunction, many third sector organization self-impose (or are required by law to fulfil) more or less stringent limitations in profit distribution by means of partial or complete non-profit distribution constraint. They often also resort to non-market (or partially non-market) resources. For example, unpaid (voluntary) work is not uncommon in third

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<sup>3</sup> We purposefully overcome the well-known Williamsonian dichotomy between market and hierarchies (Williamson, 1973, 1975) since we do not consider hierarchy as being a necessary feature of organizations. Instead, we treat organizations as coordination mechanisms of the economic activity (Borzaga and Tortia, 2010). In this perspective organizations can be and, within the third sector, often are characterized by democratic and non-hierarchical governance.



sector organizations. Similarly, capital resources are often accumulated by reinvesting positive residuals into common capital reserves. This is done to guarantee adequate levels of self-finance for future investment, to shield members against unpredicted future negative events, and to build collateral guarantees that allow the attainment of financial support by intermediaries. These processes are quite independent of the market value of the invested resources and, again, are not intended to maximize their exchangeable value.

In third sector organisations, a portion of the capital of the organization can be collectively owned by community and organisational members in terms of common capital resources (Tortia, 2011). Such an instance of common resources (accumulated capital within not-for profit structures) is that presented within the literature relating to co-operatives. Various authors such as Borgaza and Tortia (2009) have presented common resources as a proxy for alignment between community interests and organisational governance. The implication of rules governing common resources is the facilitation of a number of “bottom lines” for the organisational structure (Ostrom and Basurto, 2011). There is a genuine set of accountabilities and inclusion of community oriented values. Strategy is no longer simply about market effectiveness and orientation, but extends beyond this objective to redress the balance between community/citizenship activities and pursuit of market share.

The importance of common resources for cooperatives can best be seen in their absence. The longevity of successful co-operatives is very much linked to the legislative environment governing demutualisation (the process of converting co-operatives to an investor owned firm). Demutualisation is a greater risk in market led economies with a common law tradition, than it is in European integrated economies with a tradition of legal civil codification. In this regard it can be argued that the symmetry between capital and labour has been mediated to an asymmetry where labour hires capital in a state of economic democracy.

In addition, the broader dispersion of value (beyond costs) can potentially resolve the problems associated with market led organisational governance. Specifically collaborative ownership in the form of cooperative equity is an incentive for financial and non-financial performance. This in turn contributes to organisational resilience. It also gives rise to stable membership, and therefore a less volatile form of equity.

A contrary argument was initiated by Furubotn and Pejovich (1970) who stated that common resources do not always support optimal financial incentives, due to underinvestment and undercapitalization. However, by constituting a common financial basis, collateral guarantees, and an insurance buffer, common resources can promote non-monetary inclusion and welfare. It is in the resolution of this tension that a compromise between solidarity and the market has been achieved in the Italian cooperative movement. This is specifically represented through the management of common resources through legislatively mandated asset locks.<sup>4</sup>

Third sector organisations have also been presented as a remedy for the alienation and disengagement of labour (Knox-Haly, 2011). Labour has the opportunity to be an owner and equal participant in the process of organisational governance through its membership. Purportedly higher levels of engagement also facilitate the phenomenon

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<sup>4</sup> We do not want to conceal, here, the fact that the relation and the tensions existing between the implementation of optimal financial incentives, and inclusive governance processes, are far from being solved in the existing literature and need extensive analysis.

of ‘volunteerism’, which is paradoxical phenomenon, because it is an economically valuable that can increase economic returns without increasing costs. Consequently its role, that can be crucial for the survival of entrepreneurial organizations, is difficult to reconcile with the neoliberal interpretation of the firm, in which all operation need to have a clear recorded value.

Hence, we envisage a framework for this paper, which positions the neoliberal firm characterised by spot labour market transactions at one extreme, while inclusive governance forms that represent workers objectives at the other extreme. We will take the neoliberal interpretation of the firm as benchmark and bottom line organizational process in which the maximization of shareholder value and market exchanges tend to dominate the creation and development of the organization. The potential of inclusive governance in terms of creation of both monetary and non-monetary welfare will be evaluated against this benchmark. We argue that inclusive governance in labour relations is characterised by employment stability and long-term relations in excess of what would be expected to happen in deregulated labour markets and for profit objectives (Navarra, 2010; Navarra and Tortia, 2012; Albanese Navarra and Tortia, 2012). We take third sector organizations as one of the main examples of the implementation of inclusive governance relations. This organizational type shows a strong tendency not to resort to monetary incentives as the main tool guaranteeing high productivity and achievement of economic targets. Instead efficiency is achieved through meeting the intrinsic needs of the involved actors, through participation in operational and strategic decision making, procedural and distributive justice, and labour relations based on transparent relations between managers and the workforce (Borzaga et al., 2011). These organisations feature a wider range of issues over which agreement can be reached and greater efficiency in information flows. Opportunism, typically in the form of shirking, is primarily controlled by horizontal mechanisms such as peer pressure and procedural fairness, rather than hierarchy where the status of employees as partners brings about greater commitment (Jensen, 2012). Workers do have substantial opportunity for interaction with managers and even some degree of control over managerial decisions and holding management to account. In the extreme case, in worker owned enterprises, workers as members of the organizations are in charge of appointing and terminating managers directly or indirectly through elected boards of directors. This governance model exhibits both constraining and empowering features, which are functional to the enhancement of worker empowerment and well-being. Here we mean that while membership rights and the accumulation of common resources may be understood as the main avenues leading to worker empowerment, control over managerial decision may limit to some degree managerial discretion and freedom of operation, but is itself the function and the achievement of worker empowerment.

Within this continuum of the neoliberal and third sector firm we finally interpret the prevailing systems of industrial relations as hybrids that are positioned between the two extreme models (the market based, neoliberal one and the fully democratic one). They represent compromises between competing ends, and are intermingled with the political influence of different social constituencies. In this sense they can be interpreted as emerging, but partial and evolving institutional equilibria, which are clearly influenced also by historical accident and path dependence. As previously noted, we consider the nature and import of inclusive governance as not having been fully and systematically explored (Ben-Ner and Ellman, 2013). The neoliberal interpretation of the firm can be considered the baseline organizational template,

against which our democratic alternatives are evaluated. Also, moving from the neoliberal extreme towards worker control and empowerment we expect to observe a process of internalization of workers motivations and preferences into the objectives of the organization itself.

#### **4. The Role of Labour and Ownership in the Governance of Corporate Organisations: Australia and Italy**

The twentieth century saw the polarisation of the corporate structure between two rival systems of corporate governance – the European social model and the Liberal free market model. Based on the economic success of the USA in the twentieth century the question was raised as to whether there would be convergence around the Anglo Saxon liberal market model. However from a critical perspective this is seen as a struggle between the narrowly focussed Anglo Saxon outsider model of the firm, which can well be represented following the tenets of the principal agent model (Jensen and Meckling, 1976), and the European insider model, which is best represented by inclusive stakeholder model of governance.<sup>5</sup> In this latter model “... all interested stakeholders - managers, employees, creditors, suppliers and customers are able to monitor corporate performance” (Clarke 2004, p.181). The main difference between the two models is that “The Anglo Saxon model places importance on competition and market processes and perceives the main corporate objective as the delivery of shareholder value (often in the short term)” while the European model emphasises cooperation and consensus and “... conceives the corporate mission as the creation of values for all stakeholders in perpetuity” Clarke 2004, p. 9). Here it is interesting to draw on the views of Handy (1997) who describes the repositioning of labour in the contemporary context:

The old language of property and ownership no longer serves us in the modern world because it no longer describes what a company really is. The old language suggests the wrong policies and screens out new possibilities. The idea that a corporation is the property of the current holders of shares is confusing because it does not make clear where power lies. As such the notion is an affront to natural justice because it gives inadequate recognition to the people who work in the corporation, and who are increasingly, its principal assets. (Handy, 1997, p. 27).

Corporate governance is both a system by which power is exercised in organisations as well as a system by which business corporations are monitored, directed and controlled. It is crucial to economic and social well-being, in providing incentives and performance measures as well as “... providing the accountability and transparency to ensure the equitable distribution of the resulting wealth” (Clarke, 2004, pp. 1 -2). Labour and its representatives have taken a number of routes to intervene the governance of organisations from the election of labour representatives to the company board, two tier boards as in German co-determination as well as advocating the takeover and transformation of firms into fully democratic worker cooperative firms. The objective being to alter the nature of power associated with the employment relationship and how work is planned, carried out and managed. These

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<sup>5</sup> Outsider model refers to governance forms based on Boards of ‘independent Directors’ who are neither employees nor agents of the firm.

have been the main aims of the Marcora law (no. 49/1985) in Italy, which regulates the conversion of bankrupt investor owned enterprises into worker cooperatives.<sup>6</sup>

To discuss this in greater detail we now turn to our task of comparative examination of Italy and Australia along the dimensions specified in our introduction. These dimensions are the system of industrial relations (IRS) and coverage of workforces, the role corporate law and organisational governance forms. Both countries share cultural roots and institutional manifestation in solidarity and justice for working people.<sup>7</sup> In both context of industrial relation we can focus on specific institutional equilibria which can be observed and, in this sense, a case study focus represents the soundest path of enquiry. Both countries have well-established national traditions of industrial relations whose origin dates back to the end of the nineteenth century. The main differences between the two IRS are found in the different legal traditions, which refer to common law in Australia and to civil law in Italy, and in the different roles played by the crucial macro and meso-institutions: government agencies, unions and employer associations. In Australia, the common law emphasis has led to the development of a strongly contractual focus in legislation, as it pertains to corporate law, and specialist industrial relations tribunals. The common law emphasis did not create an environment which facilitated collectively owned organisations such as cooperatives. As shall be seen, it is only recently that there have been legislative developments which actually facilitate cooperative development. We shall now analyse one at the time the Australian and Italian system of industrial relations in order to correctly locate them within the continuum going from the neoliberal firm to inclusive governance based on worker ownership and control.

#### *4.1. The role of labour in organisational governance in Australia*

In assessing the role of employee participation in organisational governance in Australia three avenues must be considered. The first is participation through an industrial relations system of courts and an organised union movement. The second avenue refers to the opportunity for employee participation in organisational governance through the alternative of the corporate legal framework (either as employee directors or as employee shareholders). The third channel for employee participation is to assess the prevalence of employee owned firms and worker cooperatives in Australia.

The Australian industrial relations system regulates employment conditions. In essence – the following sections illustrate that institutional configuration around the treatment of labour in organisational governance has generally existed as an uneasy co-existence of two forms of law: (i) corporate law, which represents the firm as just a set of contracts and market exchanges; (ii) industrial law, which implicitly challenges the neoliberal reductionist perspective of labour as merely being a human resource with no rights of participation in organisational governance. This tension is resolved by the exertion of power by the parties involved.

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<sup>6</sup> CICOPA (2011), the Sectoral Organization of ICA (International Cooperative Alliance) for Industry, Services, and Crafts, reports 28 worker buyouts and transformation in worker cooperative in Italy since 2008. As of today, 16<sup>th</sup> November 2013, 36 buyouts in the crisis period are reported in the web-report “La rinascita”: <http://ilbureau.com/la-rinascita-storie-del-workers-buyout-italiano/>

<sup>7</sup> The Papal Encyclical *Rerum Novarum* became a rallying point for the cooperative movement in Italy and its philosophy underpinned the Harvester Agreement in Australia institutionalizing the basic wage and a tripartite compact between the state, the labor movement and business.

Rawlings (2006) notes that Australia enjoyed relatively balanced union-employer representation, where unions held the exclusive right to represent employee interests at the industrial tribunals. Rawlings (2006) argues that collective bargaining was historically protected through conciliation and arbitration, with the unions being allocated an exclusive right of representation at these tribunals. In the past, the industrial awards covering the vast majority of Australian employees also acted as a protection against erosion of employee conditions (Kramar, Bartram, De Cieri, Noe, Hollenbeck, Gerhart and Wright, 2013). The genius of this Australian model was that wages and employment conditions were historically uniquely regulated outside of the market. Exclusive reliance on deregulated labour markets would have otherwise impoverished the role of labour in the economic system and lead to a situation in which workers absorb most of the negative external effects of contractual imperfections (i.e. unemployment and relocation). The downside of this unique system was the reduction of opportunities for employee participation through alternative channels. Rawlings (2006) concludes that the opportunity for industrial arbitration through these industrial tribunals made direct employee engagement in governance (such as workers councils or employee directors) unnecessary. This contributed to limit employee representation under Australian corporate law and undermined serious attempts to introduce democratic reforms to corporations. It also meant weakening of the industrial relations jurisdictions, increased employees' vulnerability, and exacerbation of exclusionary perspectives in corporate law.

The deregulation of the Australian industrial relations system began with the Hawke-Keating Labour Governments from 1983 to 1996. This Government was a proponent of economic rationalism, monetarism and softer neoliberalism (Knox-Haly, 2012). It was this reformist Government which instigated the decentralisation of industrial systems through enterprise bargaining and award simplification (or award restructuring) which reduced the number of protected matters covered in industrial agreements (Rawlings, 2006). These reforms increased the opportunity for the growth of casualized and part-time employment (Senate Committee, 2004). The process of erosion continued when the Howard Government introduced the *Workplace Relations Amendment (Work Choices) Act 2005*, which included disincentives for industrial action, and the option of non-union agreements. Taking a historical perspective it can be argued that, prior to 1983, Australian industrial relations were more aligned with a coordinated market economic model. However the deregulation of historical protections suggests a transition to a liberal market economic model. During this period of transition from coordinated to deregulated models, the level of union coverage of Australian workers dropped. In 1976, 51% of all Australian workers were union members, this fell to 26% in 1999 (ABS, 2000). By 2009, only 20% of Australian workers were union members (ABS, 2010). Given the dramatic weakening of the first channel as an opportunity for employee participation, we now address the opportunities for employee participation through the second channel, i.e. the corporate legal framework.

The Australian corporate model has some distinctive features in its development of an outsider model of corporate governance that distinguishes it from the US and UK Clarke (2007). Only a minority of Australian companies are quoted on the stock exchange and ownership is more concentrated in Australia than in the US and UK. On the other hand, the separation of ownership and control (Berle and Means, 1967) has taken hold to only a limited degree in Australia (Clarke 2004). The percentage concentration of block shareholders (as opposed to institutional shareholders) is much

higher in Australia, than it is in the US or the UK (Clarke, 2004). However the last fifteen years has seen a large growth of institutional shareholders. Again this supports the idea of transition to an LME model.

Australia has been described by Hall and Soskice (2001) as a 'liberal market led' economy because it has a highly capitalised share market, the eighth largest in the world in terms of trading volumes and capitalisation, despite the smallness of its population (Nottage, 2007). This share-market creates a flourishing environment for corporations as the dominant organisational form. In principle, there are several opportunities for employee participation in organisational governance under this corporate framework, since employees can be instituted as: (i) corporate director; (ii) shareholder. However, the state of the arts shows that the presence of a highly capitalised share market has implications for ownership stability, participation and associated governance costs. Participation in organisational governance is particularly germane with respect to control of organisational capital, which can be either privately (owner's equity) or publicly (share market equity) owned. Within the Australian corporate framework – (as specified by the Australian Corporations Act 2001) exclusivist, hierarchical ownership of organisational capital is favoured. For example, the Australian Corporations Act 2001 makes no explicit reference to employee or community representation at board level. Consequently, labour participation is not generally at a strategic level, occurring instead through enterprise bargaining, and is constrained to influencing decisions which directly impact on the performance of one's job. Such hierarchical and exclusivist ownership solutions are argued by most new-institutionalist writers to be the most cost efficient means of managing an organisation, reducing costs and achieving market exchange objectives, since it is based on the involvement of a few and allows for the straightforward pursuit of profit maximization and shareholder value (Hansmann, 1996). This model also limits the involvement of non-investor stakeholders (specifically employees and community) since, for example, community involvement in governance is specific to the shareholder role. The main purported limitation of this model is usually found, as in the basic version of the principal-agent model, in the divergence between managerial and ownership objectives. To this end, when direct control of managers becomes too difficult or impossible, powerful monetary incentive mechanisms are devised which align managers' and owners/shareholders objectives (Jensen and Mackling, 1976).

In assessing the role of labour in strategy and governance we start by observing that industrial relations in Australia are typically characterised by the absence of worker representation at a board level. Under the Australian Corporations Act 2001, company directors are typically appointed by other board members. Directors are not elected by shareholders or nominated by employees. Nottage (2007) has also observed that in recent decades there has been an increase in 'arms-length' governance or independent directorship in Australian organisations governed by corporate law. Thirty-eight percent of Australia's top 250 companies have a majority of independent (non-employee) directors. Whilst there is no Australian law mandating independent directorships, ASX listing guidelines promote the use of independent directorships (Zandstra, 2007). The promotion of outsiders rather than insiders being responsible for organisational governance militates against the construct of employee directors, or direct employee representation at board level.

The second possibility left to employee participation in organisational governance refers to their role as shareholders either through their superannuation trusts or

through union shareholder activism. Redesigning of labour as a shareholder grew out of the Hawke-Keating Labor government reforms around economic codetermination. Under these reforms it became compulsory for employers to contribute to employee superannuation funds, which have come to represent the largest single source of capital funding in the Australian share market.<sup>8</sup> This gave labour a stake in funds governance, but not an operationally controlling role in corporate governance. Superannuation funds are one institutional structure effecting the Australian corporate sector, which until recently did have specific requirements for employee involvement in organisational governance. These funds are required to have equal representation of employers and employees at board level.

The development of employee controlled superannuation funds was one of the features contributing to the concept of employee shareholder activism. Rawlings (2006) argues that the erosion of centralization in the industrial relations system, forced unions to try and exercise influence through shareholder activism. Whilst there is nothing specifically pertaining to employee directors in the 2001 Corporations Act, sections 249D (1) declares the right for 100 or more shareholders to request a company meeting. This works in conjunction with 249N (1), or the right of 100 or more shareholders to vote for resolution proposal at company meetings. These two arrangements are compatible with workers having a role in corporate strategy through shareholder activism. This possibility, however, has hardly ever been successful in electing worker representatives in the board of directors of Australian corporations, though in some cases, such as in the Rio Tinto Mining dispute, shareholder activism resulted in the possibility for unions to reach new collective agreements (Rawson and Anderson, 2005; Rawlings, 2006; Anderson 2007: 47 -53, Rawling 2006 taken from Nottage). These actions removed psychological and ideological barriers to institutional shareholders being able to acknowledge industrial relations matters as a legitimate part of corporate governance. The weakening of the role of labour is evident in the Cooper Review's recommendation that mandatory equal representation of employer and employee representatives on superannuation trust fund boards be abolished.<sup>9</sup> The Cooper review suggested that superannuation funds to adopt a greater proportion of independent directors for trust boards, even though the review agreed that "the core elements of the superannuation system were strong and well regulated" (Cooper, Casey, Evans, Gruen, Heffron, Martin and Wilson, 2010, p.4).

This recommendation is presented in the context of requirements for greater transparency, efficiency and governance, even if there was no history of collapses amongst Australian industry superannuation funds. Some authors argue that Australian union shareholder activism can be dismissed as being ineffective. They also notice that this is a strategy only appears to be accessible to the largest and best resourced Australian unions (Ramsey and Anderson, 2005, p.6). On the other hand, this process of activism between boards and unions has the effect of bringing broader public scrutiny to strategic matters such as lay-offs, retrenchments, terminations, labour rights and traditional governance matters. Indeed, shareholder activist campaigners support this involvement channel as being the most effective when combined with a variety of traditional and non-traditional industrial relations strategies.

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<sup>8</sup> The superannuation funds hold \$1.34 trillion worth of assets, and they are amongst the largest institutional investors on the ASX (CPA Australia, 2011).

<sup>9</sup> The Cooper Review was chaired by Jeremy Cooper (now Chairman, of Retirement Income at Challenger Limited). The review was established by the then Federal Labor Government in 2009.

The third dimension of our comparative undertaking between the industrial relations system and the corporate legal framework is represented by the presence of organisations with collective organisational governance frameworks as the ultimate form of employee participation. This solution may be at odd with the Australian cultural and institutional context. As already illustrated, the presence of a highly capitalised share market confers an advantage to Australian corporations since, as argued by Hall and Soskice (2001) the alignment between organisational governance and institutional configuration confers a competitive advantage. The Australian third sector, which includes the cooperative sector, is small and under-developed compared to its Italian counterpart as it largely consists of not for profit organisations. It is estimated that there are around a total number of 1700 registered Australian cooperatives, against more than 80 thousand active cooperatives registered in Italy. Cooperatives are governed by boards, whose directors are cooperative members. Employees can be board directors through virtue of their membership. Three quarters of cooperatives have rules preventing them from distributing surplus profits to members. They hold an asset base of 2.9 billion, employ 10,000 workers and have 1.8 million members.

Until the enactment of the National Cooperatives Law in May 2012, there were inconsistencies across states and territories. This represented a significant area of incongruity and competitive disadvantage for cooperatives, relative to corporations.

Under previous regulations Cooperatives had to make separate application and pay separate fees if they wished to trade across different states and territories. The new National Cooperatives Law is designed to reduce inconsistencies by applying a national template, promote automatic mutual recognition, bring registration fees in line with those for corporations (this represents a 75% reduction in application fees), simplify auditing and reporting requirements. The new National Cooperatives template has modelled the responsibilities, duties and accountabilities for cooperative directors on that of Corporate Law and opened the possibility for cooperatives to raise funding from members and public sources. This implies for legal purposes Cooperatives are treated as ‘individuals.’ and employee involvement in organisational or board level governance is absent in the principles of the National Law. The National Law reflects also strong role for the State, as rules template are put forward by the Registrar and not by the cooperatives themselves. Five active members are required to establish a cooperative and the democratic power of members is supported by the fact that managers must be appointed by members, not the Board of Directors.

In sum, whilst Australian cooperatives do offer the opportunity for employee participation in organisational governance, they are operating at a significant level of competitive disadvantage compared to Australian corporations in terms of accessing capital, thriving as market leaders, and operating under an ill fitting legislative framework.

#### *4.2. The role of labour in organisational governance in Italy*

We shall now consider the Italian institutional framework for employee participation in organisational governance. As with the Australian context, our analysis is informed by consideration of the Industrial relations system, the Corporate Legal Framework and the creation of a favourable context for cooperatives.

Contemporary Italian industrial relations rest on three main pillars: the regulation of the labour market; the role of unions and of employers’ associations; and the



regulation of representative bodies at the firm level. The Italian labour market was deeply reformed in a corporatist direction in 1970 by Law no. 300, which is still known as the “Workers’ Statute”. This law made it significantly more difficult than in the past to lay-off workers. Since 1970 Italian firms with more than 15 employees are only permitted to terminate employment when either an objective case for economic difficulties (negative firm performance), or a subjective case for poor performance or misconduct has been established. In cases where difficulties are ascertained, the firm starts a process of consultation with unions and, in some cases, of arbitration with the intervention of judges. This process is intended to determine the precise nature of economic and financial difficulties and employee numbers for termination. The intention is to prevent opportunistic behaviours by the firm, to single out who is to be laid off and identify transition strategies for retrenched employees. Identification of those for retrenchment incorporates the employee’s personal and professional circumstances. The transition plan is supported by public subsidies for a duration of one year to 18 months. Retrenchments can be halted if the employer fails to establish a sufficient evidence base. A judge can also order the reinstatement of a worker when there is insufficient evidence of misconduct or low productivity. Discriminatory lay-offs, due for example to ethnic and religious background, or to union membership, imply the immediate reinstatement.

Law 300/1970 has been considered the highest achievement of workers’ movement in Italy, and has been defended as such by both unions and leftist parties. Article 18 of the law 300, which strictly regulates lay-offs procedures, and a referendum in 2002 aimed at extending unfair dismissal rights to employers with less than 15 employees, have represented the main benchmarks of industrial relations over the last decades.<sup>10</sup> By contrast, employer associations and conservative parties have repeatedly pressed for substantial reforms. Employers’ concerns have focused on the involvement of external parties, such as judges and unions, with commercially sensitive information about the organisation’s market position, and the determination of misconduct or low productivity. The latter problem mainly arises from the difficulty of using external benchmarks of productivity. As the Italian economy has generally demonstrated slow growth in productivity over the last 20 years, Law 300 has been identified by many commentators among the main causes of slow economic growth.

On March 23<sup>rd</sup>, 2012, under the pressure of the economic crisis, high unemployment<sup>11</sup>, and repeated requests by the European Union for labour market

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<sup>10</sup> The 2002 referendum did not succeed in extending the protection granted by the Article 18 to employer with less than 15 employees.

<sup>11</sup> The process of reform and liberalization of the Italian labor market started in 1998, when unemployment reached 11.2%. Economic recovery allowed an improvement in labour market conditions between 1998 and 2001. Also, in the same period, some initial measures of flexibility of labor contracts were introduced by the so-called “Treu law” (law no.196, “Norme in materia di promozione dell’occupazione”). For the first time after the Statute of the Worker Italian enterprises were allowed to hire workers on the so-called atypical and short term contracts, i.e. contracts different from open-ended one, which is most protected by the provision of Law 300. This took the unemployment rate down to 9.1% in 2001. The economic difficulties followed to the explosion of the net economy financial bubble in 2001 where contrasted a new liberal reform in 2003 (the so called “Biagi” law, n. 30/2003), which increased labor market flexibility by introducing new typologies of atypical contracts. Workers on atypical contracts are considered by Italian legislation as “independent”, as they lie in between the category of the employee and of independent producers. Because of this reason, contractual protection guaranteed to atypical contracts is limited. Starting from 2007 the economic crisis hit the whole Italian economy, whose GDP shrank by 5% in 2009 and shrank again by 2.1% in 2012, and by 1.9% in 2013. The unemployment rate grew to 10.7% in 2012, peaking at 12.2%

liberalization, the Italian government reformed around labour contracts and employment terminations with the law 92/2012. The discipline of unfair dismissal in article 18 of the Workers' Statute, which is applied only to firms with more than 15 employees, has undergone profound transformation. Dismissal, as in the original version of article 18, can take place because of three reasons: *disciplinary*, when the employees misbehave; in connection with objective *economic* difficulties of the firm; and *discriminatory*, based on personal physical, religious, cultural or psychological features of the worker. The new law, however, in the instances of disciplinary and economic dismissal has been very much contested because it abolishes the “*automatic*” restoration or reinstatement of the employees in his/her job position, prescribed by law 300/1970, when the premises of the dismissal prove wrong. Restoration is replaced in some cases with a simple financial compensation, and can be decided by the judge at his/her own discretion, based on substantive evidence.

The requirements of disciplinary dismissal remain basically the same. However, if these requirements are missing, and therefore the dismissal is illegal, rather than reinstate the employee, the employer is obliged to pay financial compensation equal to 15 to 24 months. If it is determined that the employee did not commit the act giving rise to the dismissal, the court may order the reinstatement and compensation equal to the salary payable from the time of dismissal. In the case of lay-off for economic difficulties of the firm, which require the firm to publicly report such difficulties, as for disciplinary dismissals, if the judge determines that the reported difficulties were missing, the employer is obliged to compensation from 15 to 24 months. The restoration is expected only in cases of manifest lack or disguised difficulties. Discriminatory lay-offs keep on being outlawed and always lead to reinstatement.

The 2012 is directed to increase employers’ discretion in the employment termination process and to reduce workers’ guarantees at the disciplinary level. The old “statute of the workers” granted unions and worker representatives important margins of manoeuvre in steering and adjusting (though not halting) lay-offs. The new law is intended to increase the flexibility of labour contracts and productivity at the plant level, and to make answer to macroeconomic shocks more expedite. However, critical commentators argue that heightened discretion on the employer side will lead to reduced transparency and accountability to external parties, and will reduce contestability by employee representatives. Indeed, the degree of litigation is reported to have substantially increased after the reform.

Italian unions represent the second pillar in the industrial relations system and remain powerful beyond their level of density. As with Australia, the union movement is structured on the basis of political affiliations. The socialist CIGL is the largest union in Italy, the social democratic union (UIL), Christian democratic union (CISL) are moderate constituencies, while the conservative union (UGL) become influential in recent years. The Italian rate of unionization is approximately 34%, although it has been experiencing some decline over the last decades. The Italian rate of unionization is about half of the Swedish one, but substantially higher than the UK (28%), the German (20%), and the French (8%) ones. The role of unions in Italian

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in August 2013. Youth unemployment reached 40.1% in July, and 40.4 in September 2013, while the NEET (the young Not in Education, Employment or Training) reached 23% in the same period (IMF, Eurostat and ISTAT data). Almost all categories of atypical contracts have been abolished by the 2012 reform. The apprenticeship contract will become the standard for the introduction of young workers in the labor market. The utilization of other short term and limited contracts has been simplified and reduced.

industrial relations can be considered, generally, as a consultative one. Union representatives interact closely with employer associations, whilst retaining a high degree of autonomy. Where positions cannot be reconciled, confrontation frequently leads to industrial action, which is carefully regulated by the Italian legislation, and to the mediation of public authorities.

The third pillar in Italian Labour relations is represented by the existence of worker representatives at the firm level. Worker committees had been already regulated by law 300/1970. Following bipartisan reforms agreed to by main unions and the Italian Government in 1993, election on workers committees became more closely regulated by law, starting from 1997, with the introduction of the RSU (Unitary Union Representation), whose members are elected by members in two thirds of cases, while one third is appointed directly by the national, regional, or sectorial unions. More specifically, it is elected by the unions that have also signed the relevant sectoral or relevant collective labour agreement. The RSU has a mainly consultative role, which represents a legally binding constraint for the firm operation only concerning a limited number of labour issues. RSU action, starting from 1993, has been widely complemented, and on many labour issues substituted, by collective bargaining between the relevant unions and employer associations. This is particularly the case with the so called system of “concertative” labour relations which, starting from 1993 has regulated union and employer bargaining on all key aspects of wages and employment levels, adapting wages to predicted and actual inflation.<sup>12</sup>

Let us now consider the role of Italian corporate law in facilitating employee participation at a strategic level. As is the case in Australia, corporations are a dominant organisational structure- but corporations can take the form of a Societa' Per Azioni (SPAs) or Societa' A Responsibilita' Limitata (SRL). There is a minimum requirement for one director, but no statutory maximum number of directors. Unlike the Australian system, directors are appointed by shareholders who also vote on the executive remuneration and salary. There is no requirement for Directors to be independent. There is a broad requirement in SPAs around avoiding conflicts of interest (i.e. Directors of competing companies cannot assume a directorship on their competitors board) However this restriction can be overruled by shareholder approval at a general meeting. In an SRL, there is no requirement for a director to advise the company of conflicts of interest. In terms of organisational governance, with shareholder approval, an SPA can appoint either a Management Board and a Supervisory Board, with all the powers of management over a company, or a Board of executive directors (executive employees) with an internal committee of non-executives who supervise the full board and company (Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili and The Association of Chartered Certified Accountants, 2009). Again in contrast to common law countries, there is no clear boundary between executive employees and directors, and by their very nature these board structures incorporate employee directors through the executive director function. In an SRL, the Directors may carry out all the company's business and again there is no required separation between directors and employees. They can be one and the same. However in 2010, the corporate governance committee of the Borsa Italiana adopted a new article, requiring Italian SPAs to implement European Union recommendations around communicating with markets about board evaluations on the

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<sup>12</sup> Prior to the 1993 “concertative” system of contractual agreement wages were automatically adapted to the actual rate of inflation. This was the so called “mobile ladder” system, which was abolished as it was recognised as the main cause of the high level of inflation during the late 1970ies and 1980ies.

independence of Directors (Borsa Italia, 2010). As with the recent industrial reforms, this push for a more exclusionary model of organisational governance is coming from the European Union, rather than from Italy itself.

Whilst historically, there has been an option for employee participation at Board level, Italian union shareholder activism is virtually non-existent, and indeed the largest Italian union CIGL has been fighting against legislative reforms introducing worker share ownership by arguing, in very simple terms, that entrepreneurial risk is the sole responsibility of employers. This also occurs in the broader context of limited shareholder activism, although this is a rapidly growing area. Guay, Doh and Sinclair (2004) noted that Italy only had twelve socially responsible investment funds (SRI), with half of these being under the control of the San Paolo Banking Group. These funds are marketed to Catholic investors, and whilst Italian SRIs are limited in number, total capital holdings equate to 2.3 billion Euro, making them the second largest source of SRI funding in Europe (Guay et al, 2004). In summary, Italy represents a context where labour has a powerful role to play, but it seems that participation is still restricted to the operational, sub-strategic level.

Let us now consider our final dimension for employee participation- the prevalence of cooperative structures in the Italian economy. In contrast to Australia, Italy represents a case of civil law country in which dedicated legislative acts exist in both the contexts of industrial relations and third sector organizations. The existence of dedicated legislation has important ramifications for corporate law, the flourishing of co-operatives and other third sector organizations, and as an avenue of influence for Italian labour. The fundamental law of Italian cooperative legislation, the so-called "Basevi" law (legislative decree no. 1577) was passed right after World War II, in 1947 and represent still nowadays that backbone of all cooperative legislation. In 1985 the Italian government brought in the Marcora Law (no. 49), which set up a financial institution the CFI to facilitate and provide finance for the transformation of failed businesses to democratically controlled worker cooperatives. This was subsequently suspended by the European Union for contravening European Competition Law. A key turning point came in the 1990s when Italian labour abandoned the syndicalist strategy of supporting direct worker governance through worker cooperative formation and turned to a centralised tripartite agreement. The Marcora Law re-emerged post 2000 with less generous financial ability. Among other crucial legislative acts, the law 142/2001 reformed the regulation of worker membership in worker cooperatives. The law 381/1991 instituted the social cooperative, which added public benefit objectives to the mutual benefit governance. Most social cooperatives are interpretable of worker cooperatives as their membership. In 2011 about 14,500 social cooperatives employing 310 thousand workers were recorded. In the same year, the total number of Italian cooperatives was about 80 thousand employing 1,310 thousand workers. (Euricse, 2011; Censis, 2012). These legal reforms still represent a significant competitive advantage for the cooperative organisation, and there does not appear to be any adverse legislative developments resulting from European Union pressures in the post GFC era.

An overall evaluation of the Italian labour market regulation and industrial relations system would lead one to define it as hybrid which is highly interconnected and multi-layered. The main social actors (unions, employer associations, and the government) closely interact to reach agreements, while legislation is taken as the benchmark against which all agreements are laid down. Worker representation at the firm and plant level has a consultative role, which is mainly restricted to labour issues, while

no direct representation in governing and strategic bodies (the Board of Directors) has ever been implemented despite the promulgation of the European Company statute by the European union defining a template for a corporation with a two tier board, one elected by the workers. None the less the corporate governance structure under traditional Italian corporate law cannot be defined as exclusionary. Through the process of executive directorships, there is an option for board members to be both employees and directors.

The overall picture gives a clear idea of partial and evolving institutional equilibria, whose path dependence is all the more relevant. Imperfections are marked. Few examples will be brought to bear in this context. The recent reform of the labour market and corporate governance principles have been implemented under the strong pressure of the economic crisis and of the European Union institutions, even if no clear cut agreement was reached by the main social constituencies. The impact of the reform will need to be carefully evaluated. While, on the one hand, the hope is expressed for improved performance and higher productivity and lower unemployment, on the other hand the strengthened discretionary power of employers causes fears of a more impoverished and subjected role of the weak contractual party, that is workers. At the firm level, worker representation has been implemented in very partial way, as all reforms in that direction have been fiercely opposed by employers' associations. The weakened representation of employees as executive directors is also evident in the recent push for Italian corporations to make disclosures around the independence of their Boards.

## **5. Discussion and conclusion**

The objectives of this paper were to offer a critique and present an alternative to the neoliberal conceptualisation of the firm as a nexus of contracts and market exchanges. The process that leads from the contemporary systems of industrial relations to models of enterprise genuinely based on worker involvement and control, as today embodied in the sporadic cases of employee owned companies and worker cooperatives, evidences the presence of important institutional leaps (Erdall, 2012). In Australia, institutional steps rather than leaps are apparent through employee shareholder activism, employee representatives on boards of superannuation trusts and the development of a friendlier legislative environment for cooperatives (Figure 1).

*Figure 1 about here*

Institutional comparison between Italy and Australia illustrated that context powerfully shapes the emergence of alternative third sector firms and alternative models, which position employees in a central role in organisational governance. The different forms of enterprises and systems of industrial relations can be represented on a continuum in which at the one extreme we find the corporatist model which prioritises independent investor control and highly deregulated labour markets on which labour contracts can be easily started and terminated, and at the other extreme we find fully blown mutualistic models of worker ownership and control, in which workers' objectives become co-substantial with the objectives of the organization (Figure 1).

The highest level of employee involvement in governance concerns control rights, either through employee directorships on corporations or in third sector organisational

structures. Worker control on the organization has stringent implications that require ad-hoc institutional set-up, which can make labour the main stakeholder of the organization by bestowing on workers decision making rights, independence and autonomy. However, the governance of worker controlled organizations can be difficult to implement, and limited access to financial markets substantively restrict the creation and development of such organizations. The difficulty to gather financial resources on the market forces worker controlled organisations to consider different channels for raising capital, for example reinvestment of net residuals in common capital reserves.

The dominant systems of industrial relations both in Europe and in Aglo-Saxon countries are close to the left extreme (investor control), while limited exceptions identifiable in employee owned companies and in worker cooperatives come closer to the second extreme. Hybrid systems of industrial relations can be interpreted as modifications of the fully blown Neo Liberal benchmark. Australia, within the common law tradition, started from a regulated system of conciliation and arbitration in which unions and the State played centre-stage. This system was deregulated starting from 1983 and progressed down the path of industrial deregulation. Italy started instead from a highly regulated hybrid industrial relation system, which was established in 1970 and only marginally reformed over the last decades of last century. These reforms led to more stringent regulation of industrial relations and labour markets and, on the other, to enlarged governance of the relations between firms and the other social actors. Only recently has Italy taken some steps toward the Neo Liberal benchmark, which implies marketization of the employment relationship. In both countries, however, the role of unions and government intervention is still crucial to balance power concentration in the system of industrial relations. This role cannot be substituted by arm-length contractual exchanges. This shows, indirectly, that the Neo Liberal extreme of the spectrum is nothing but a counterfactual benchmark.

Intermediate forms between worker control and capitalist firms do exist, both in terms of governance and of financial set up. German co-determination system, and the ESOP (Employee Stock Ownership Plans) in the US represent well known examples in which workers' objectives can be partially internalized into the objectives of the organization itself. These forms modify basic tenets of the capitalist system in important ways, but appear as exceptions within a general trend that is not favourable to the spread of more or less penetrating forms of worker involvement and control. Partial equilibria on the process leading from the neoliberal to the participatory model of the firm are graphically represented in Figure 1 as specific points within an identifiable pattern of social evolution.

When we position the state of the art in Australian and Italian labour relations within the defined continuum, we can see a clear distance between the partial and conflictual results of the interaction between employers and employee and the idealized model of participatory governance, in which labour relations are expected to be and non-conflictual, employment is expected to be stable in the long run and lay-offs to be the exception more than the rule. At the same time, workers are granted a substantive (direct or represented) role in operational and strategic decision making.

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Figure 2. Different systems of industrial relations and different ownership forms

