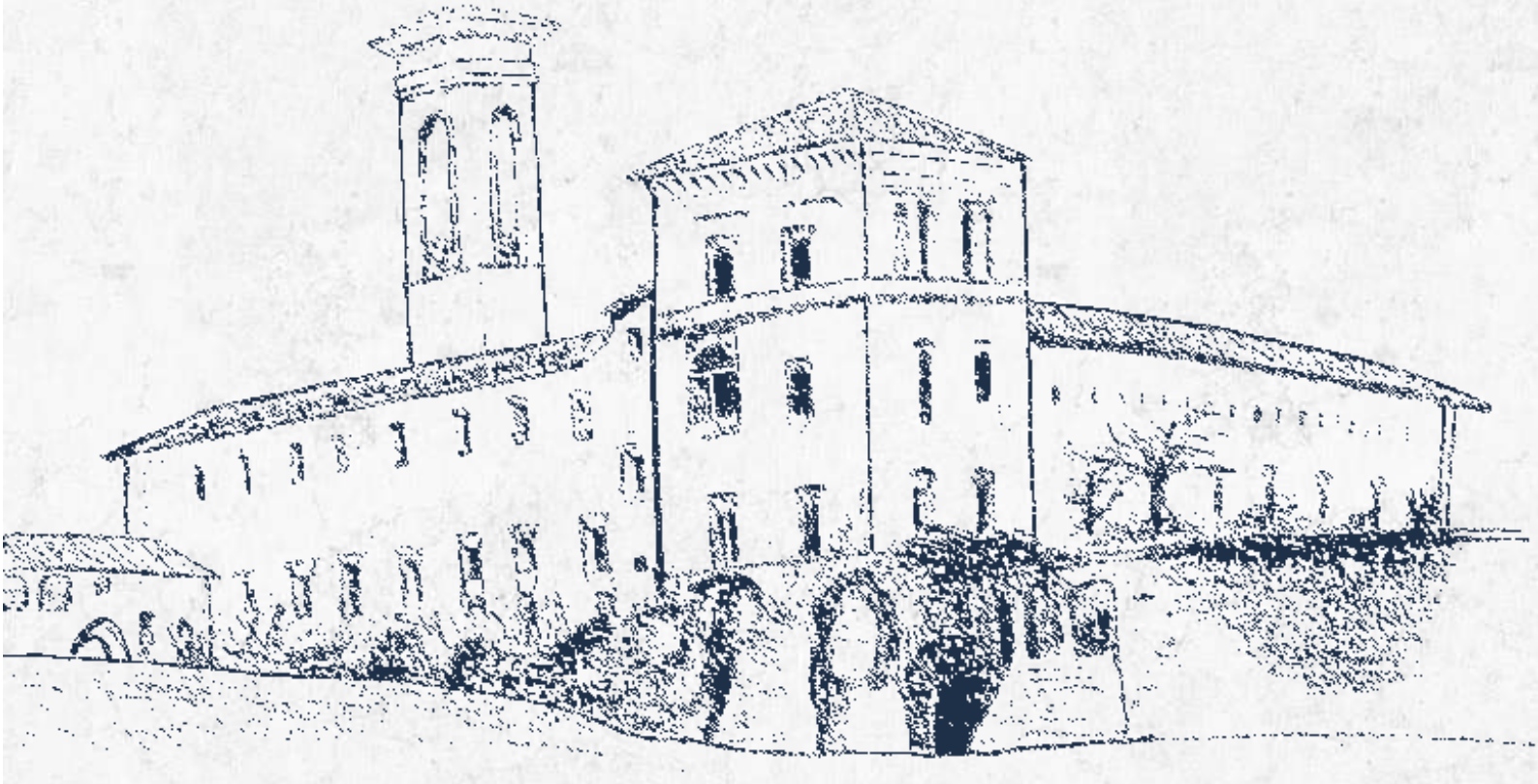
OPEN ACCESS
ISSN 2280-4056

E-Journal of International and Comparative

LABOUR STUDIES

Volume 7, No. 3, September-October 2018



ADAPT
www.adapt.it
UNIVERSITY PRESS

E-Journal of International and Comparative **LABOUR STUDIES**

ADAPT *International School of Higher Education in Labour and Industrial Relations*

E-Journal of International and Comparative

LABOUR STUDIES

Volume 7, No. 3, September-October 2018

ADAPT
www.adapt.it
UNIVERSITY PRESS

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

Index

Contributions

Book Reviews

Reconciling Facts with Fiction, or: A Theoretical Speculation of why the Minimum Wage has no Discernible Effect on Employment

Arne Heise [1]

Abstract

Purpose – There has long been a discussion about the employment impact of minimum wages and this discussion has recently been renewed with the introduction of an economy-wide, binding minimum wage in Germany in 2015. In traditional reasoning, based on the allocation-based approach of modern labour market economics, it has been suggested that the impact is clearly negative on the assumption of a competitive labour market and clearly positive on the assumption of a monopsony-based labour market.

Design/methodology/approach – A post-Keynesian employment market, based on a different pre-analytical vision of the economy than traditional mainstream economics, is presented here.

Findings – The most likely prediction of the employment effect of minimum wages based on the alternative model presented here - a negligible impact on overall employment - is very much in line with the empirical evidence established by a bulk of literature.

Research limitations/implications – The research proposes an analytical framework and invites future empirical investigation.

Originality/value – The paper contends that existing literature affords too much attention to a (false) theoretical approach based on the pre-analytic vision of market exchange as basic constituent of capitalist economies.

Paper type - Conceptual paper

Keywords: *Minimum Wage, post-Keynesianism, Labour Market Theory.*

[1] University of Hamburg, Dept. of Socio-economics. Email address: Arne.Heise@wiso.uni-hamburg.de.

1. Introduction

The discussion about minimum wages is an old one[2]. The introduction of a minimum wage in Germany in 2015 added yet another chapter to that discussion[3]. While most mainstream economists – represented by the majority position within the German Council of Economic Experts (*Sachverständigenrat*) – claim that there is a negative employment effect, particularly for lower-skilled and young, inexperienced workers (see SVR 2013: 284ff.), progressive or dissenting economists – represented by the minority position within the German Council of Economic Experts – argue that a minimum wage will actually increase the quantity of employment (see SVR 2013: 289f., Bofinger 2014: 164ff.).

Both positions are based on a partial analysis of the labour market using allocational reasoning. Assuming the ordinary labour market to be characterized by perfect competition – as the mainstream position does – a minimum wage will undoubtedly have significantly negative employment effects once the minimum wage is higher than the market-clearing wage rate associated with the respective skill level[4]. This is so, because any job that does not earn its labour cost, i.e. where the (minimum) wage rate is higher than the marginal productivity of that job, will eventually be priced out of the market. And a minimum wage that is set below the market-clearing wage rate would clearly be useless. This straightforward result, based on the pre-analytical vision of the labour market being the operator of intertemporal exchange between (real) income, leisure time and postponed consumption, can only be altered without challenging that pre-analytical vision by refuting the assumption of perfect competition. Assuming a monopsonistic labour market, i.e. a labour market with one (dominant) employer, a minimum wage rate set between the profit-maximizing wage rate of the monopsonistic firm and the maximum wage rate associated with the productivity of the same quantity of employment will increase the level of employment and reduce the mark-down on wages (see, e.g., Manning 2003; Ashenfelter/Farber/Ransom 2010).

Both models present clear cut and opposing predictions about the impact of minimum wage rates on employment and it should, therefore, be easy to evaluate these theories empirically: As there are many countries with long histories of minimum wage legislation (Neumark/Wascher 2008: 9ff., ILO

[2] For an overview, see Neumark/Salas/Wascher (2014).

[3] See e.g. Heitger 2003, Franz 2007, Bauer/Kluve/Schaffner/Schmidt 2009, Paloyo/Schaffner/Schmidt 2013.

[4] Most simulation studies for Germany predicted a loss of more than one million jobs (i.e. about 3% of total employment!) if the current minimum wage of 8,50€ was introduced (see, e.g., Schuster 2013: 33).

2014), we should be in a position to falsify either of the two models or, rather, the assumptions on which they rest. Alas, meta-studies on the minimum wage (see, e.g., Doucouliagos/Stanley 2009; Wolfson/Belman 2014) paint a perplexing picture: "Economists have conducted hundreds of studies of the employment impact of the minimum wage. Summarizing those studies is a daunting task, but two recent meta-studies analyzing the research conducted since the early 1990s concludes that the minimum wage has little or no discernible effect on the employment prospects of low-wage workers" (Schmitt 2013: 22).

There are two possible ways to tackle the question of why this is the case. (1) Remaining within the traditional pre-analytic vision (i.e. accepting the ontological dimensions of the mainstream paradigm), one has to find "channels of adjustment" that could stop managers from firing workers as would be expected by the ordinary competitive market model (see Hirsch/Kaufman/Zelenska 2011: 1; Schmitt 2013: 11ff.): increasing productivity via training or lower labour-turnover or reducing the effect of nominal minimum wages on real minimum wages by allowing the cost to be passed on in the form of price increases. Of course, one could also assume that real world labour markets may be partly competitive (in some regions) and partly monopsonistic (in other regions): Depending on the employment shares of both market structures, this would cancel out positive and negative employment effects. (2) If one turns to a different pre-analytical vision – which would mean a truly heterodox approach[5] – then a different prediction about the impact of minimum wages on employment becomes possible: one which is better in line with the empirical picture.

This is exactly what the present paper attempts to provide. Taking the empirical evidence as a strong disincentive to accepting the traditional reasoning, we will provide a model of a post-Keynesian 'employment market' that not only suggests a macroeconomic frame, but is based on a pre-analytic vision of the economy as a system of nominal obligations (part 2)[6]. This

[5] For a theoretical deduction of heterodox economics, see Heise/Thieme (2016: 1107ff.).

[6] To my knowledge, there are only three post-Keynesian studies on minimum wages, of which one is not in English (Seccareccia 1991) and the other two rather broad in nature (Herr/Kazandziska/Mahnkopf-Praprotnik 2009; Herr/Kazandziska 2011). It is important to note here that a monopsonistic labour market – which is sometimes rated as neo-Keynesian due to its imperfect competition assumption and even sometimes approximated with post-Keynesianism because the late post-Keynesian Joan Robinson allegedly introduced monopsonistic labour markets into the economic literature (see Robinson 1933) – is an entirely different conception from the post-Keynesian employment market outlined in this article. Of course, monopsonistic firms may be introduced into a post-Keynesian employment market – these ideas will be pursued further in part 4 – yet the ontological foundations of both conceptions still remain incompatible.

general model needs to be restructured in such a way as to portray the effect of minimum wages on employment. As the effect of minimum wages is to hamper wage dispersion, or even to shrink the lower bound thereof, in order to avoid 'unfair' wages (or, morally speaking, 'exploitation') for that part of the labour force that is no longer covered by collective agreements (see Bachmann et al. 2008: 28ff.), we can rely on a two-sector model created to discuss the employment effects of growing wage dispersion (part 3). Finally, we need to judge the likely effect of minimum wages on employment under alternative assumptions regarding the parameters involved (part 4). *The objective of the present paper is not to empirically test the proposed model but to provide a theoretical frame which conforms better to the overwhelming empirical evidence already available than the ordinary neoclassical models.*

2. A Post-Keynesian Model of the Employment Market

Post-Keynesianism is a portmanteau term for a variety of quite different heterodox approaches. By relying closely on the ideas presented in Chap. 2 of Keynes' *magnum opus*, fundamentalist or monetary Keynesianism appears to have elaborated the most highly-visible approach to providing an alternative to the ordinary labour market of the neoclassical mainstream (see e.g. Weintraub 1957, Davidson/Smolensky 1964, Davidson 1994, Kregel 1984/85)[7]. Monetary Keynesianism does not only forcefully reject Walras' law as (positive or negative) heuristic (see Heise 2017), it also provides a microeconomically-based, yet macroeconomically-embedded employment determination that turns the quantity-price nexus of mainstream labour markets upside down. It is not the real wage rate that causally governs labour supply and demand until equilibrium is reached at the full employment level; but rather the quantity of labour demanded and supplied (at the level where real wage and profit expectations are fulfilled and, therefore, a stable position beyond the market-clearing point is reached) is determined endogenously and simultaneously with

[7] Of course, ever since Franco Modigliani's extension of Hicks' ISLM interpretation of Keynes' *General Theory* (see Modigliani 1944), the labour market and employment determination have played a significant role in those economic approaches that are termed 'Keynesian'. However, to my knowledge, other than monetary Keynesianism, there is no other post-Keynesian approach that attempts explicitly to reject traditional labour market reasoning and to take seriously Keynes' claim that the real wage is no exogenous control or distributive device, but is endogenously determined *pari passu* with the quantity of employment. Therefore, Lavoie's approach (Lavoie 2014: 280ff.) is not followed here which – based on the conception of market rationing – rejects the idea of a 'well-behaved' uniquely negative employment-real wage relation with respect to effective as opposed to notional demand configurations. His intention is to introduce functional (not personal!) income distribution into employment determination but not to reject traditional real wage modelling altogether.

the real wage rate[8]. The employment market[9], as will be developed below, cannot, therefore, be considered by way of a partial analysis, independently of its macro-economic environment. We will, thus, have first to outline a post-Keynesian macro model, before we concentrate – *but always keeping the macro-economic links in mind* – on the employment market.

The stylised post-Keynesian model presented here is an elaboration of Setterfield (2006), Heise (2008) and Pusch/Heise (2010). It comprises 7 structural and definitional equations and euilibrium conditions depicting the post-Keynesian core of the model. We start with the demand equation:

$$D_t = \alpha(\bar{w}, \bar{I}, \bar{m}, \bar{G}, L_t), \qquad (1)$$

where D is the value of aggregate demand, which evolves as a function of (given) nominal wages $\bar{w}$, (given) nominal private investment outlays $\bar{I}$ [10], the (given) investment multiplier $\bar{m}$, (given) governmental spending $\bar{G}$, and labour employed L.

The supply relation is:

$$Z_t = \beta(\bar{w}, \bar{T}, L_t). \qquad (2)$$

Z is the value of aggregate supply. $\bar{T}$ denotes (given) technology. The next equation is an equilibrium condition:

$$D_t \equiv Z_t. \qquad (3)$$

The price level p depends on the nominal (given) wage rate $\bar{w}$, given technology and a given mark-up $\bar{\pi}$:

$$p_t = \gamma(\bar{w}, \bar{T}, \bar{\pi}). \qquad (4)$$

Real income Y

$$Y_t = \theta(\bar{K}, L_t, \bar{T}) \qquad (5)$$

[8] „…, and the volume of employment is uniquely related to a given level of real wages – not the other way round" (Keynes 1936: 30).

[9] Throughout this paper, I will call the virtual place of employment determination from a post-Keynesian perspective the 'employment market', in order to distinguish it from the ordinary 'labour market' of neoclassical provenance.

[10] This, of course, is a very delicate assumption for a post-Keynesian model. It is set forth here only for the sake of simplicity and to reduce the complexity of the model as proposed by one referee.

is dependent on production factors and technology. L is the level of employment determined by eq. (3), K is the (given) stock of real capital.
We need to realize that equilibrium employment L_t determined in the aggregate demand-aggregate supply section merely explains the aggregate employment demand by firms given their demand expectations are met. In order to understand whether such equilibrium employment demand matches the supply of labour provided by households, we either have to assume a given amount of labour brought forward at the ruling nominal wage rate (irrespective of what the real wage rate will turn out to be) or, as will be done here, we assume a behavioural function of labour supply L_S dependend on the given wage rate and an expected price level p_e:

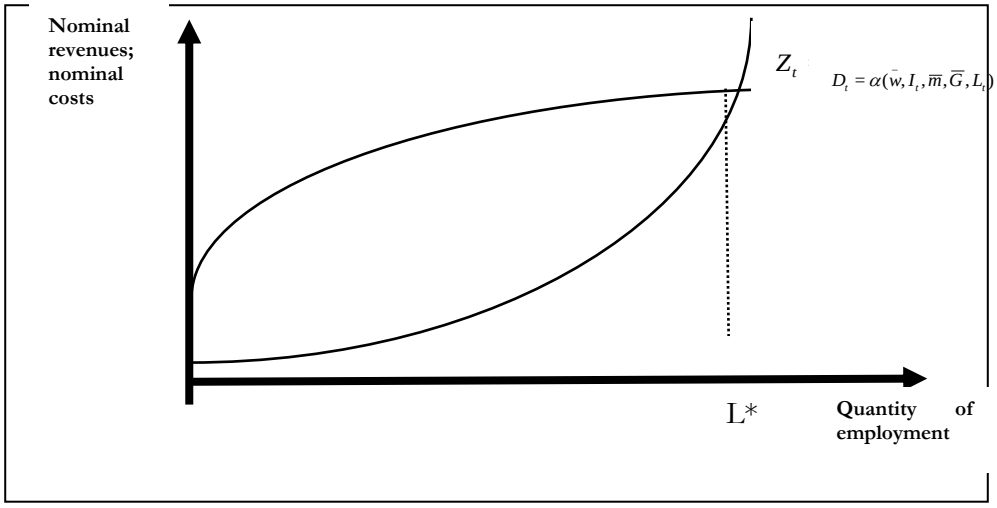
$$L_S = \lambda(p_e, \overline{w}) \qquad (6)$$

In order to satisfy the conditions of expectational equilibrium, we need to extend the model:

$$p_e = p_t \qquad (7)$$

The model comprises an aggregate demand-aggregate supply section (eq. 1–3) determining the equilibrium employment level, an ordinary production function (eq. 5), mark-up pricing (eq. 4), labour supply (eq. 6) and a stability condition (eq. 7). The model is distinctly post-Keynesian in nature inasmuch as: the employment level depends on the propensity to consume, the incentive to invest, the nature of long-term expectations, i.e. eployment and overall output is determined by effective demand conditions (see Keynes (1936: 250).
The post-Keynesian employment market is depicted by the aggregate demand – aggregate supply section (eq. 1 – 3) and has first been elaborated by the late Sidney Weintraub (1957). As shown in fig. 1, overall employment is determined by the intersection of the aggregate demand curve D and the aggregate supply curve Z. The D-curve is the aggregation of firms' expectations about nominal revenues taking the nominal wage rate as given. The Z-curve is the aggregation of firms' nominal costs associated with a certain level of employment, the given nominal wage rate, technology, and fixed capital stock. The resultant quantity of employment in the overall economy is thus the number of jobs made available by employers under profit maximization principles in a world of fundamental uncertainty.

Fig. 1: Employment determination in a Z-D-model



Whether L* equals the quantity of employment supplied by households at the ruling wage rate (eq. 6), surpasses it or falls short of it, cannot be predicted with accuracy – in economic history, we have experienced all three constellations[11]. What can be said with some certainty is that a mature economy with a large capital stock (i.e. low marginal efficiency of capital), high income and saturation level (i.e. low marginal propensity to consume), and high labour market participation rates for both men and women will be far less likely to secure full employment than an economy with lower capital stock (i.e. higher marginal efficiency of capital), lower income and saturation levels (i.e. higher marginal propensity to consume), and lower labour market participation rates. What can also be said is that any disequilibrium between supply and demand of employment cannot easily be cured by curtailing wage aspirations (see e.g. Davidson 1994: 179ff.), as the nominal wage rate (which is the appropriate controlable variable) enters equally into both aggregate demand and supply functions – graphically acting as a shift parameter that leaves the intersection of the curves unaltered with respect to the quantity of employment[12]. *Therefore, Keynes and post-Keynesians favour(ed) a wage regime that is*

[11] Post-war (West) German economic history, for instance, showed a period of ‚excess employment up until the early 1970s (when migrant labour was invited into Germany to close the gap), ‚full employment' until the first oil crisis in the mid-1970s and unemployment ever since.

[12] This result rests on two assumptions: (1) a closed economy; and (2) endogenous money. Of course, the assumption of a closed economy is not very realistic. But the introduction of external economic relations does not necessarily produce a different result (this depends on the exchange rate system) or would imply a beggar-thy-neighbour strategy. The second assumption

able to introduce some downward rigidity as an institutional device for safeguarding the stability of the economic system[13].

It is necessary to point out at this stage that a labour market in which supply and demand for labour is equilibrated by real wage movements does not exist in any operative way (see e.g., Lucas 1981: 242; Darity/Horn 1988: 220; Heise 2017). Real wages can neither be determined exogenously by the parties to collective bargaining nor by individual actors, but will be determined in line with employment and the price-level once the nominal wage rate is set and the production technology is given. Taking the common features of a 'well-behaved' production function for granted (eq. 6)[14], higher employment is *ceteris paribus* associated with a lower real wage rate. But this correlation cannot be turned into a causality running from lower real wages to higher employment.

3. A Sectoral Refinement

In order to discuss the effect of minimum wages on employment, we need to portray a stylized two-sector model of the post-Keynesian employment market (see Heise 1998; Heise 1999): sector A comprises all firms that are affected by the minimum wage and sector B comprises all firms that pay wages above the minimum wage level (see fig. 2)[15].

L_A and L_B denote the quantities of employment in sector A and B respectively[16]; u depicts unemployment. What we are interested in is the impact of an increase in the nominal wage rate in sector A up to the level of a fixed

is, of course, a basic post-Keynesian assumption, which undermines the likelihood of positive real-balance effects in favour of negative real-balance effects in case of a severe deflationary process.

[13] "In the light of these considerations I am now of the opinion that the maintenance of a stable general level of money-wages is, on the balance of considerations, the most advisable policy for a closed system; …" (Keynes 1936: 270).

[14] This, of course, may be seen critically by Sraffians. However, it conforms to Keynes' acceptance of the ‚first fundamental postulate' in the *General Theory* (Keynes 1936: 5ff.). Moreover, we interpreted Sraffa's critique not as a complete refutation of a ‚well-behaved' production function but as the theoretical proof that the particular properties of a ‚well-behaved aggregate production function (i.e. the falling marginal productivities of the factors of production) may not hold in any case. However, the empirical relevance of this theoretical possibility is still open to discussion; see e.g. Hamermesh 1986, Felipe/McCombie 2005.

[15] Of course, sector A will comprise firms from many different industrial sectors and branches. In Germany, most firms with most of the employees that will be affected by the minimum wage legislation are from branches such as agriculture, forestry and fishing, retail, transportation, food and beverages, and hotels and restaurants (see Bellmann et al. 2015).

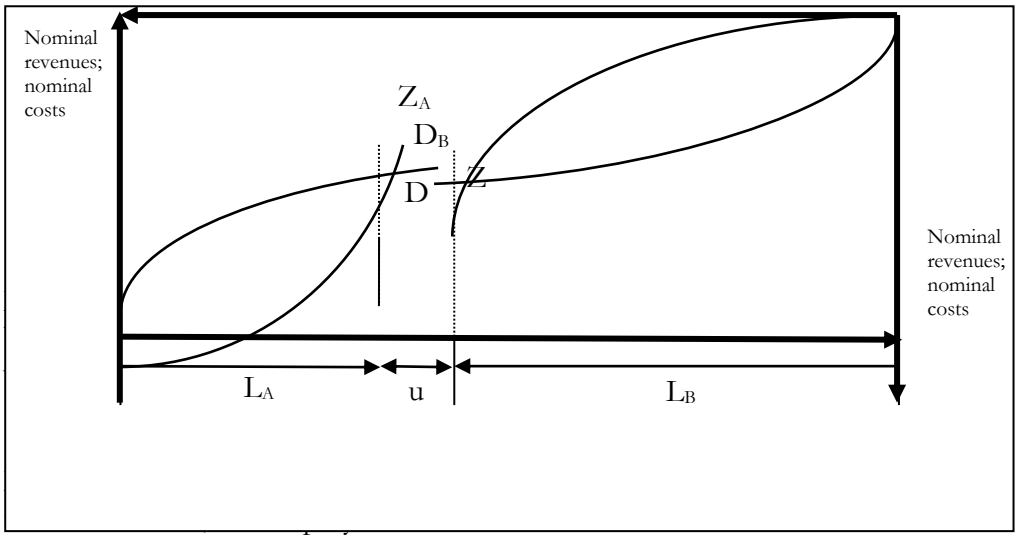
[16] In different studies (see Knabe/Schöb/Thum 2014; Brenke/Müller 2013; Falck et al 2013; Heumer/Lesch/Schröder 2013; Kalina/Weinkopf 2013), the percentage of employees affected by the minimum wage in Germany, i.e. L_A, ranges between 14% - 20% of total employment.

minimum wage rate, while the wage rate in sector B stays unchanged. As elaborated in Heise (1998: 254ff.), the sectoral employment effect of a change in the sectoral wage rate depends on the relative weight of the 'substitution effect' of relative price changes of commodities (i.e. the respective sectoral price elasticities of demand) and the 'income effect' of (wage) income changes (i.e. the respective income elasticities of demand). The overall employment effect can be summarized as follows[17]:

$$N^\circ = k\,(\eta_{A,A} + \eta_{B,A} - \varepsilon_A - 1)\,w_A^\circ + (1 - k)\,(\eta_{B,B} + \eta_{A,B} - \varepsilon_B - 1)\,w_B^\circ \quad (8)$$

(ε_i = absolute value of the own price-elasticity of demand for commodities of sector i; $\eta_{i,j}$ = income-elasticity of demand of wage earners of sector j for commodities of sector I;k = employment share of sector A; ° denotes the rate of growth [percentage change] of a variable)

Figure 2: A Post Keynesian 2-sector-model of the employment market



$$N_A^\circ = k\,(\eta_{A,A} - \varepsilon_A - 1)\,w_A^\circ + (1 - k)\,\eta_{A,B}\,w_B^\circ \quad (9)$$

[17] For a derivation see appendix A

[18] Herr/Kazandziska/Mahnkopf-Praprotnik (2009: 12) come to the following conclusion with respect to employment effects of minimum wages in a post-Keynesian approach: minimum wages will change the structure of wages, the structure of prices, the structure of demand for final products and the structure of demand for inputs. How employment is affected is theoretically open and extremely difficult to predict empirically." If 'theoretically open' is to mean that there may be different post-Keynesian model specifications with potentially different results, the statement is correct but also somewhat trivial. And whether the effects are 'extremely difficult to predict' depends on the specific model specification – formal specifications as opposed to narrative approaches, at least, offer the chance to make prediction rather easy. Whether such predictions can easily be falsified empirically, is yet another question and depends on the testability of the theoretical predictors. But, maybe, that is what they meant by 'extremely difficult to predict empirically'.

$$\rightarrow N_A^\circ \mid w_A^\circ = k\,(\eta_{A,A} - \varepsilon_A - 1)\,x \qquad (9a)$$

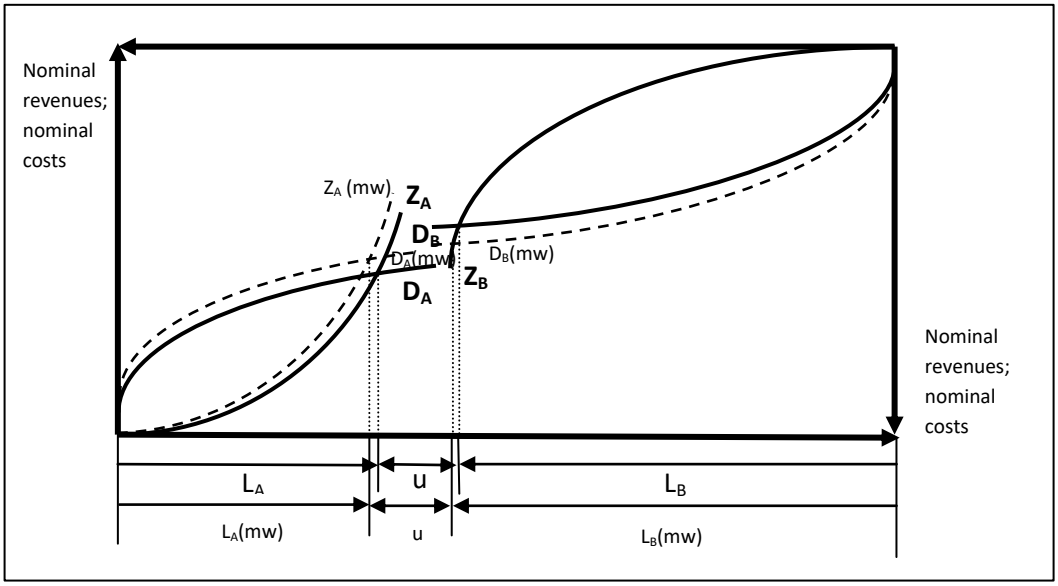
$$N_B^\circ = (1 - k)\,(\eta_{B,B} - \varepsilon_B - 1)\,w_B^\circ + k\,\eta_{B,A}\,w_A^\circ \qquad (10)$$

$$\rightarrow N_B^\circ \mid w_A^\circ = k\,\eta_{B,A}\,x \qquad (10a)$$

$$N^\circ \mid w_A^\circ = k\,(\eta_{A,A} + \eta_{B,A} - \varepsilon_A - 1)\,x \qquad (11)$$

The 'substitution effect' is given by the magnitude of the price-elasticity of demand for those commodities produced by workers affected by the minimum wage legislation, ε_A; the 'income effect' is determined by the income elasticities of demand of those workers affected by the minimum wage for commodities from sector A, $\eta_{A,A}$, and for commodities from sector B, $\eta_{B,A}$ (see eq. 11). From eq. 9a and eq. 10a, the respective sectoral impacts of the introduction of a minimum wage in sector A can be specified. Obviously, they will be of different magnitude and they might also be of different sign: While sector B might gain from minimum wages in sector A (income effect), sector A itself will have to weigh the positive income effect against the negative substitution effect. Most likely, the employment impact in sector B will be positive, while it will be negative in sector A (see Fig. 3).

Figure 3: A Post Keynesian employment market with minimum wage



Note: mw denotes the respective function or variable after the introduction of a minimum wage

4. Discussion

From chapter 19 of the *General Theory*, we can infer that Keynes was rather skeptical about the positive effect of wage reductions on employment outcomes. Contrary to neoclassical labour market theory[19], Keynes argued that both moderate wage reductions and moderate wage increases, which result in neither massive deflationary nor massive inflationary pressure, will affect the price level, but not the total quantity of employment (see Keynes 1936: 267). It is only once wage changes trigger a contractionary monetary reaction or markedly increase the real burden of nominal obligations that negative employment effects are likely to occur.

4.1 Predicting the Likelihood of Employment Effects

Keynes, however, assumed a single nominal wage rate for all firms (by transforming different types of labour into 'ordinary labour') and thus concentrated on change in the general wage level, while ignoring the possible effects of a change in the wage structure. In order to shift our attention to precisely this object of inquiry, we had to refine the simple post-Keynesian employment market model by introducing two different sectors, A and B, in which the nominal wage rates w_A and w_B differ and may change in different ways. As we have seen, the sectoral, as well as total, employment effect of a change in the wage structure due to the introduction of a general, binding minimum wage depends on the respective magnitudes of the income- and price-elasticities of demand.

In order to predict the effect of a minimum wage in sector A, we would have to estimate the price-elasticity of demand for those commodities affected by the introduction of a minimum wage and the income-elasticities of demand of the wage-earners of sector A. This, alas, poses serious problems[20]. While the income-elasticities of wage-earners affected by a minimum wage can be reasonably assumed to be quite high (i.e. around the magnitude of 1), the price-elasticities of demand for those commodities affected by the minimum wage may vary considerably as they are very different (see footnote 14). Tab. 1

[19] Pigou's *Theory of Unemployment* (Pigou 1933) which Keynes explicitly criticized in his *General Theory*, can still be seen as the foundation of modern labour market theory.

[20] As mentioned earlier, the proposed two-sector model is highly stylized. It is extremely difficult to empirically test this model as no real-world economy is comprised of just two sectors showing the proclaimed features. Moreover, the particular price- and income-elasticities cannot easily be estimated. Therefore, siding with Keynes (1939; 1940) rather sceptical approach to econometric methods, I refrain from own statistical interferences but rather rely on judging the likelihood of parameters.

summarises a number of parameter constellations that are possible, but not all equally likely.

Tab. 1: Employment impact of minimum wages under different parameter constellations

Price- and income elasticities of demand	Employment impact			Likelihood
	Total	Sector A	Sector B	
1) $\eta_{A,A} > 1; \eta_{B,A} > 1$				High
a. $\lvert\varepsilon_A\rvert > 1$	°	-	+	High
b. $\lvert\varepsilon_A\rvert > 1$	-	--	+	Medium
c. $\lvert\varepsilon_A\rvert < 1$	+	+°	+	Medium
2) $\eta_{A,A} < 1; \eta_{B,A} < 1$				Medium
a. $\lvert\varepsilon_A\rvert \approx 1$	-	-	+	Medium
b. $\lvert\varepsilon_A\rvert > 1$	--	--	+	Low
c. $\lvert\varepsilon_A\rvert < 1$	°-	-	+	Low

Note: ° no effect; °- very small negative effect, - small negative effect, -- large negative effect, +° very small positive effect, + small positive effect

As already noted, it appears rather likely that the income-elasticity of low income earners – i.e. those that are affected by the minimum wage – is close to unity[21]. This is due to the fact that the marginal propensity to consume of low income earners can be assumed to be high (i.e. close to 1) – as the income-elasticity is defined as the ratio of the marginal propensity to consume to the average propensity to consume, it must be close to unity in this case (see tab. 1). But even if the marginal propensity to consume is assumed to be markedly lower than 1, as my be the case if minimum wage earners are beneficiaries of supplemental transfer income ('*Aufstocker*') or secondary wage earners

[21] Dynan/Skinner/Zeldes (2004: 416) calculate savings ratios of the lowest income quintile between -22% and +9% depending on different income definitions. With such low savings (i.e. high consumption) ratios, the income elasticity must be close to unity.

('*Zuverdiener*')[22], this does not necessarily imply a much lower income-elasticity (as the average propensity to consume will also be lower than 1 in such a case and the ratio of both may well be not far less than unity). However, assuming for a moment a much smaller income-ealsticity (i.e. $\eta > 1$ in tab. 1) for such minimum wage earners, this would only lower the average income-elasticty of all minimum wage earners under the condition of the minimum wage earners with low income-elasticity being a big fraction of all[23] – it appears save not to rule out entirely the coincidence of both but to rate it at best of medium likelihood (i.e. 'medium' in tab. 1). The case of an income-elasticity of (much) higher than unity would imply a growing marginal propensity to consume with rising income – a case which consumer theory does not discuss as a rational behaviour. It is therefore excluded here.

With respect to price-elasticities, we should keep in mind that industries producing goods and services for basic needs are supposed to be faced with lower price-elasticities of demand than industries producing more advanced or luxurious goods. Also, minimum wage earners tend to be more employed in basic industries than more advanced industries (see e.g. BLS 2017: tab. 4 and 5 for the US). Therefore, although the price-elasticity of commodities of sector A can only be estimated from empirical research, we would attribute a higher likelihood to a lower than average price-elasticity of demand for goods from sector A: Meta-studies on price-elasticities (Tellis 1988, Maurer 1995) show an enormous variation ranging from -10 to +2. According to these studies, the average price-elasticity is about –1,8. Taking into consideration a reporting bias[24], the arguments above and the fact that these empirical elasticities are measured by way of partial analysis (i.e. assuming changes only in the relative price of the one commodity under investigation), whereas the introduction of a minimum wage will affect many commodities and thus the relative price impact on the single commodity will be lower, the assumption of (close to) unity price-elasticity appears justified, but a higher as well as a lower magnitude is not entirely unlikely.

[22] Müller/Steiner (2013) show that about one-third of wage-earners affected by the minimum wage in Germany live in households in the upper half of the income scale. Although it remains unclear what this means for consumption behaviour of the respective wage-earner, it may indicate the empirical importance of secondary wage earners at least in Germany.

[23] Knabe/Schöb/Thum (2014: 147ff.) estimate that about 10% of all employees affected by a minimum wage in Germany are recipients of supplemental transfer income ('*Aufstocker*').

[24] "The 'file drawer hypothesis' suggests there may be many studies that are unpublished because their results are not consistent with the normal expectation of a significantly negative price elasticity. The negatively skewed distribution of elasticities…seems to support this hypothesis" (Tellis 1988: 337).

To summarize, most likely are income- and price-elasticities of demand for goods and services from sector A close to unity (i.e. case 1a. in tab. 1 implying a high likelihood) – which translates into a negligible overall employment effect. However, a small positive or negative impact of a statutory minimum wage on the economy-wide employment level is possible, but not very likely (i.e. cases 1b., 1c. and 2a. in tab. 1 indicating a medium liklihood). Moreover, the most probable outcome combines an indiscernible overall employment effect with small sectoral employment shifts: *sector A is likely to experience a small negative employment change while sector B is likely to realize some small employment gains.*

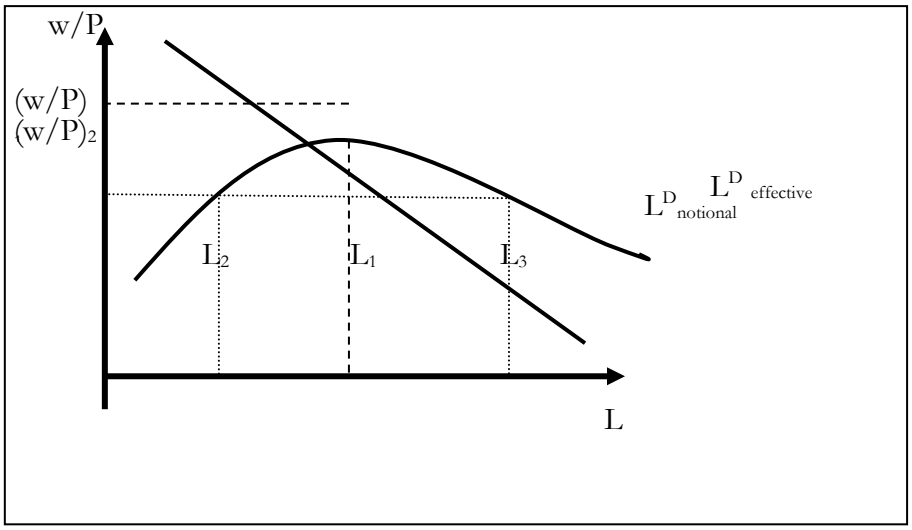
4.2 Monopsonistic firms

A final thought shall be given to the case of a monopsonistic labour market. Although I am skeptical about the empirical relevance of such a market structure[25], the monopsonistic labour market model has received considerable attention because it appeared to be the only theoretical foundation for those who attempted to reject the glooming negative employment outcome of minimum wages as exposed by the ordinary competitive labour market model. We have presented a different approach challenging this commonly negative employment effect – however, it may be of interest to see what difference the labour market structure makes within a post-Keynesian model. And it is here that the Lavoie-model becomes a potentially useful analytical tool: The 'Lavoie-model' (see Lavoie 2014: 280ff.) claims to be able to analyse the importance of functional income distribution for the determination of employment by introducing the distinction between notional and effective labour demand (see Fig. 4): The 'notional' demand for labour is basically portrayed by the ordinary negatively sloped labour demand curve assuming decreasing labour productivity but disregarding demand constraints from the commodity market. Such constraints are integrated into the construction of a hump-shaped 'effective' demand curve for labour assuming the demand for commodities

[25] There are only very few studies addressing the empirics of monopsonistic labour markets. Most of them concentrate on very narrow regional, industry-specific markets (e.g. Ransom/Sims 2010) and estimate the wage-elasticity of labour supply (e.g. Falch 2010, Staiger/Spetz/Phibbs 2010, Booth/Katic 2011). For Germany, Bachmann/Frings (2017) report, quite in line with most of these other studies, wage elasticities which appear to be low enough not to assume perfectly competitive labour markets. Moreover, they appear to be industry-specific with only a few low-wage industries (such as Hotels and Restaurants) showing wage-elasticities of a magnitude that might indicate market power for firms. In any case, a monopsony is characterized by restrictions on the demand- side of the market, not particular features on the supply-side. Therefore, it is debatable whether wage-elasticities are an appropriate measure for the monopsony-status of a certain market although this may be the standard procedure nowadays.

(and, therefore, the demand for labour under the condition of a given technique and capital stock) out of consumption spending by wage-earners and (given) autonomous spending by capitalists. Assuming that wage-earners spend all their wage income, effective labour demand is primarily dependent on the autonomous spending of capitalists who earn what they spent.

Figure 4: Notional and effective labour demand curves



The hump-shape of the effective labour demand curve indicates the respective change of the real wage in order to maintain commodity market clearing: The effective labour demand curve reaches a local maximum at the real wage rate $(w/P)_1$, intersecting the notional labour demand curve at the employment level of L_1. This is where the real wage rate just equals (marginal) labour productivity and portrays the situation of a competitive labour market. However, if the labour market is supposed to reflect a (regional) monopsony[26], the idea is that the monopsonistic firm may charge a mark-down on wages, pays only $(w/P)_2$

[26] One referee criticized my restriction of the monopsony model to the case of regional monopsonitic firms. Although it appears obvious that firms can create a monopsonitic position (i.e. being the only employer) in the labour market only – if at all – at the regional level, ‚modern monopsony theories' are said not to rest on the ‚single firm assumption' but the idea that firms have the structural power to set real wages below their competitive levels due to labour market imperfections on the supply side: the introduction of transaction cost (e.g. job search or mobility costs) allow for a restricted deviation of offered real wages from market-clearing real wages (i.e. ‚mark-down'). We will deal with this argument later – however, it should be clear that it is of entirely different nature than the monopsonistic labour market argument. What Erickson/Mitchell (2007) dubs 'a metaphor for the emerging post-union labour market', I would prefer to call a 'misnomer'.

and, thus changes functional income distribution in its own favour. *Ceteris paribus*, in order to maintain commodity market equilibrium, the monopsonistic company would either have to decrease employment to L_2 or increase it to L_3. This rather unfamiliar result originates from the fact that lower employment payed at the wage rate that equals its (marginal) labour productivity would create excess demand on the commodity market as long as autonomous capitalist spending is not reduced. And due to decreasing returns, the real wage-rate would also have to be reduced in the case when employment is increased to L_3 in order to guanrantee commodity market equilibrium.

Although employment would theoretically be indetermined in case of a change in functional income distribution, it appears more likely that L_2 will be chosen by the monopsonistic firm as the curtailment of employment demand will be the device to reduce the real wage rate to $(w/P)_2$ and the profit rate (not real profits which are constant along the effective demand curve) will be higher than in the case of L_3. What this means is that any change in functional income distribution due to monopsonistic market power on the labour market will reduce the employment level as compared to a competitive market strcuture and, hence, any increase in the real wage rate between $(w/P)_2$ and $(w/P)_1$ due to minimum wage legislation will increase employment rather than lower it. This result appears quite in line with the foregoing post-Keynesian analysis indicating that the income effect of a minimum wage overcompensates the substitution effect.

Of course, this result rests on a number of assumptions which have all been made explicite in the argumentation above, namely: a) (given) autonomous spending of the capitalists , b) the ability of the monopsonistic firm to impose a mark-down on the real wage rate and, thus, to influence functional income distribution. While the first assumption can be accepted as a partial analytical tool to isolate the labour market from its broader macroeconomic environment, yet for a determinantion of the employment level, spending of the capitalists must certainly be endogenized as it determines the exact location of the effective demand curve. The second assumption is more serious as it appears to contradict the post-Keynesian postulate of the endogeneity of real wages (see Herr/Kazandziska/Mahnkopf-Praprotnik 2009: 8). How are monopsonistic firms able to charge a mark-down on real wages if all they can control is the nominal wage rate? Of course, if the price level P is fixed, any reduction in the nominal wage rate w – forced by a reduction in labour demand as from L_1 to L_2 – would be enough to get the assumed result[27]. But why should the price level remain unaltered, if nominal spending and nominal

[27] And that is obviously what Lavoie (2014: 283) has in mind when he equates an increase in nominal wages w with an increase with real wages w/P.

wage costs fall? This could only be the case if incomplete competition – on the commodity market, not the labour market – would allow for a price-setting behaviour of the firms (see eq. 4)[28]. However, on the one hand that would be an additional assumption which is entirely unrelated to the assumption of a (regional) monopsony on the labour market and, even if assumed, would allow for the charging of a mark-up on prices irrespective of the market structure of the labour market the firm is acting in.

On the other hand, even if a regional monopsony in the labour market is assumed, any decrease in the nominal wage rate due to market power in the labour market would be passed on to prices as long as the competitive structure in the commodity market does not change – only this would make it possible to raise the mark-up and, in this way, increase the mark-down on wages[29]. *Therefore, the analysis based on the 'Lavoie-model' explains how functional income distribution – however derived - impacts on the demand for labour, yet it does not give support to the proposition that a (regional) monopsonistic labour market has any direct influence on the real wage rate and employment level* and therefore, no independent argument can be derived from this analysis that would predict an increase in employment as the result of an economy-wide, binding minimum wage.

5. Conclusion

As shown in Tab. 1, the impact of the introduction of an economy-wide, binding minimum wage on overall employment in a post-Keynesian perspective is most likely to be negligible or at least very small, provided no contractionary monetary reaction is triggered. The picture may, however, look different if single branches or the whole of sector A, comprising all industries that are affected by the minimum wage, are taken separately. This result is very much in line with the empirical findings of the above-mentioned meta-studies and appears to fit reality (with respect to deviant industry results; see e.g.

[28] Please remember that eq.4 indicates the possibility of a mark-up over marginal cost (i.e. $\pi > 1$) in case of restrictions on competition in goods markets. If perfect competition is assumed, π happens to be 1.

[29] One referee claimed not to be convinced by my reasoning. However, leaving the logical rigour of the argument aside, the difference in opinion lies in different assumptions: while the argument of real wage-setting (‚monopsonistic') firms rests on the assumption of a ‚barter economy', ‚real-exchange economy' or ‚neutral economy' as pre-analytic vision „in which the factors of production are rewarded by dividing up in agreed proportions the actual output of their co-operative efforts" (Keynes 1933: 77), my argument of endogenous real wages is based on the ontology of a ‚money wage economy' or ‚entrepreneur economy' „in which the entrepreneurs hire the factors for money but without such a mechanism as the above" (Keynes 1933: 78). These ontological differences make it clear why a monopsonistic labour market model is not to be mixed up with a post-Keynesian employment market model.

Machin/Manning/Rahman 2003, König/Möller 2007) much better than either the neoclassical mainstream labour market model of perfect competition or that of monopsony.
Moreover, the labour market structure has no impact of its own on functional income distribution and – other than its possible impact on the wage structure (i.e. personal income distribution) – on the employment level. Therefore, support for minimum wages in order to institutionally assist collective bargaining systems which can no longer protect low wage earners does not have to rest on theoretical foundations which are of dubious empirical significance.

Appendix A

Specifying eq. 1 and eq. 2 and assuming, for the sake of simplicity, that only wage earners consume and no governmental spending is considered, we get: $Z_i = (\pi_i/\omega_i)\ w_i\ N_i$, $D_i = c_{i,i}\ w_i\ N_i + c_{j,i}\ w_j\ N_j + I_i$ and $D_j = c_{j,j}\ w_j\ N_j + c_{i,j}\ w_i\ N_i + I_j$ with π_i = average labour productivity in sector i and ω_i = marginal labour productivity in sector i; w_i = nominal wage rate in sector i and N_i = empoyment in sector i; $c_{i,j}$ = marginal propensity to consume commodities from sector j of wage earners from sector i and I_i = (autonomous) investment spending on commodities of sector i, with i = sector A and j = sector B. Now, the percentage rate of change of employment with respect the rate of change of the nominal wage rate depends on the relative rate of change of the D- and Z-functions:
In order to determine the percentage rate of change of a variable, we split the demand curve D_i into parts D_i^i , D_i^j , D_i^I and transfer the demand and supply equations into their natural logarithmic version:

$$\ln D_i^i = \ln c_{i,i}\ w_i\ N_i$$

$$\ln D_i^j = \ln c_{j,i}\ w_j\ N_j$$

$$\ln D_i^I = \ln I_i$$

$$\ln D_j^j = \ln c_{j,j}\ w_j\ N_j$$

$$\ln D_j^i = \ln c_{i,j}\ w_i\ N_i$$

$$\ln D_j^I = \ln I_j$$

$$\ln Z_i = \ln(\pi_i/\omega_i)\ w_i\ N_i$$

Differatiating the log aggregate demand functions with respect to changes in the nominal wage w_i and implying $D_i = p_i Y^D_i$ (with Y^D_i being real output demanded of sector i), we get:

$$d(\ln Y^{D,i}_i)/d(\ln w_i) = d(\ln c_{i,i}) - d(\ln p_i)$$

$$d(\ln Y^{D,i}_j)/d(\ln w_i) = d(\ln c_{j,i})$$

As it can be shown that diffentiated natural logarithmic equations translate into elasticities (for $d(\ln y)/d(\ln x) = (dy/y)/(dx/x)$ = elasticity of x with respect to y; see Chiang 1984: 304f.)), we get:

$$Y^{D\circ} = Y^{D,i\circ}_i + Y^{D,i\circ}_j = (\eta_{i,i} + \eta_{j,i} - \varepsilon_i) w_i^\circ$$

Differentiating the log aggregate supply function with respect to changes in the nominal wage and executing the same operation as above, we get:

$$d(\ln Y^S_i) = d(\ln w_i)$$

or

$$Y^{S,\circ}_i = w_i^\circ$$

Assuming that any change in real output translates into a proportional change of employment (i.e. $Y_i^\circ = N_i^\circ$) the percentage rate of change of employment in sector i due to a percentage change in wages depends on the difference between the percentage rate of change of aggregate demand and aggregate supply:

$$N_i^\circ = (\eta_{i,i} + \eta_{j,i} - \varepsilon_i - 1)\, w_i^\circ$$

The overall employment effect, assuming k to be the share of employment in sector i (and, respectively, (1-k) as employment share of sector j), we get:

$$N^\circ = k\,(\eta_{i,i} + \eta_{j,i} - \varepsilon_i - 1)\, w_i^\circ + (1 - k)\,(\eta_{j,j} + \eta_{i,j} - \varepsilon_j - 1)\, w_j^\circ$$

Bibliography

Ashenfelter, O.C., Farber, H., Ransom, M.R. (2010); Labor Market Monopsony, in: *Journal of Labor Economics*, Vol. 28, No.2, pp. 203 – 210

Bachmann, R., Bauer, T. K., Kluve, J., Schaffner, S., Schmidt, C. M. (2008); Mindestlöhne in Deutschland: Beschäftigungswirkungen und fiskalische Effekte, *RWI Materialien*, No. 4

Bachmann, R.,Frings, H. (2017); Monopsonistic Competition, Low-Wage Labour Markets, and Minimum Wages – An Empirical Analysis; in: Applied Economics, Vol. 49, No.51, pp. 5268-5286

Bauer, T.K., Kluve, J., Schaffner, S., Schmidt, C.M. (2009); Fiscal Effects of Minimum Wages: An Analysis for Germany; in: *German Economic Review*, Vol. 10, No.2, pp. 224 - 242

Bellmann, L, Bossler, M., Gerner, H.-D., Hübler, O. (2015); Reichweite des Mindestlohnes in deutschen Betrieben; in: *IAB-Kurzbericht*, No.6

Bofinger, P. (2015); Grundzüge der Volkswirtschaftslehre, Hallbergmoos

Booth, A. L., Katic, P. (2011); Estimating the wage elasticity of labour supply to a firm: What evidence is there for monopsony; in: *Economic Record*, Vol. 87, No. 278, pp. 359–369

Brenke, K.; Müller, K. U. (2013): Gesetzlicher Mindestlohn: kein verteilungspolitisches Allheilmittel, in: *DIW Wochenbericht*, 80, 39, 3-17

Bureau of Labor Statistics (2017); Characteristics of minimum wage workers, 2016, BLS report 1067, Washington

Chiang, A.C.(1984); Fundamental Methods of Mathematical Economics, Singapore

Darity, W.A., Horn, B.L. (1988); Involuntary Unemployment Independent of the Labor Market; in: *Journal of Post Keynesian Economics*, Vol. 10, No.2, pp. 216 – 224

Davidson, P. (1994); Post Keynesian Macroeconomic Theory. A Foundation for Successful Economic Policies for the Twenty-first Century, Cheltenham

Davidson, P., Smolensky, E. (1964); Aggregate Supply and Demand Analysis, New York

Doucouliagos, H., Stanley, T. D. (2009); Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis; in: *British Journal of Industrial Relations*, Vol. 47, No. 2, pp. 406-428

Dynan, K.E., Skinner, J., Zeldes, S.P. (2004); Do the Rich Save More?; in: *Journal of Political Economy*, Vol. 112, No.2, pp. 397 - 444

Falch, T. (2010); The elasticity of labor supply at the establishment level; in: *Journal of Labor Economics*, Vol. 28, No. 2, pp. 237–266

Falck, O.; Knabe, A.; Mazat, A.; Wiederhold, S. (2013): Mindestlohn in Deutschland: Wie viele sind betroffen?, in: *Ifo-Schnelldienst* 66, 24, 68-73

Felipe, J., McCombie, J.S.L. (2005); How sound are the foundations of the aggregate production function?; in: Eastern Economic Journal, Vol. 31. No. 3, pp. 467 -
Franz, W. (2007); Der trügerische Charme des Mindestlohns; in: *Zeitschrift für Arbeitsmarktforschung*, H. 4, pp. 431 – 438
Erickson, C.L., Mitchell, D.J.B. (2007); Monopsony as a metaphor for the emerging post-union labour market; in: International Labour Review, Vol. 146, No. 3-4, S. 163 - 187
Hamermesch, D. (1986); The demand for labor in the lomng run; in: Ashenfelter, O., Layard, R. (eds.); Handbook of Labor Economics, Vol. I, Amsterdam
Heise, A. (1998); Ungleichheit und Beschäftigung aus makroökonomischer Perspektive; in: Heise, A. (ed.); Renaissance der Makroökonomik, Marburg, S. 241 – 266
Heise, A. (1999); Grenzen der Deregulierung. Instututionеller und struktureller Wandel in Großbritannien und Deutschland, Berlin
Heise, A. (2008); Economic Governance and Employment. Policy, Polity and Politics of Economic Rise and Decline, Berlin
Heise, A. (2017); 'Walras' Law in the Context of Pre-Analytic Visions: a Note.' *Economic Thought*, 6(1), pp. 83-96
Heise, A., Thieme, S. (2016) The Short Rise and Long Fall of Heterodox Economics in Germany After the 1970s: Explorations in a Scientific Field of Power and Struggle; in: *Journal of Economic Issues*, Vol. 50, No. 4, pp. 1105-1130
Heitger, B. (2003); Minimum Wages and Employment: The Case of German Unification; in: *International Economic Journal*, Vol. 17, No.1, pp. 1 – 15
Herr, H., Kazandziska, M. (2011); Principles of minimum wage policy : economics, institutions and recommendations; Global Labour University working papers ; No.11
Herr, H., Kazandziska, M., Mahnkopf-Praprotnik (2009); The theoretical debate about minimum wages; Global Labor University working papers No. 6
Heumer, M.; Lesch, H.; Schröder, C. (2013): Mindestlohn, Einkommensverteilung und Armutsrisiko; in: *IW-Trends*, Nr. 1
Hirsch, B. T., Kaufman, B., Zelenska, T. (2011); Minimum Wage Channels of Adjustment; IZA Discussion Paper No. 6132. Germany: Institute for the Study of Labor
International Labour Office (ILO) (2014); Minimum wage systems. General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), Geneva
Kalina, T.; Weinkopf, C. (2013): Niedriglohnbeschäftigung 2011. IAQ Report, 2013-01

Keynes, J. M. (1933); The distinction between a co-operative economy and an entrepreneur economy; in: Moggridge, D. (ed.); The Collected Writings of John Maynard Keynes, Vol. XXIX: The General Theory and After – A supplement, London 1979, pp. 76 - 87

Keynes, J. M. (1936); The General Theory of Employment, Interest and Money, London

Keynes, J.M. (1939); Professor Tinbergen's Method, in: *The Economic Journal*, Vol. 49, No. 195, pp. 558-568

Keynes, J.M (1940); Comment, in: *The Economic Journal*, Vol. 50, No.197, pp. 154 - 156

Knabe, A.; Schöb, R.; Thum, M. (2014): Der flächendeckende Mindestlohn; in: *Perspektiven der Wirtschaftspolitik,* Vol. 15, No. 2, pp. 133-157.

König, M./Möller, J. (2007); Mindestlohneffekte des Entsendegesetzes? Eine Mikrodatenanalyse für die deutsche Bauwirtschaft, Institut für Arbeitsmarkt- und Berufsforschung (IAB), IAB Discussion Paper No. 30/2007, Nürnberg

Kregel, J. (1984/85); Sidney Weintraub's Macrofoundations of Microeconomics and the Theory of Distribution; in: *Journal of Post Keynesian Economics*, Vol. 7, No.4, pp. 540 - 558

Lucas, R.E. Jr. (1981); Studies in Business Cycle Theory, Oxford

Lavoie, M. (2014); Post-Keynesian Economics. New Foundations, Cheltenham

Machin, S., Manning, A., Rahman, L. (2003): Where the minimum wage bites hard: Introduction of minimum wages to a low wage sector; in: *Journal of the European Economic Association*, Vol. 1, No. 1, pp. 154–180

Manning, A. (2003); Monopsony in motion, Princeton

Maurer, N. (1995); Die Wirkung absatzpolitischer Instrumente: Metaanalyse empirischer Forschungsarbeiten, Wiesbaden

Modigliani, F. (1944); Liquidity Preference and the Theory of Interest and Money; in: *Econometrica*, Vol. 12, No.1, pp. 45 – 88

Müller, K.U., Steiner, V. (2013); Distributional Effects of a Minimum Wage in a Welfare State: The case of Germany, SOEP papers No. 617

Neumark, D., Salas, J.M.I., Wascher, W. (2014); Revisiting the Minimum Wage-Employment Debate: Throwing out the Baby with the Bathwater?; in: *ILR Review*, Vol. 67, Issue 3, pp. 608 - 648

Neumark, D., Wascher, W. L. (2008). Minimum Wages. Cambridge, Massachusetts: The MIT Press

Paloyo, A.R., Schaffner, S., Schmidt, C.M. (2013); Special Issue of the Effect of Minimum Wages in Germany: Editorial; in: *German Economic Review*, Vol. 14, No.3, pp. 255 - 257

Pigou, A.C. (1933); The Theory of Unemployment, London

Pusch, T., Heise, A. (2010); Central banks, trade unions, and reputation - is there room for an expansionist maneuver in the European Union?, in: *Journal of Post Keynesian Economics*, Vol. 33, No. 1, pp. 105-126
Ransom, M., Sims, D. (2010); Estimating the firm's labor supply curve in a new monopsony framework: Schoolteachers in Missouri; in: *Journal of Labor Economics*, Vol. 28, No. 2, pp. 331–355
Robinson, J. (1933); The economics of imperfect competition, London
Sachverständigenrat (SVR); (2013); Jahresgutachten 2013/14: Gegen eine rückwärtsgewandte Wirtschaftspolitik, Wiesbaden
Seccareccia, M. (1991); Salaire minimum, emploi et productivité dans une perspective post-keynésienne; in: *L'Actualité économique,* 672 (1991): 166–191
Setterfield, M. (2006); Effective demand and endogeneous money in a pathdependent economy: towards a "Moorian" credit supply curve – and a reconciliation between horizontalists and structuralists?, in: Setterfield, M.; Complexity, Endogenous Money And Macroeconomic Theory : essays in honour of Basil J. Moore, Cheltenham (: Edward Elgar), pp. 119 - 139
Schmitt, J. (2013); Why Does the Minimum Wage Have No Discernible Effect on Employment?; Center for Economic and Policy Research, New York
Schuster, T. (2013); Mindestlohn. Beschäftigungsrisiken höher als behauptet; in: IW policy paper 19, Institut der deutschen Wirtschaft, Cologne
Staiger, D. O., Spetz, J., Phibbs, C.S. (2010); Is there monopsony in the labor market? Evidence from a natural experiment; in: *Journal of Labor Economics*, Vol. 28, No. 2, pp. 211–236
Weintraub, S.(1957); The Micro-Foundations of Aggregate Demand and Supply; in: *Economic Journal*, Vol. 67, No. 267, pp. 455 - 477
Wolfson, P., Belman, D. (2014); What Does the Minimum Wage Do? Kalamazoo, MI: Upjohn Institute for Employment Research.

Instability and Asymmetric Behaviors of Okun coefficients in the Eurozone: A Markov-Switching Autoregressive Model

Hélène Syed Zwick [1]

Abstract

Purpose - This study investigates the stability over time, the disparity across countries and the asymmetry in behavior in different regimes of the relationship between unemployment and output for the Eurozone and its twelve historical members over the quarterly period 2001Q1-2017Q2.

Design/Methodology/Approach - Based on a revised version of the augmented Okun's law, we use a Markov-switching autoregressive model that allows for gradual adjustment after a regime change.

Findings - Results are threefold: first, there is an asymmetric and switching behavior of Okun coefficient in both cases of positive and negative changes in cyclical unemployment. Second, the Eurozone output is less sensitive to movement in cyclical unemployment in the recessionary regime than in the expansionary one. Third, most countries' outputs are systematically less sensitive to movement in cyclical unemployment when this latter is positive, than when it is negative.

Research limitations/implications - This study while showing that there is no evidence of jobless recovery in the Eurozone could have been conducted to the 28 EU member states.

Originality/Value: This study provides a holistic approach of Okun's law for the Eurozone and considers non-linearity of the employment-production nexus over the business cycle through the use of switching models.

Paper type: Original paper

Keywords: *Okun's law, Markov-switching model, Great Recession, European Union.*

[1] Lecturer, Economics Department, Faculty of Business Administration, Economics & Political Science (BAEPS), The British University in Egypt (BUE). Email address: Helene.Syed@bue.edu.eg.

1. Introduction

Researchers by using standard linear regression models for stationary time series, commonly implicitly assume that the parameters of the model –the mean and the variance- remain constant over time or over business cycles. However, recent evidence shows that time series are often characterized by structural breaks that affect cross-relationships among different variables. As a consequence, ignoring slope heterogeneity while investigating relationships between time series can have two major impacts. First, if time series data exhibit state shifts and structural breaks then a model assuming constant parameters over the sample period is likely to yield misleading results. Second, the empirical results exploring the relationship may significantly depend on the selection of the sample period due to the structural breaks in the series. In other words, modeling the relationship between different series within a nonlinear framework appears more suitable to deal with such instabilities and to model the changing causality patterns over the sample period when the inconstancy of the model parameters is clear to the researcher (Kocaaslan, 2013).

As many other macroeconomic time series, output and unemployment series may exhibit nonlinear behavior due to several factors, like policy changes and economic crises. However, originally, the first strand of literature on output and unemployment nexus captured by Okun in 1962 and 1970 considers homogeneity of the slope (Moosa, 1999; Attfield and Silverstone, 1997; Lee, 2000 among others). Most of these findings highlight an empirical evidence of a negative relationship between output and unemployment, but exhibit great heterogeneity in Okun coefficient estimates. While Okun's law associates a 1-percentage point reduction in the unemployment rate with a reward of 2 to 3-percentage-point rise in real GDP, findings can vary greatly over space (Moosa, 1999; Malley and Molana, 2008; Sögner and Stiassny, 2002; Villaverde and Maza, 2009; Durech et al., 2014). The observation of a horizontal heterogeneity across countries has been recently complemented by the observation of a vertical one that refers to non-linearity in the estimates. In that sense, outcomes from Sögner and Stiassny (2002), Knotek(2007), Huang and Lin(2008), Meyer and Tasci (2012) and Chinn et al. (2014) point outthenon-linearity of Okun coefficient estimates over time, while Cuaresma (2003), Silvapulle et al. (2004), Holmes and Silverstone (2006) and Valadkhani and Smyth (2015) underline their variation over business cycle. For example, Valadkhani and Smyth (2015) examined the stability and the asymmetry in behavior in boom and bust periods of Okun coefficients in the United States (U.S.) from 1948 to 2015 using a Markov-switching model. Authors find that the Okun relationship has weakened over time and explain that jobs have not

recovered after the Great Recession in 2008 because of high structural unemployment, confirming previous results (Cuaresma, 2003, Holmes and Silverstone, 2006 and Chen et al., 2011). Besides, by employing a Markov-switching model, the authors reveal that the extent of within-regime asymmetry is much stronger than across-regime asymmetry.

Such empirical exercise has never been done for the Eurozone area yet. In the literature, studies so far remain limited at evaluating the non-linearity over the business cycle without considering switching models (Jardin and Stephan, 2012).

Our study attempts to go beyond by providing with a holistic approach of Okun's law for the Eurozone. First, it confirms cross-country disparity in Okun coefficient estimates already shown in the literature (Syed Zwick and Syed, 2016; Perman and Tavera, 2005). It investigates disparity across Eurozone members, and asymmetric behavior in recessions and in expansions. It appears reasonable to examine whether or not the output-unemployment relationship within the Eurozone exhibits asymmetric behavior in boom and bust periods. Asymmetry occurs when a symmetric response of unemployment to output depends on whether or not the economy is in an expansionary or in a recessionary regime (Holmes and Silverstone, 2006). To account for nonlinearities, we follow their methodology by using a Markov-switching autoregressive (MSAR) model in which we allow for asymmetries within and across regimes for each country and a gradual adjustment after the process changes regime. In that sense, we obtain two Okun coefficient estimates for each regime corresponding to the position of cyclical output relative to the trend (above or below trend). On this basis, and contrary to Valadkhani and Smyth (2015) or Cuaresma (2003), we do not only focus on one country but we compare Okun coefficients across the twelve historical member states (MS) of the Eurozone within the switching regime.

In that sense, the Great Recession in 2007 raised the issues of structural imbalances within the Eurozone, which are sources of a lack of competitiveness and performances. National structural disparities in labour market responses to changes in output have broader implications for labor market policies at the national and European levels. This study helps better understanding the cross-national differences in the relationship between unemployment and output within two different regimes, the recessionary one and the expansionary one.

The rest of the paper is organized as follows. Section 2 describes the methodology and data while section 3 estimates and analyzes the main results. We conclude in the last section.

2. Methodology and Data

We first present the econometric specification and then discuss the data used in our study.

2.1 Empirical modeling methodology

Okun (1970) proposed two different specifications of the output-unemployment nexus: a first-difference model and a gap model. According to the first difference model, the relationship between the the natural log of observed real output y_t and observed unemployment rate u_t is given by the following expression:

$$(y_t - y_{t-1}) = \alpha + \beta(u_t - u_{t-1}) + \mu_t \quad (1)$$

Where α is the intercept, μ_t is the error term and β is the Okun coefficient that measures by how much changes in the unemployment produce changes in output.

In comparison, the initial equation representing the gap model is given by:

$$y_t - y_t^* = \alpha + \beta(u_t - u_t^*) + \mu_t \quad (2)$$

Where y_t represents the natural log of observed real output, y_t^* is the log of potential output, u_t is the observed unemployment rate, and u_t^* is the natural rate of unemployment. α is the intercept and μ_t is the disturbance term. The left-hand side term represents the output gap, while right-hand side captures the unemployment gap.

In this study, we opt for the gap model. However, its original specification does not allow for instability or asymmetry in behavior of the Okun coefficient. Therefore we use an augmented version of this original specification, which can also be found in Sheehan and Zahn (1980), Prachowny (1993) and Lee (2000). We follow a three-step approach through the specification of three models to appreciate the stability and the asymmetric behavior in recessions and in expansions of Okun coefficients. Assuming that the series are stationary, equation (2) is augmented by a dynamic fourth-order autoregressive error process to obtain well-behaved residuals (Valadkhani and Smyth, 2015):

$$Model\ 1: \begin{cases} Q_t = \alpha + \beta u_t^c + \mu_t \\ \mu_t = \sum_{i=1}^{p=4} \rho_i \mu_{t-1} + e_t \end{cases} \quad (3)$$

Where $Q_t = 100 \times (y_t - y_t^*)/y_t^*$ denotes the percentage deviation of actual output Y_t from the potential output Y_t^*; $u_t^c = (u_t - u_t^*)$ is the cyclical unemployment rate defined as the difference between the actual unemployment rate u_t and the natural rate u_t^*; α is the intercept term

capturing the mean cyclical growth rate. Both variables u_t and u_t^* are also expressed as percentages. The no observable data y_t^* and u_t^* are estimated through the use of de-trending techniques to separate our two time series into trend and cyclical components. In that sense, we apply the Hodrick-Prescott (HP, 1997) filter and in order to test for the robustness of the Okun coefficients, the Baxter-King (BK, 1995) filter.

To address the asymmetric behavior in recession and in expansion, Model 2 decomposes the cyclical unemployment rate into its positive and negative values, denoted u_t^+ and u_t^- respectively:

$$Model\ 2: \begin{cases} Q_t = \alpha + \beta^+ u_t^+ + \beta^- u_t^- + \mu_t \\ \mu_t = \sum_{i=1}^{p=4} \rho_i \mu_{t-1} + e_t \end{cases} \quad (4)$$

The positive and negative values of the cyclical unemployment rate are defined as below:

$$u_t^+ = \begin{cases} u_t^c \ if \ u_t^c > 0 \\ 0 \ if \ u_t^c \leq 0 \end{cases} \text{and } u_t^- = \begin{cases} u_t^c \ if \ u_t^c < 0 \\ 0 \ if \ u_t^c \geq 0 \end{cases} \quad (5)$$

As a third step, we design a Markov-switching model with time-varying variances which allows displaying both asymmetric and switching behavior within and across different regimes. The Markov-switching model developed by Hamilton (1989) fits dynamic regression models that exhibit different dynamics across unobserved regimes using regime-dependent parameters to accommodate structural breaks. While there are two models available, Markov-switching dynamic regression (MSDR) models and Markov-switching autoregressive (MSAR) models, we opt for the second ones as they allow gradual adjustment after a regime change and are often used to model quarterly data. We assume that the transitions between the unobserved regimes follow a Markov chain. In order to have enough degrees of freedom and sufficient non-zero observations for u_t^+ and u_t^- within each regime, only two regimes ($m = 1,2$) are considered in model 3:

$$Model\ 3: \begin{cases} Q_t = \alpha(m) + \beta_m^+ u_t^+ + \beta_m^- u_t^- + \mu_t \\ \mu_t = \sum_{i=1}^{p=4} \rho_i \mu_{t-1} + e_t \end{cases} \quad (6)$$

The coefficients β_m^+ and β_m^- capture the asymmetric effects of positive and negative changes in cyclical unemployment on the output gap within and across m regimes over time, respectively. Besides, the error term e_t is also allowed to be regime dependent. That is:

$$e_t \sim nid[0, \sigma^2(m)] => \sigma^2(m) = \sigma_H^2(2 - S_t) + \sigma_L^2(S_t - 1) =>$$
$$\begin{cases} \sigma^2(1) \; if \; S_t = 1 \\ \sigma^2(2) \; if \; S_t = 2 \end{cases} \quad (7)$$

Where the variance in regime 2 is assumed to be significantly different from that of regime 1. After estimating model 3, a Wald test is then applied to examine the statistical significance of asymmetry in Okun coefficient within and across the two regimes. To sum up, we estimate four different Okun coefficients, $\beta_1^+, \beta_1^-, \beta_2^+$ and β_2^-.

2.2 Data

We use quarterly data over the period from 2001Q1 to 2017Q2 for the twelve historical and founding European member states of the Eurozone[2]. The series include the real GDP in millions of Euros, constant prices and constant PPP (reference year 2005) and unemployment, where unemployment is measured by the unemployment rate as per OECD database.

After generating both Y_t^p and $\bar{U}_t$ employing the Hodrick and Prescott (HP, 1997) filter, the output gap and cyclical unemployment u_t are computed. Table 1 presents the descriptive statistics of the data for the Eurozone.

[2]Austria-AT, Belgium-BE, Germany-DE, Finland-FI, France-FR, Greece-GR, Ireland-IE, Italy-IT, Luxembourg-LU, Netherlands-NL, Portugal-PT, Spain-SP.

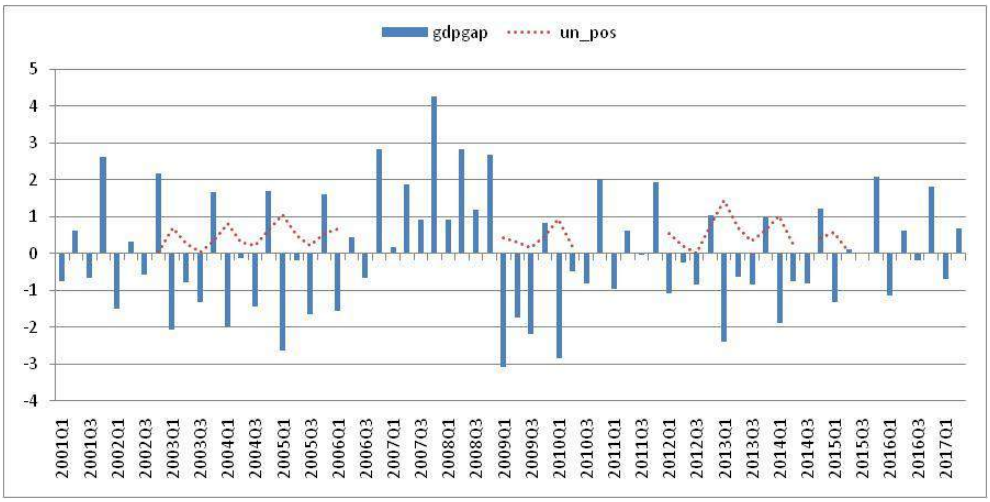
Table 1. ***Summary Statistics - Eurozone (2001Q1 - 2017Q2)***

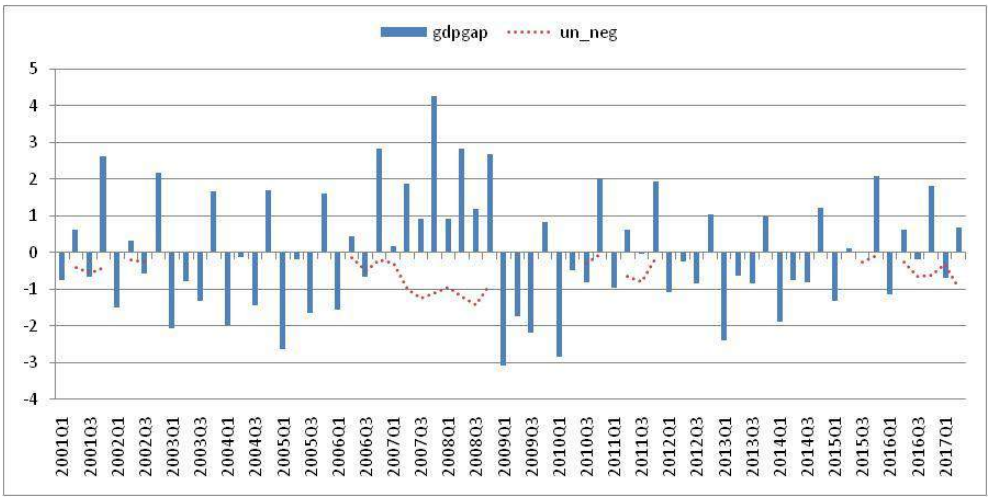
Description	Output gap Q_t	Cyclical U u_t^c	Positive cyclical unemployment u_t^+	Negative cyclical unemployment u_t^-
Mean	-0.0003	0.004	0.49	-0.54
Max.	4.24	1.43	1.43	-1.42
Min.	-3.06	-1.42	0.91	-0.03
Std. Dev.	1.57	0.6	0.33	0.40
Skewness	0.31	-0.26	0.91	-0.61
Kurtosis	2.57	2.74	3.56	2.18
No. of obs.	66	66	37	29

Notes: in%. Std. Dev.=Standard Deviation. No. of obs.= Number of non-zero observations.

The plot of the cyclical components of output and unemployment series gives a pictorial evidence of an inverse relationship between cyclical unemployment and cyclical output during the sample period (Figure 1). The maximum (4.24) and minimum (-3.06) output gap are observed in 2007Q4 and 2009Q1, corresponding to the beginning and the worse period of the Great Recession, respectively. Moreover, the maximum (1.43) and minimum (-1.42) cyclical unemployment rates are recorded in 2013Q1 and 2008Q3. Looking at the standard deviations, we can also observe that the cyclical output (1.56) exhibits greater variability than cyclical unemployment (0.60). One can also notice that positive cyclical unemployment u_t^+ (0.33) and negative cyclical unemployment u_t^- (0.40) show a relatively similar variability.

Figure 1. Inverse relationship between output gap and positive/negative cyclical unemployment





Sources: Author's calculations

As our series need to be stationary, we conducted three different unit root tests: Augmented Dickey-Fuller (DF, 1981), Phillips and Perron (PP, 1988) and Kwiatkowski et al. (KPSS, 1992). Results indicate that both cyclical output and unemployment are stationary[3].

[3] Results of unit root tests are available upon requests.

3. Empirical Results

3.1 Eurozone level

We apply first our three-step methodology to the Eurozone. Table 2 presents the estimation results of models 1 and 2 using ordinary least squares (OLS). Apart from the intercept, all the coefficients have the expected sign and are statistically significant at the 1% level. The corresponding Okun coefficients in models 1 and 2 are consistently negative and highly significant, offering strong evidence that the output gap is inversely related to the cyclical unemployment rate. Asymmetric behavior of Okun coefficient in recession and in expansion is also confirmed: during expansion periods (β^+ =-2.6), the adjustment is slightly more important than during recession periods (β^- =-2.1). Diagnostic tests (Durbin-Watson test and Breusch-Godfrey test) conducted therefore indicate that there is no autocorrelation in the residuals. Besides, the Ramsey RESET test indicating whether non-linear combinations of the fitted values help explain the response variable, is rejected for model 1 while it cannot be rejected for model 2. Testing for the presence of asymmetry, results of the Wald statistics[4] under the null hypothesis of an equality between β^+ and β^- (H_0: $\beta^+ = \beta^-$ *versus* H_1: $\beta^+ \neq \beta^-$) reject H_0 at the 1% level. These results in RRESET test and Wald test confirm the relevance of investigating the asymmetric behavior in Okun coefficient for the Eurozone.

[4]Results of Wald test are available upon requests.

Table 2. ***Fixed and asymmetric Okun coefficients – Eurozone***

Description	**Model 1**		**Model 2**	
	Coef.	*t Stat.*	*Coef.*	*t Stat.*
α	-0.03	-0.32	0.01	0.03
β	-2.25***	-10.26		
β^+			-2.6***	-6.21
β^-			-2.1***	-5.29
ρ_1	0.18***	2.74	0.19**	2.68
ρ_3	-0.65***	-9.58	-0.64***	-9.44
R^2	0.83		0.83	
Diagnostic tests				
DW	1.86		1.87	
BG(2)	25.86		25.88	
BG(4)	31.51		31.43	
RRESET	F(3,56)=1.32*		F(3,55)=1.36	

*Notes: *** represents significance at 1%. DW= Durbin-Watson test. BG(2) and BG(4)= Breusch-Godfrey serial correlation LM test with 2 and 4 lags. RRESET=Ramsey RESET test.*

The estimation results for model 3 are shown in table 3. It appears that all the switching and non-switching coefficients have the expected sign and are statistically significant at the 1% level. Results of testing the absence of asymmetry within and across the two specified regimes from estimating model 3 (table 4) allows us reject the null hypotheses at the 1% level. In that sense, they provide evidence of asymmetry within the two regimes and across them. These outputs validate the use of model 3.

Table 3. Asymmetric and switching Okun coefficient for the Eurozone

	Coef.	z Stat.
Switching coefficients		
Regime 1: Expansionary regime		
β_1^+	-2.58***	-8.92
β_1^-	-2.32***	-8.32
AR(4)	0.79***	9.15
α_1	-1.50***	-1.72
Regime 2: Recessionary regime		
β_2^+	-1.87***	8.45
β_2^-	-1.33***	-5.24
AR(4)	1.01***	43.83
α_2	-3.68***	-1.83
Non-switching coefficients		
ρ_1	0.45	0.22
ρ_3	-0.56	-1
Transition matrix probabilities		St. err.
$P11$	0.92	0.05
$P21$	0.04	0.03
Average duration (in quarters)		St. err.
Expansionary regime	14	11.06
Recessionary regime	23	17.70

*Notes: *** indicates significance at 1%. St. err. = Standard error.*

We can now describe our two regimes. Regime 1 is characterized by a positive mean cyclical output (α_1= 1.50%) while the second regime is characterized by a negative one (α_2 =-3.68%). The first regime is called expansionary as the mean cyclical output is above the trend output, while the second is called recessionary as the mean cyclical output is below the trend output. In expansion, both adjustments for positive and negative unemployment are higher in absolute value than in recession. During expansion, the absolute Okun coefficient estimate for positive cyclical unemployment ($|\beta_1^+| = 2.58$) is higher than the one for negative cyclical unemployment ($|\beta_2^-| = 2.32$). This indicates an asymmetry *within* the regime, confirmed by the statistics of the Wald test shown in table 5, significant at the level of 1%. Also, in recession, the absolute Okun coefficient estimate for positive cyclical unemployment ($|\beta_2^+| = 1.87$) is higher than the one for negative cyclical unemployment ($|\beta_2^-| = 1.33$). This asymmetry during recessionary cycles suggests that a given increase in cyclical unemployment where output is below the trend has a

smaller impact on the cyclical output than a decrease in cyclical unemployment of equal magnitude. Again, the statistics of the Wald test shown in table 5 confirms the significance of this result at the level of 1%.

Table 4. Four Okun coefficient estimates–Eurozone

	Cyclical unemployment negative $(u - u_t < 0)$	Cyclical unemployment positive $(u - u_t > 0)$
Regime 1: *Expansionary* Expansion in output	$\beta_1^+ = -2.58$	$\beta_1^- = -2.32$
Regime 2: *Recessionary* Recession in output	$\beta_2^+ = -1.87$	$\beta_2^- = -1.33$

Table 4 summarizes our results regarding the four Okun coefficient estimates for the Eurozone. There is also an asymmetry *across* regimes. Our results show that $|\beta_1^+| > |\beta_2^+|$ and that $|\beta_1^-| > |\beta_2^-|$. This means that the output is less sensitive to movement in cyclical unemployment in the recessionary regime.

Table 5. Testing for asymmetries within and across regimes for the Eurozone (model 3)

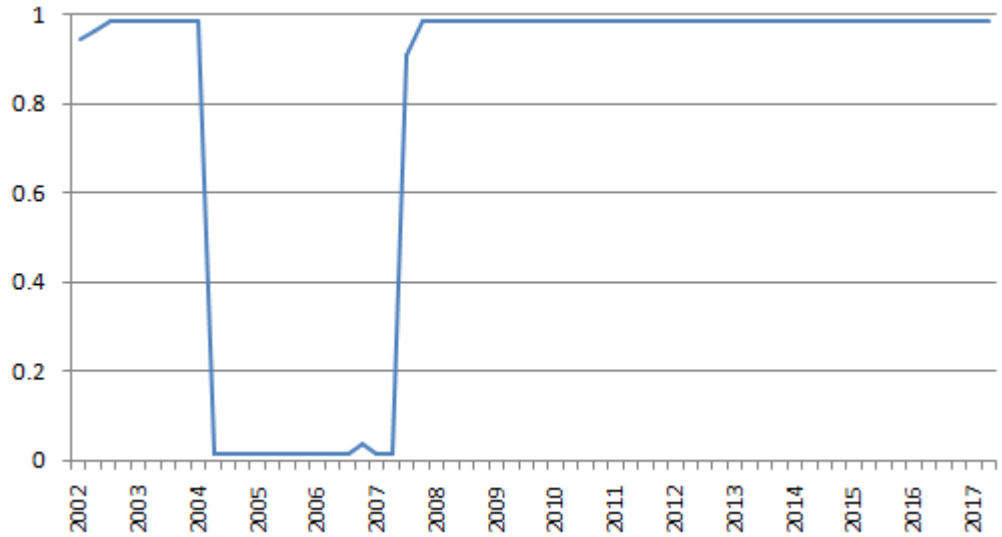
	Hypotheses	*Type of asymmetry*	*Wald test*
1	$H_0^1: \beta_1^+ = \beta_1^-$ $H_1^1: \beta_1^+ \neq \beta_1^-$	Within – 1/1	314.7*
2	$H_0^2: \beta_2^+ = \beta_2^-$ $H_1^2: \beta_2^+ \neq \beta_2^-$	Within – 2/2	454.8***
3	$H_0^3: \beta_1^+ = \beta_2^+$ $H_1^3: \beta_1^+ \neq \beta_2^+$	Across – 1+/2+	391.6***
4	$H_0^4: \beta_1^- = \beta_2^-$ $H_1^4: \beta_1^- \neq \beta_2^-$	Across – 1-/2-	257.6***

Notes: *** indicates significance at 1%.

Transition probabilities that are of greater interest for a Markov process are shown also in table 3. The probability of staying in an expansion phase in the next period given that the process is in this phase in the current period ($P11$) equals 0.92 and therefore indicates that regime 1 is highly persistent. Similarly the estimate of 0.96 ($P22$) indicates that regime 2 corresponding to

recessionary cycles is also highly persistent. Finally, the average duration in regime 1 (regime 2) is 3 years and a half (6 years and a half). Figure 2 displays the probability of switching to a recessionary regime (regime 2) and suggests that the economy is most likely in a recessionary regime since 2004 with a significant average Okun coefficient estimate of -2.25.

Figure 2. Inferred probabilities for being in Regime 2 – Recessionary Regime



3.2 Disparity for the Eurozone countries within the two regimes

We then apply our three-step methodology to our twelve historical Member States. Tables 1A and 2A in appendix display Okun coefficient estimates of models 1 and 2. If we do not consider the intercept α, eleven out of the twelve estimated coefficients have the expected sign and are statistically significant at the 1% level. The case of Luxembourg is specific as Okun coefficient estimates are not significant neither in model 1 nor in model 2. We therefore skip its case from the analysis that follows. In model 1, Portugal has the lowest estimate ($|\beta_{PT}| = 1.33$) in absolute value, while Spain has the highest estimate ($|\beta_{SP}| = 2.85$). For both models, ρ_1 and ρ_3 that indicate the AR coefficient estimates, indicate that none of the roots lie outside the unit root. The estimated goodness-of-fit statistics R^2 varies from 0.50 for Germany and 0.95 for Spain for both models. However, the statistics remains very high. The DW statistics allows us to indicate that there is no evidence of first-order serial autocorrelation in the disturbance when all the regressors are strictly

exogenous in any of the two models, for any of our twelve countries. The BG statistics with 2 and 4 lags testing for higher-order serial correlation, points out that there is no higher-order serial correlation in the residuals, for any of the two models, and any of our twelve countries. Moreover, the statistics of the Ramsey RESET test is not significant for model 1 but significant for model 2 for ten countries - Luxembourg is not included in our discussion anymore due to the non-significance of Okun coefficient estimates in models 1 and 2- confirming the relevance of our non-linear approach. The case of the Ramsey RESET statistics for Belgium indicates that there is no statistical reason to expect an asymmetry in behavior of the Okun coefficient between expansions and recessions. For Belgium, a symmetric Okun coefficient is appropriate.

We now focus on the amplitude in asymmetry shown in model 2. The estimated $\hat{\beta}$, $\hat{\beta}^{+}$ and $\hat{\beta}^{-}$ confirm the presence of asymmetric behavior in boom and bust periods. Our results also indicate that there is a clear diversity within the Eurozone. Model 2 reveals two groups of countries. The first group, that gathers Austria, Germany, France, Italy and Portugal, is characterized by a higher $|\hat{\beta}^{+}| > |\hat{\beta}^{-}|$. This implies that a change in the positive cyclical unemployment has a larger impact on cyclical output than the same absolute change in the negative cyclical unemployment. On the opposite, the second group, consisting of Finland, Greece, Ireland, Netherlands and Spain is characterized by $|\hat{\beta}^{+}| < |\hat{\beta}^{-}|$. For each country, we conducted a Wald test to assess the significance of this difference between $\hat{\beta}^{+}$ and $\hat{\beta}^{-}$ by designing $H_0: \beta^{+} = \beta^{-}$ $versus$ $H_1: \beta^{+} \neq \beta^{-}$. Our results allow us reject the null hypothesis at the 1% level for all of the eleven countries, except for Belgium, for which referring to the asymmetric behavior in Okun coefficient is not appropriate.

The estimation results for model 3 and all our countries are displayed in table 3A in Appendix. We first note that the distinction between the two regimes is less obvious. The mean cyclical output is not systematically above the trend output in regime 1, but systematically inferior to the mean cyclical output in regime 2. This situation refers to France, Greece, Italy, Netherlands and Spain. Therefore, we can consider regime 1 as expansionary or low recessionary while regime 2 remains recessionary, characterized by a negative output gap. Second, a great diversity across countries characterizes Okun coefficient estimates. There is no clear pattern emerging. For example, in the recessionary regime, in case of positive cyclical unemployment, Okun coefficient estimates are lower in absolute value that in case of negative cyclical unemployment for most of the countries, but not all (Austria, Italy, and Portugal are the exceptions). The same applies for the expansionary or low recessionary regime: in most cases of positive cyclical unemployment, Okun coefficient estimates are higher than or

equal to Okun coefficient estimates in negative cyclical unemployment cases. Third, differences are also noticeable when we analyze transition probabilities. The recessionary regime appears highly persistent and more persistent on average than for the expansionary or low recessionary regime for most of the countries with few exceptions (Spain, Ireland, and Greece).

4 Conclusions

By applying a Markov-switching autoregressive model, this article revisits the specification of the Okun coefficient both in the Eurozone and in its twelve historical members. This issue has not been examined in a rigorous manner, as far as we know. We estimate three models to exhibit the potential instability and asymmetry in behaviors during recession and expansion periods of Okun coefficient estimates. These models are applied for the Eurozone using quarterly data series on unemployment and output, but also to its member states to capture the potential diversity across Eurozone members.

Results are threefold. First, they have revealed the presence of asymmetries in behavior of Okun coefficient estimates in expansion and in recession both within and across regimes for the Eurozone, but also for most of the Eurozone countries. Second, at the Eurozone level, they have shown that the output is less sensitive to movement in cyclical unemployment in the recessionary regime than in the expansionary one. Third, the Eurozone and most European countries output are systematically less sensitive to movement in cyclical unemployment when this latter is positive, than when it is negative.

In terms of policy implications, our findings suggest at least two recommendations: First, as our results indicate the great heterogeneity in Okun coefficient estimates and their asymmetric behaviors in booms and bursts phases reflect extremely special features of macroeconomic structures and national labor markets. Structural reforms could be implemented to promote a more homogenous response in unemployment when equal absolute increases or decreases in output occur. It would develop a more time-consistent behavior at the Eurozone level. Second, the evidence of jobless recovery found in the United States does not seem valid in the European context. During expansionary phases, especially in the aftermath of the great recession, the US recovered with higher growth but without expected associated gains in terms of unemployment. According to our results for the Eurozone, phases of recovery since 2001 have been accompanied by a low but significant dynamic in job creation. Indeed, during expansionary phases, Eurozone real output should grow an extra 2.58% in case of positive cyclical unemployment, to reduce unemployment by 1 percentage point, while it requires an extra 1.87% during recessionary phases. Third, at the national level, the two different Okun

coefficients according to the situation within the same regime, lead to the necessity to decentralize countercyclical macroeconomic policies –the monetary policy implemented by the European central bank need to take into account this diversity while launching an expansionary policy during recession phases or a contractionary one during rapid expansion phases. The strong coordination of monetary policymakers with national fiscal authorities needs to support measures that aim at boosting the output coupled with structural reforms especially in countries with low Okun coefficients within the recessionary regime.

References

Attfield, C. and Silverstone, B. (1997). 'Okun's coefficient: a comment', *The Review of Economics and Statistics,* 39, pp. 326-329.
Baxter, M. and King, R.G. (1995). 'Measuring business cycles approximate band-pass filters for economic time series'. NBER Working Paper No. 5022, National Bureau of Economic Research.
Chen, J., Kannan, P., Loungani, P. and Trehan, B. (2011). 'New evidence on cyclical and structural sources of unemployment', IMF Working Paper 11/106.
Chinn, M., Ferrara, L. and Mignon, V. (2014). 'Exploring US employment growth after the great recession: the role of output-employment non-linearities', *Journal of Macroeconomics,* 42, pp. 118-129.
Cuaresma, J.C. (2003). 'Okun's Law revisited', *Oxford Bulletin of Economics and Statistics,* 65, pp. 439-451.
Dickey, D. and Fuller, W. (1981). 'Likelihood ratio tests for autoregressive time series with a unit root', *Econometrica,* 49, pp. 1057-1072.
Durech, R., Minea, A., Mustea, L. and Slusna, L. (2014). 'Regional evidence on Okun's Law in Czech Republic and Slovakia', *Economic Modelling,* 42, pp. 57-65.
Hamilton, J.D. (1989). 'A new approach to the economic analysis of nonstationary time series and the business cycle', *Econometrica,* 57, pp. 357-384.
Hodrick, R. J. and Prescott, E.C. (1997). 'Post-War U.S. Business Cycle: An Empirical Investigation',*Journal of Money, Credit and Banking,*29(1),pp. 1-16.
Holmes, M.J. and Silverstone, B. (2006). 'Okun's law, asymmetries and jobless recoveries in the United States: a Markov-switching approach', *Economics Letters,* 92, pp. 293-299.
Huang, H.C. and Lin, S.C. (2008). 'Smooth-time-varying Okun's coefficients',*Economic Modelling,*25,pp. 363-375.
Jardin, M. and Stephan, G. (2012). 'How Okun's law is non-linear in Europe: A Semi-Parametric Approach', 16th annual conference on macroeconomic analysis and international finance, Rennes.

Knotek, E. (2007). 'How useful is Okun's law. Economic Review', Federal Reserve Bank of Kansas City, 4, pp. 73-103.
Kocaaslan, O. (2013). 'The causal link between energy and output growth: Evidence from Markov-switching Granger causality', *Energy policy,* 63(C), pp. 1196-1206.
Kwiatkowski, D., Phillips, P., Schmidt, P. and Shin, Y. (1992). 'Testing the null hypothesis of stationarity against the alternative of a unit root', *Journal of economics,* 54, pp. 159-178.
Lee, J. (2000). The robustness of Okun's Law: evidence from OECD countries',*Journal of Macroeconomics,*22,pp. 331–356.
Malley, J. and Molana, H. (2008). 'Output, unemployment and Okun's law: some evidence from the G7', *Economics Letters,* 101(2), pp. 113-115.
Meyer, B. and Tasci, M. (2012). 'An unstable Okun's law, not the best rule of thumb',*Economic Commentary*, 7 June 2012.
Moosa, I. (1999). 'Cyclical output, cyclical unemployment, and Okun's coefficient: a structural time series approach', *International Review of Economics and Finance,* 8, pp. 293–304.
Okun, A.M. (1970). 'Potential GNP: its measurement and significance'. The Political Economy of Prosperity. Norton, New York, pp. 132-145.
Okun, A.M. (1962). 'Potential GNP: Its Measurement and Significance'. In the Battle against Unemployment and Inflation (M.N. Baily and A.M. Okun, Ed.).
Perman, R. and Tavera, C. (2005). 'A cross-country analysis of Okun's law coefficients convergence in Europe', *Applied Economics*, 37(21), pp. 2501-2513.
Phillips, P. and Perron, P. (1988). Testing for a unit root in time series regression', *Biometrika,* 75, pp. 335-346.
Prachowny, M. (1993). 'Okun's law: theoretical foundations and revised estimates',*Review of Economics and Statistics,*75,pp. 331-336.
Sheehan, R.G. and Zahn, F. (1980). 'The variability of the Okun coefficient',*Southern Economic Journal,* 47(2),pp. 488-497.
Silvapulle, P., Moosa, I. and Silvapulle, M. (2004). 'Asymmetry in Okun's law',*Canadian Journal of Economics,* 4,pp. 353-374.
Sögner, L. and Stiassny, A. (2002). 'An analysis on the structural stability of Okun's law – a cross-country study', *Applied Economics,* 34(14), pp. 1775-1787.
Valadkhani, A. and Smyth, R. (2015). 'Switching and asymmetric behavior of the Okun coefficient in the US: Evidence for the 1948-2015 period', *Economic Modelling,* 50, pp. 281-290.
Villaverde, J. and Maza, A. (2009). 'The robustness of Okun's Law in Spain, 1980–2004: regional evidence', *Journal of Policy Modeling,* 31, pp. 289–297

Appendix 1A: *Disparity of Fixed Okun coefficient estimates within the Eurozone (model 1)*

Description	***AT***	***BE***	***DE***	***FI***	***FR***	***GR***	***IE***	***IT***	***LU***	***NL***	***PT***	***SP***
α	-0.01	0.03	-0.01	-0.02	-0.01	-0.01	0.02	0.01	-0.04	0.04	0.06	-0.01
β	-2.31***	-2.22***	-2.09***	-2.28***	-2.1***	-2.33***	-2.50***	-1.96***	NS	-1.68***	-1.33***	-2.85***
ρ_1	0.01*	0.07**	0.09**	-0.36***	0.22*	0.07**	0.13**	0.26**	0.47***	0.06**	0.01*	-0.02**
ρ_3	-0.8***	-0.28***	-0.35**	-0.39***	-0.23*	-0.06	-0.23*	-0.62***	-0.53***	-0.42***	-0.20**	-0.30***
R2	0.79	0.82	0.50	0.86	0.56	0.76	0.53	0.84	0.51	0.65	0.67	0.95
DW	1.99	1.72	1.82	1.48	1.88	1.92	1.86	1.61	1.62	1.76	1.94	1.79
BG(2)	22.79	51.62	12.99	6.63	35.81	37.28	1.03	19.7	11.93	46.24	30.59	16.85
BG(4)	27.45	53.54	17.08	12.52	36.29	41.32	6.21	21.36	13.90	46.35	35	18.62
RRESET	1.66	5.07	1.51	2.37	1.07	0.41	0.15	0.03	1.68	1.09	1.22	1.93

Appendix 2A: *Disparity of Asymmetric Okun coefficient estimates within the Eurozone (model 2)*

Description	***AT***	***BE***	***DE***	***FI***	***FR***	***GR***	***IE***	***IT***	***LU***	***NL***	***PT***	***SP***
α	0.21	-0.03	0.23	-0.45	-0.29	-0.31	-0.47	-0.06	-	-0.34	-0.16	-0.03
β^+	-2.84***	-2.41	-2.55***	-1.13***	-2.2**	-1.08***	-1.12**	-2.07***	-	-1.27*	-1.45***	-2.83***
β^-	-1.77**	-2.12	-2.03**	-2.09***	-2.08***	-2.60***	-2.63***	-1.85***	-	-2.76**	-1.17***	-2.86***
ρ_1	0.02*	0.07	0.10**	-0.32***	0.20*	0.06**	0.07**	0.26***	-	0.03**	0.01*	-0.02***
ρ_3	-0.16**	-0.27***	-0.34**	-0.42***	-0.23*	-0.05**	-0.23*	-0.62***	-	-0.47***	-0.20**	-0.30***
R2	0.79	0.82	0.51	0.86	0.57	0.76	0.54	0.84	-	0.66	0.67	0.95
DW	1.8	1.72	1.94	1.65	1.92	1.92	1.88	1.6	-	1.76	1.95	1.79
BG(2)	22.1	51.5	10.5	8.6	32.0	37.4	0.41	19.7	-	45.3	30.1	17.0
BG(4)	26.2	53.4	15.1	12.4	33.0	41.6	7.9	21.5	-	45.4	34.6	18.7
RRESET	1.77**	3.55	1.86**	2.95***	1.11**	0.78*	1.44**	0.02**	-	1.30**	1.54***	1.90***

*Notes: ***, ** and * denote significance at the 1%, 5%, and 10%, respectively. DW = Durbin-Watson; BG(2) and BG(4) = Breusch-Godfrey serial correlation LM test with 2 and 4 lags, respectively. RRESET = Ramsey RESET test. NS = not significant.*

Appendix 3A: *Disparate, Asymmetric and switching Okun coefficient estimates within the Eurozone*

Description	AT	BE	DE	FI	FR	GR	IE	IT	LU	NL	PT	SP
Switching coefficients												
Regime 1: Expansionary or low recessionary regime												
β_1^+	-1.1***	-	-2.7***	-2.7**	-1.8**	-2.4***	-1.1**	-1.9***	-	-1.3***	-2.3***	-1.7***
β_1^-	-1.1***	-	-1.5***	-2.6**	-1.8**	-2.4***	-3.1***	-1.3***	-	-2.3***	-1.8***	-2.0***
AR(4)	1.0***	-	-0.02	0.7**	0.9**	0.9**	0.4*	0.9**	-	1.1***	0.8**	0.9**
$\alpha(1)$	-4.1***	-	0.07**	0.37*	-0.01*	0.53*	-0.66	-1.2**	-	-3.1***	0.68**	-6.03*
Regime 2: Recessionary regime												
β_2^+	-2.9***	-	-2.1***	-1.9**	-1.10*	-1.6**	-1.1**	-2.9***	-	-2.1***	-1.5**	-2.52*
β_2^-	-2.0***	-	-2.9***	-4.1**	-2.5**	-2.1**	-1.9**	-2.4***	-	-2.8***	-1.05**	-2.9***
AR(4)	0.7***	-	0.8***	1.2**	0.8**	0.9**	0.3**	-0.1**	_	0.49***	1.0***	1.0***
$\alpha(2)$	-	-	-	-	-	-	-	-	-	-	-	-

	6.5***		0.01**	0.6	2.2**	4.2	0.83	1.9***		6.4***	1.42*	7.13*	
Non-switching coefficients													
ρ_1	0.75	-	0.41	1.91	0.34	1.34	-0.07	0.1	-	0.24	0.72	0.36	
ρ_3	0.95	-	0.92	1.21	0.63	0.67	-0.55	0.8	-	0.84	0.64	0.43	
Transition parameters		*matrix*											
P11	0.60	-	0.62	0.02	0.79	0.89	0.741	0.41	-	0.55	0.84	0.93	
P21	0.05	-	0.12	0.70	0.07	0.20	0.37	0.04	-	0.04	0.06	0.13	
Average duration													
Expansionary regime	2.5	-	3	1	5	9	1	2	-	220	6.5	15	
Recessionary regime	20	-	8	1.5	13.5	5	2.5	20	-	0.5	15	7	

*Notes: ***, ** and * denote significance at the 1%, 5%, and 10%, respectively.*

One Story is Good, till Another One is Told.[1] Multi-Utility Companies in Spain, their Evolution and the Laws that Helped their Explosive Growth during the 2008 Crisis

David Acosta-Rosero [2]

Abstract Purpose –The aim of this paper is to create a picture of the evolution of the Multi-Utility Companies in the Spanish economy, using the changes in Labour Law to create a context within which this phenomenon can be explained.
Design/methodology/approach – The paper is composed of a two-part analysis: The first stage considers the changes in the regulations surrounding the evolution of Multi-Utility companies in Spain during the 2008 crisis period. The second component of this study deal with the evolution in the potential number of companies working under the Multi-Utility model.
Findings – The paper contributes with evidence that shows an increase in the number of enterprises that are most commonly associated with types of economic activities Multi-Utility Companies are registered under.
Research limitations/implications – The nature of the subject of study currently has a tenuous conceptualization and legal definition, factor that limited the amount of official information available.
Originality/value – The study presents a review of the changes in the legal framework, analysing existing Labour Law literature, jurisprudence, and enacted acts, in order to provide some context for the evolution of Multi-Utility Companies.
Paper type - Analytical Paper.

Keywords: *MUC, Spain, Labour Law*

[1] Aesop, *The Man and the Lion,* in *Aesop's Fables*, (ed.) G. Townsend, Wisehouse Classics, Sweden, 2015.

[2] David Acosta-Rosero, Social Economy PhD. Candidate, IUDESCOOP, Universidad de Valencia, which is Part of the Research Group "INCLUSIVE" GIUV2017-351. Email address: davidacosta.da@gmail.com. This paper was prepared as part of the project "Fundamental Rights on the era of digital subordinate work" DER2017-83488-C4-3-R.

1. Introduction

The new, or not so new, business reality has pushed companies to find inventive ways to cut costs, improve efficiencies and enhance margins. Subcontracting is a common tool now-a-days, and it can easily be found in all industries and all sizes of enterprises. Looking to satisfy the need for transient labour or the desire to outsource part of the operation of a corporation, the Multi-utility Companies (MUC) have jumped into the labour arena, taking up the market by a storm and leaving their mark.

This article is an attempt to understand the phenomenon these types of companies represent, and starts with a general conceptualization and a brief description of their humble beginnings. Next, the changes in the labour legal framework, where these companies operate, is illustrated, taking special consideration to point out the introduction of laws that could be counted as contributing factors for their rapid expansion. Diving even deeper into the Workers' Statute, two of the articles that are most relevant to the function and justification of being of the Multi-Utility Companies, are analysed. They are Article 42 and 43, and they define the context where subcontracting can exist.

Later, the focus is shifted towards the consequences that have been seen to the rights of the workers that are part of some of these enterprises, the mechanics and methods utilized to bypass legal requirements, and the social response of Unions and Associations aimed to stop those abuses.

The final section is an inductive analysis that spans from 2008 to 2017 - including the period of crisis-, aimed to present the evolution of the number of the MUC by means of tracking the amount of companies with the same type of "main" economic activity most commonly associated with these enterprises.

2. What are Multi-Utility Companies (MUC)?

Outsourcing can be done in several ways, making it possible for a company to externalize specific activities to a separate company and saving money by doing so. The common options are specialized service providers, but, what if instead of hiring several companies with specific expertise you could hire a "jack-of-all-trades" or "do-it-all" company. Then you would be hiring a *Multi-Utility Companies (MUC)*.

The question 'What are multi-utility companies or "MUC"?' is an inquiry to which the exact answer has been the focus of much speculation, but it is safe to say that the term refers to an enterprise that performs several activities specially tailored to fulfil, generally, the peripheral labour needs of another company. Those services include but are not limited to: cleaning, call-centre

agents, security, office administration, among others. In words of Esteves-Segarra Multi-Utility Companies "are characterized first and foremost by the versatility of their social object. Therefore, they are not entities sorted by their technical occupation to one activity, but is precisely their professional and lucrative activity the one that is shaped to accommodate the object of the contract it is tending to."[3]

Until 1999, a company looking to save on labour costs would turn to a TWA (Temporary Work Agency) for staff. But, following that year's legislative changes that toughened the rules for the TWA[4], using their services became as expensive as hiring regular staff. Here is where MUC took advantage of some legal loopholes found in the Workers' Statute[5] surrounding the subcontracting phenomenon, and quickly filled the gap left by the TWA. This was the spark that ignited the voracious growth surrounding these enterprises, which -as we will later see- even expanded throughout the period of deep economic uncertainty that Spain lived at the beginning of the decade.

3. Some of the (legal) Reasons for the Expansion of the MUC

The tumultuous crisis Spain lived in the last decade saw many changes and reforms that affected the way business was done. The economic challenges, shifting demographics and external pressures gave birth to a wide assortment of measures that affected all aspects of the Spanish Welfare State, but more relevantly, the rules associated with labour market. Here we will go over the most impactful changes in the legislation, and how they helped laid the foundation for a more favourable structure that fostered the growth of the Multi-Utility Companies.

In June 16, RDL (Royal Decree-Law) 10/2010[6] was introduced, which among its virtues allows for the reduction the costs of dismissal and speeds up recruitment. It enables the identification, through collective agreements, of the

[3] A. Esteve-Segarra, *La selección del convenio colectivo en empresas multiservicios. A propósito de la STS de 17 de marzo de 2015, rcud. 1464/2014*, Universidad de Valencia, 2015, Not available in English

[4] Law 29/1999 imposes the requirement for TWA workers to have the same remuneration and collective agreements protections as the workers of the client company they are providing services to.

[5] The articles most relevant to the modus operandi of these companies are: Art. 43 WS (Workers' Statute) faintly describes an illegal and a legal cession of workers. Art. 42 WS sanctions the possibility of subcontracting services. Art. 15.1a WS allows for the interpretation that the duration of a work contract can be linked to a commercial contract between companies.

[6] Spain, *Royal Decree-Law 10/2010 of 16 June 2010 on urgent measures to reform the labour market [Real Decreto - Ley 10/2010, de 16 de junio, de medidas urgentes para la reforma del mercado laboral]*, BOE, n.147, June 16, 2010, Not available in English.

activities that are essential to the company. This particular point is one of the key factors in concerning the MUC. A company looking to reduce costs -via outsourcing- would want to reduce its staff and replace it with temporary labour, hence being more flexible to the demands of the market. According to art. 42 WS, a company that wishes to subcontract another one to cover or help out with the production or execution of its "primary activity"[7], must be certain that the contracting company has fulfilled its Social Security obligations. Even further, the hiring company will be solidarily responsible if the contracting company fails to meet those obligations. All of this does not apply to those companies hired to perform other service that are not the main activity of the client company. That means that the client company is not responsible for the labour security of those workers involved in the peripheral needs of the client company. Compared to the TWA workers, the MUC workers are a cheaper and more flexible alternative.

Another change this bill brought is related with the length of the work contract (art. 15.1 WS) for those employed by the subcontracted company. The understanding that a commercial contract is limited to a specific length of time, has been reason to link the work service contract to the duration of the commercial contract. In other words, if a company is hired to provide a service for a specific period of time, the worker that performs that service is hired only for the time that the contract between the two companies lasts. Even though the cancellation of the original commercial contract was seen as an immediate cause to end the service contract with the worker, the Supreme Court has ruled the process inadmissible. To bypass this constrain the MUC must resort to use a different legal tool in order to dismiss those workers If the commercial contract falls through. That tool was also provided in this RDL in the form of modifications to arts. 51.1 and 52 WS, in which the dismissals due to economic, technical, organizational or production reasons is stated as permissible. The end of a commercial contract would fall under one or all of the justifications aforementioned, making it legal to dismiss any worker in the payroll.

The bill also allows the employer to change certain work conditions such as the distribution of work hours, a scheme similar to "the so-called German model of reduction of working hours on economic grounds is introduced: 10% to 70% of the working hours may be reduced (full-time work may become part-time work). In this case, dismissed employees are entitled to unemployment benefits in accordance with the working conditions set in their previous

[7] The concept of the "primary activity" or "main activity" will be the subject of further discussion in a later section concerning the subcontracting of labour.

contract"[8]. This can be justified under the same principle of economic, technical, organizational or production reasons mentioned before. The areas that can be affected are: work day, schedule and distribution of working time, shift work regime, pay and salary systems, work and performance systems, and functions (art. 41 WS)[9].

The following year another legal tool came into action. RDL 7/2011, this bill brought potentially the most powerful and meaningful change to the legal landscape to the MUC. It, among other things, gives priority to the enterprise agreements over the sector agreements, in regards to collective bargaining[10]. This means that what has been agreed by the company and its workers takes precedence above any other collective agreement including those negotiated by Unions for entire business sectors.

When talking about collective bargaining, identifying the sector agreement that must be applied to a MUC is very important, but often enough it is very hard to do, due to the plethora of activities that it could be engaged in at any given time. As with any other type of company, these agreements set the minimum legal benefits in regards with salary, work hours, dismissals, etc. In the case of MUCs an apparent shift of perspective from "the main activity" to the "activity of expertise" has taken place, which allow the usage of agreements that would match the type of services performed for each specific and separate commercial contract. In contrast with TWA, the application of the collective agreement of the client company, does not need to be applied. By having as many agreements as contracts, the MUC can apply different conditions to workers that would otherwise have access to higher standards if they were hired directly by the client companies. If a MUC wishes to avoid having to deal with the interpretation of what sector agreement is supposed to be applied, the company agreement seems to be the main tool used to escape the more protectionist responsibilities those sector agreements could provide. Not surprisingly, the company agreements tend to have lower Union representation when negotiated [11] hence lower standards and protection for workers.

A parenthesis is necessary at this point to mention some of the elements of the social protection Collective agreements are meant to provide. These main factors that can be negotiated by means of a company agreement, and that have a precedence over any other type of collective (sector) agreement are: a)

[8] J. Llados Villa, T. Freixes, *The Impact of the Crisis on Fundamental Rights across Member States of the EU. Country Report on Spain*, European Parliament - Directorate General for Internal Policies, 2015, 1-131

[9] Spain, *op. cit., 3*

[10] Llados Villa, Freixes, *op. cit., 4*

[11] A. Vicente Palacio, *Empresas multiservicios y precarización del empleo: el trabajador subcedido*. Atelier, Barcelona, 2016.

wages and supplements including those related with company to company profits, losses and results, b) overtime pay and shift work specific wages, c) scheduled work hours and the distribution of labour time, shift work arrangements and vacation planning allocation, d) professional classification tailored to suit specific company's needs, e) the conditions of the types of work contracts that are affected by collective bargaining, f) policies to enhance personal / work life balance, and e) any other policy that could be negotiated in accordance with Article 83.2 WS[12].

Going back to the legislative changes that affected the landscape for Multi-utility Companies, in 2012, new measures were introduced. In regards to Temporary Work and Labour Brokering agencies, they are now allowed to be "for-profit", and even serve for the procurement of workers for the Public Sector thanks to the introduction of RDL 3/2012.[13] This bill also allows for the suspension of contracts due to production, economic or organizational losses including those hired by government agencies and organizations. In the case of dismissal of public servants based on "economic reasons", budgetary deficiencies can be used to justify said lay-offs[14], condoned by adding an additional disposition to the Workers´ Statue.[15] Adding to this, if a company wanted to dismiss staff skipping the regular or legal procedures, the reparations monies to be payed to the fired employee were also diminished. The compensation packages went from 45 days of pay per year of service, with a maximum of 45 monthly payments, to 33 days of pay per year of service, with a maximum of 24 monthly payments.

The collective dismissal procedure for private companies saw changes too. Previously, a Labour Adjustment Plan -process of negotiation supervised by the Ministry of Labour and Social Security, with the presence of the Workers'

---

[12] Article 83.2 refers to the capability that national or regional Unions and Workers' Associations have in order to negotiate clauses associated with the structure of collective agreements (interprofessional or to a specific sector) and, if necessary, the rules to solve disputes relevant to those agreements. But, the application of the company agreement over any other type of collective negotiation, as stated in Art. 84, can effectively cancel out the points negotiated by Unions and Workers' Associations via Art. 83.2. Spain, *Legislative Royal Decree 2/2015 of 23 October, by which the Consolidated Text of the Law of Workers' Statutes is approved [Real Decreto Legislativo 2/2015 de 23 de Octubre, por el cual se aprueba el Texto Refundido de la Ley del Estatuto de los Trabajadores], BOE, n. 255, October 24, 2015, Not available in English.*

[13] Spain, *Royal Decree-Law 3/2012 of 10 February 2010 on urgent measures to reform the labour market [Real Decreto - Ley 3/2012, de 10 de Febrero, de medidas urgentes para la reforma del mercado laboral]*, BOE, n. 36, February 10, 2012. Not available in English.

[14] A. Vicente Palacio, *El Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral. Una breve presentación de la reforma en el ámbito del derecho individual*, *Revista General de Derecho del Trabajo y de la Seguridad Social*, Spain, 2012, n.31, 258-315.

[15] FEMP, *Análisis del Decreto Ley 3/2012, de 10 de Febrero, de medidas urgentes para la reforma del mercado laboral,* Madrid, 2012.

representatives- was required. With the introduction of this Bill, the collective dismissal process can be expedited unilaterally by the employer without the intervention or supervision of government representatives.[16]

This Royal Decree Law also suspended the automatic conversion of temporary contracts into fixed-term contracts by modifying art 15.5 WS, measure that was introduced the previous year in RDL 10/2011 of the 26 of August 2011. Before this modification, any worker employed for more than 24 months out of 30, under one or more temporary contracts in the same company, would acquire the status of permanent worker. This right is no longer available, effectively making it harder to become a "permanent" worker, with all the rights and stability it entails.

Among other "benefits" of this reform, telecommuting is now legal, greater flexibility is added by modifying the occupational system, and companies can unilaterally assign up to 5% of working hours to other professional categories. But, with all the tools presented to allow for internal flexibility, Martinez Veiga[17] points out that only 1 in 10 of the companies decided to make use of "soft" flexibilizing measures, such as schedule or pay adjustments, while more than double the amount of companies (25%) preferred "hard" measures such as dismissals; the trend and preference for employers in cases of economic stress is still aimed towards the use of "hard" measures.

And to boost job creation, a one-year-probation-period contract was created to support entrepreneurs. This figure (contract) has generated a heated debate, even reaching the Social Rights European Tribunal. The justice institution has declared that such type of mechanism violates the European Social Rights Chart, international Treaty of which Spain is an endorser -even if it is only the core articles of the chart.[18]

Some of these legislative changes might partially explain the massive increase in unemployment, the disregard for collective bargaining agreements, the skyrocketing increase in many different types of companies, among other social consequences that could contribute to the rise in the Risk of Poverty index or the increase in the GINI coefficient. But that is a subject that will not be discussed now.

On the other hand, what we can state is that the changes in the law provided not only tools for companies to thin out and legally get rid of employees, but the transition provided a well defined route on how to do it. Chronologically

[16] Lladós Villa, Freixes, *op. cit., 4*.

[17] U. Martínez Veiga, *La Reforma Laboral De 2012 Y El Aumento Del Despido Y Desempleo En España,* in *Revista Andaluza De Antropología*, vol. 11, no. Trabajo y Culturas del Trabajo en la Globalidad Hegemónica, 2016, 44-66.

[18] M. B. Cardona Rubert, *La situación del Estado Español en relación al cumplimiento de la Carta Social Europea*, in *Revista de Derecho Social*, 2015, no. 69, 103-114.

speaking, the identification of the segments that were not essential in the company was the first step, followed by the critical change from a Sector agreement to a company agreement, were a cause of the decrease, in many cases, of the standards for workers. After, firing workers got easier and cheaper, while hiring workers got incentives, even if those workers had part-time contracts or service contracts -of the latter some were tied to mercantile contracts. Effectively, the consequence was a revolving door where workers could be fired and then rehired with lowered benefits and uncertain stability.
The changes that occurred to the Workers' Statute were far reaching, and it is now necessary to dive a little deeper into two important Articles, when speaking about outsourcing. Those are Article 42, and article 43.

4. Art. 42 WS: Subcontracting for Specific Works and Services[19]; Worker Protection or an Open Door for Segregation?

It is important start by mentioning that the Spanish Constitution (art. 38) allows for freedom of enterprise, including the ability to organize the structure and labour of the company, which in turn allows to contract or subcontract labour, a practice that is permitted in art. 42 of the Workers' Statute. This management tool is implemented by means of a commercial contract where a company -public or private- hires another company to perform a specific deed or to provide a service for a certain clearly stated price. In this contract both companies retain their economic and legal autonomy. It is not necessary for the hiring company to be the recipient of the work or services performed by the hired company[20], in other words, the subcontracted company can offer its services "for" the hiring company, not just "to" it.
As noted in a previous section, this article provides protection to the subcontracted worker performing duties that are considered to be those part of the main activity of the client company. So far in paper, this falls in line with the same type of rhetoric used to curve the abuse of temporary workers, as it was seen in the 1990s, even though it does not go as far as to delineate a need for the subcontracting company to match the benefits that the workers of the client company have, requirement that Temporary Work Agencies need to comply.
Article 42 WS rules over the subcontracting of all industries with exception of the construction industry. Due to the compartmentalized nature that the

[19] Spain, *op. cit.,* 5
[20] J. G. Arbós, *Análisis de las contratas y subcontratas como reflejo de la descentralización productiva*, in *Revista Jurídica Universidad Autónoma de Madrid*, Madrid, Jul. 2016, vol. 0, no. 1, 149-180.

industry can exhibit, and specific law[21] was drafted to regulates the subcontracting of labor for specific jobs and services.
In regards to the rest of industries, Art. 42 WS compels a client company looking to subcontract labour for their main activity to check if the company it is hiring has a good record and is up to date with its Social Security and wages obligations. Furthermore, the hiring company is made to be solidarily responsible for the Social Security payments of the subcontracted workers, if the contracted company is not able to fulfil this commitment. Wage-wise, the same responsibility is extended effectively creating a safety net for the workers involved.
Furthermore, the workers of the contracted company, their representatives, and the Social Security Treasury must be made aware in writing, prior to the start of the tasks, of the name, fiscal identification and address of the company that the services are going to be performed for. Equally important, is the responsibility of the client company and the contracted company to inform their workers' representatives of the intention of contracting another company, specifying its name, the reason and length of the contract, the place where it will take place, the number of subcontracted workers to be posted in the main site, and what safety measures are to be taken. This information must be recorded and made available by the client company to its workers' representatives, if the worksite is going to be shared with subcontracted workers. By doing so, the workers of the hiring company can, if they deem necessary, converse, discuss, and take steps to resolve any potential conflict that may arise.
In turn, to allow the subcontracted workers to have a voice regarding their labour conditions, if they have no legal representation, their concerns can be directed to the Workers' Representatives of the client company while they share the same worksite. And even if the former have representatives, those can in turn meet with the representatives of the latter in order to discuss and coordinate their labour activities. The responsibilities of the representatives are those stated in the law or in the applicable collective agreement.
As mentioned before when describing the evolution of Multi-Utility Companies, Art. 42 protects only those subcontracted workers that perform tasks related to the "main activity" of the client company, considering it as the core or primary driver of the production process. In words of the Supreme Court:

[21] Spain, *Law 32/2006 of 18 October (Consolidated text last modified on 23 December 2009) on the regulation of subcontracts in the Construction sector [Ley 32/2006, de 18 de Octubre (Texto consolidado, última modificación el 23 de diciembre de 2009). reguladora de la subcontratación en el sector de la construcción]*, BOE, n. 250 December 23, 2009. Not available in English.

> It could be considered the main activity as the "indispensable" one, in such a way that it groups within the concept, besides the ones that are comprised within the company's productive cycle, all others that are necessary for the organization of work. This encompasses complementary tasks […] it could be interpreted that only are integrated in the concept those intrinsic activities, in a way where only those tasks that are part of the productive cycle of a company will be understood as its 'main activity'. This entails that non "core" tasks are excluded from this concept […] If it is required that works and services of contracted and subcontracted companies must match the main activity of the hiring company, is because the lawmaker is thinking of a reasonable limitation that excludes a favourable interpretation of any company activity. It is obvious that the first interpretation nullifies the effect of the mandate of Article 42 WS which has no other goal than to reduce the possible responsibility of the hiring company and, is because of this, 'we are to adhere to the interpretation that presents the main activity as the one that encompasses the nuclear works and services of the hiring company[22]

This determination leaves aside (unprotected from any solidary responsibility from the client company) those subcontracted workers performing activities dimmed "supplementary" - even if they are necessary for the correct development of the "main activity" of the company-, concept that has been interpreted by court ruling[23]. In contrast to TWA, this protection does not include or imply a homologation of benefits to match those enjoyed by the workers of the client company. The work conditions for the subcontracted employees are determined by the collective agreements of their own company or by the sector agreement applicable to it.

This leads to the conclusion that subcontracting is a tool that can be used to lessen the costs associated with Social Security and negotiated benefits for the client company, while the subcontracted company does not have to subscribe to potentially higher sector standards while working for the client company[24]. The same conclusion has clearly been reached by managers, business owners and entrepreneurs all over the country, as exemplified by the rise in numbers of Multi-Utility Companies -section to be discussed later in this work.

An active debate is taking place in regards with the practice of unequal treatment of workers performing the same job due to the externalization and segmentation of enterprise functions. Article 42, inadvertently or not, leaves a door wide open for bypassing the, otherwise, required responsibility to provide

[22] Own translation of the *Supreme Tribunal Sentence 3996/2016 of 21 of July 2017. (STS 3996/2016 del 21 de julio de 2016)*. Not available in English.

[23] A. Ginès i Fabrellas, *Externalización productiva y elusión de compromisos laborales. La necesidad de revisar la normativa europea en materia de subcontratación y sus consecuencias laborales*, in *Relaciones Laborales y Derecho del Empleo*, Mar. 2016, vol. 4, n. 1, 1-20.

equal treatment, equal wages and equal work conditions to people performing the same tasks in the same company, or similar. As Fabrellas writes "First of all, it can generate - as it effectively happens in practice- substantial wage and contract differences between the workers of the main company and the workers hired by the subcontracted company - specially in the lowers zones of the productive chain.[25]

Art 42 WS provides no barriers for a company to subcontract parts of its structure -except for those mentioned in section 1 and 2 of the article, which aim to dissuade from hiring companies that might not be up to date with the obligation to the Social Security system[26]- rendering the practice as legal, as long said relationship between companies does not devolve into an illegal transfer for workers, subject treated by Article 43 WS. In essence, subcontracting is legal if the contracted company gets to keep, inside the client company, its economic responsibilities, considered as such the ability to freely organize the labour of its employees (command, distribute tasks, and decide how to use its resources to achieve its goals) without the interference of the client company[27].

Written as the first point under "*Section 2. Guaranties due to employer change",* contradictorily, Art. 42 WS does not imply or express, in a technical sense, a change of employer when it describes and outlines contracting and subcontracting to other companies[28]. Even Though Art. 42 WS provides for the option of restructuring a company by means of subcontracting, it does not exonerate the responsibility of the "main employer"[29], which, in the case of the subcontracted employee would, theoretically, be the contracted company and not the client company. In other words, the worker's employer should be the one that hires that person - providing that there is a "real productive organization"- even if the service that he or she is hired to do takes place in a different location.

Subcontracting as an organizational phenomenon is not limited to the participation of companies within the private sector, but it is consistent

[24] Ibidem.
[25] Ibidem.
[26] J. Gárate Castro, *Algunas cuestiones laborales y de seguridad social de la descentralización productiva por medio de contratas de obras y servicios, en especial, de las que corresponden a la "propia actividad" (referencias al empleo de esta fórmula de descentralización productiva por parte de las administraciones públicas),* in J. Gárate Castro (ed.)*, Las relaciones laborales en las administraciones locales,* Fundación Democracia y Gobierno Local, Barcelona, 2004, 153-192.
[27] L. M. Munín Sánchez, *La cesión ilegal de trabajadores y su delimitación de las legítimas contratas*, in *Anuario da Facultade da Dereito da Universidade da Coruña*, 2011, n.15, 289-298.
[28] J. L. Moreno Perez, *La subcontratación como instrumento de descentralización productiva y su incidencia jurídico-laboral*, in *Revista Direito das Relações Sociais e Trabalhistas*, 2016, n.1, vol.2, 136-169.
[29] Ibid.

practice among institutions of the public sector as well. In order to grant better efficiency and flexibility to the delivery of public services, many functions of some public entities have been taken out of the scope of influence of the legal framework that presides over the public administration, and have been placed among those that deal with the commercial.30 It is common to find public institutions where contracts for cleaning and maintenance have been awarded to Multi-Utility Companies, or call centres manned by external companies.
In general, every sector of the economy has taken advantage of the capability to subcontract, and potentially replace, parts of any company at lower costs. This has not gone unnoticed by entrepreneurs who have jumped at the opportunity and quickly filled the gaps of those corporations (public or private).

5. Art. 43 WS. Transfer of Workers[31]; A Hazy Boundary

Here is where things can take a twist. Even though the practice of using the figure of subcontracts to rearrange the efficacy of a company and thus saving on labour costs and other responsibilities related to human resources management is legal, there is a fine line between subcontracting and the illegal transfer of workers. Article 43 of the Workers' Statute outlines that only duly approved Temporary Work Agencies will have the power to transfer workers to a client company -renting labour for a specific amount of time, with all the requirements associated with the use of an approved TWAs-. Furthermore, it defines an illegal transfer of workers as a situation where any or all of the following circumstances are present: a) when a service contract is celebrated with the sole object of making labour available from the subcontracted company to the client company; b) when the subcontracting company has no productive activity or lacks its own stable organization; c) when the subcontracting company lacks the means necessary to fulfil its activity; and, d) when the subcontracting company does not perform the tasks embedded in its role as employer[32].

---

[30] J. L. Moreno Perez, *Repercusiones laborales de los diversos instrumentos de privatización y reversión de servicios públicos*, in *Temas Laborales*, 2016, n.135, 251-307.
[31] Spain, *op. cit., 5.*
[32] Art. 1.2 of the Workers' Statute defines the employer as any physical or legal person, o community of property that receive the services of the persons that Art. 1.1 WS refers to, as well as those persons hired to be transferred to client companies by legal TWA. Art. 1.1. WS defines a worker as a person that voluntarily provides remunerated services employ by others and inside an organizational setting, and under the direction of another physical or legal person, that is known as the employer. From these two articles the conclusion is that the employer's tasks are: a) to provide a remuneration for the services it receives from a worker; b) provide an organizational setting for the worker; and, c) provide direction to the worker. Spain,

This article also penalizes the illegal transfer of workers by making the client company and the subcontracting company solidarily liable for any obligation to the worker or any responsibility to the Social Security system, apart from any other penalty that might be imposed by law. On the other hand, the worker subject to an illegal transfer can choose to become a full time worker of either of the companies involved in the transfer, with all the benefits that any other worker in the chosen company would enjoy. It is important to note that, in contrast with Article 42 WS, this protection is not limited to certain areas of subcontracting due to the fact that there is no mention of the "main activity" of its redaction. Hence, the protection can be extended to any illegally transferred worker, being an example the Supreme Court Sentence 1378/2015 of 17 of March 2015[33]. This case involves Technical Engineering firms and a worker performing his duties as a driver, activity which is not considered to be part of the "core" of the enterprises economic processes.

The article, which clearly states the need to utilize a TWA in order to transfer labour, unfortunately leaves a gap wide open that has been masking the use of other forms of labour management, such as subcontracting other companies, to provide for the needed or wanted transfer of labour. As mentioned before, subcontracting services is not illegal according to Art. 42 WS, but it can be used to hide unlawful labour transfers. This unlawful practice has sparked a renewed debate that puts into consideration the concept of the triangular labour relationship -client company / worker / subcontracted company[34].

A rapid growth of phenomenon has been seen, especially due to the development of new forms of labour that require little to no infrastructure, such as those jobs related to intangible production (software, customer service, management, to name a few). Considering these types of companies and industries, which might need no physical infrastructure to survive and thrive, the line gets blurry when defining a "real productive organization" vs. a fake one, especially when referring to companies that provide more than just one service[35].

To identify the difference between the two situations (legal subcontracting and illegal transfer of labour), identifying the employer responsibilities of the subcontracted company within the client company is a must. If the worker has to report to and is directed by a representative of the company he or she has

op. cit., 5.

[33] *Supreme Tribunal Sentence 1378/2015 of 17 of March 2015. (STS 1378/2015 del 17 de Marzo de 2015).* Not available in English.

[34] M. L. Pérez Guerrero, M. Rodríguez-Piñero Royo, *El artículo 43 del Estatuto de los Trabajadores: Empresas de trabajo temporal y cesión de trabajadores*, in *Revista del Ministerio de Trabajo y Asuntos Sociales,* Madrid, 2005, no. 58, 185-220.

[35] Ibid.

been hired into (the subcontracting company), and not to a representative of the client company, then we can say that there is a real organization in the subcontracting company. Failure from the subcontracted company to exercise its power of direction accounts for a flaw in the contract, and thus incurring in an illegal transfer for labour[36]. The subcontracted company must, as well, be able to provide for the necessary "structure" in order to fulfil the service it was hired for. Otherwise, if the structure is not clear or if it is dependant of the client company, then we can say that the structure is not independent from the client company, hence it becomes an illegal labour transfer[37] [38]. The same can be added to the "tools and facilities" necessary for the delivery of the service or the execution of the tasks required of the workers.

The Supreme Court (Tribunal Supremo) has stated that "the line that divides legal subcontracting and pseudo-subcontracting, or illegal transfer for workers disguised as a works-contract or services-contract is drawn according to the doctrine of the 'actual employer', having to assess the performance of the employer's position, not in a general way, but in relation with concrete employee that makes the claim".[39]

In other words, if a worker is hired by Company A, and this company fulfils its obligations as an employer (provides remuneration -including those obligations related to Social Security and collective agreements-, direction, structure, and the means to perform the tasks assigned), then the worker is considered to be working for Company A, even if Company A provides services for Company B via the use of a commercial contract. If Company A fails to fulfil any or all of its obligations -wilfully or not- then the worker can be considered to be part of an illegal transfer of labour, and is entitled to choose to work for either Company A or Company B. Summarizing, in order to avoid an illegal transfer of labour, the company that hired the worker must provide for remuneration, structure and direction.

An example can be taken from the Supreme Court Auto 672/2018, of 16 of January,[40] where it was decided to deny the appeal to an earlier Sentence related to illegal transfer of labour, corroborating the presence of the unlawful act.

---

[36] A. Montoya Melgar, *El poder de dirección del empresario en las estructuras empresariales complejas*, in *Revista del Ministerio de Trabajo y Asuntos Sociales*, Madrid, 2004, n. 48, 135-145.

[37] *Supreme Tribunal Sentence 4919/2012 of 19 of June 2012. (STS 4919/2012 del 19 de junio de 2012)*. Not available in English.

[38] *Supreme Tribunal Sentence 1187/2012 of 25 of January 2012. (STS 1187/2012 del 25 de enero de 2012)*, Not available in English.

[39] *Supreme Tribunal Auto 9599/2017 of 4 of October 2017. (ATS 9599/2017 del 4 de October de 2017)*. Not available in English.

[40] *Supreme Tribunal Auto 692/2018 of 16 of January 2018. (ATS 692/2018 del 16 de Enero de 2018)*. Not available in English.

The logic used in the decision for this Auto was based on the outlining of the figure of the real employer and its responsibilities. In this particular case a Multi-Utility Company, hired to provide services part of the main activity of the hiring company, fails to provide a real business structure for its employees. The workers of the MUC were integrated in the process of the main business activity, having no specific separation from the workers of the client company in said productive scheme. Also, the subcontracting company was supposed to lease the use to the machinery from the hiring company, but by not having records of any transactions referred to this exchange, the MUC was effectively not providing the equipment necessary to fulfil service and had to rely on the hiring company's own equipment. Furthermore, a Directive Official of the hiring company was the person in charge of issuing orders and ensure quality control for the processes the subcontracted company was engaged in, evidently, this means that the organizational structure of the MUC is embedded within client company's own configuration. According to the facts brought forward to the Supreme Court, a clear breach of the Article 43 of the Workers Statute took effect in this particular situation, leading to an illegal transfer of Labour from a MUC to a manufacturing company.

Another of such examples is evident in the Supreme Court Auto 11030/2017[41], in which this tribunal decides to uphold a previous sentence passed down from the Superior Court of the Valencian Community in 2016, in regards to the illegal transfer of labour from a MUC to an airport authority. In this case the workers of the MUC -clearly differentiated by their uniforms - were hired to provide information services to passengers, a role core to the activity of the airport authority. They were also using the equipment and facilities of the client company. Additionally, the MUC had two people to control and direct the workers, but the latter were also taking commands directly from the airport authority's staff. The Supreme Court decided that the rule of the inferior courts is justified, and reiterates that the lack of organizational structure and command from the MUC, when providing services to another company, is considered an illegal transfer or labour. Similar case can be found in the Supreme Court Auto 461/2017 of January 11, 2017[42] involving another MUC and a different Airport Authority, which yielded the same results as the former Auto. Other notable Supreme Court cases, among many others from different Superior Courts involving MUC engaging in illegal labour transfers, are: STS 4941/2016 of 10 October 2016,[43] ATS 5587/2015

[41] *Supreme Tribunal Auto 11030/2017 of 7 of November 2017. (ATS 11030/2017 del 7 de Noviembre de 2017).* Not available in English

[42] *Supreme Tribunal Auto 461/2017 of 11 January 2017. (ATS 461/2017 del 11 de Enero de 2017).* Not available in English

[43] A worker, hired by a MUC, performed services for various companies but it was deemed

of 30 of April 2015[44], ATS 9933/2015 of 10 of November 2015.[45]
It is evident in the articles previously seen that there are loopholes, some big enough to hide illegal practices within the standard process of subcontracting. In the case of MUC, Art. 42 and Art. 43 WS, which represent the legal cornerstone of their productive model, have been used in some cases to slip through the cracks of the legal fabric of workers' rights.

6. Not So Smart Anymore: The Flaw of Company Agreements in Multi-Utility Companies

There is no denying that these types of companies provide valuable services to companies looking to restructure their business model, but not all MUC are playing by the rules. The importance of the collective agreement to establish the work conditions within a company, was already mentioned; and, it was noted too that the legal changes mentioned above gave prevalence to the company agreement over sector agreements.
Some companies took advantage of this fact and pushed through agreements that were aimed to lower the conditions of their workers. To illustrate a scenario this scheme could be applied to, first, a company was formed with a very small number of employees. Those employees elected a workers representative. Then the company and the workers representative would negotiate and sign a collective agreement. So far that is considered to be a pretty standard procedure, and in most cases it works to create better conditions, but the example brought forward quite different. The workers representative turned out to be the financial director of the company, and this company grew from 7 employees in 2012, when the agreement was approved and sent to the authorities, to over 3600 employees in 2015. Before going on a hiring spree, the company would change its name from Doctus to Adecco, and the document signed provided for monthly salaries ranging from 650 to 912 Euros per month[46].

---

that the hiring company was only making the available the labour of the worker, rather that providing a structure for that labour to be performed. *Supreme Tribunal Sentence 4941/2016 of 26 of October 2016. (STS 4941/2016 de 26 de Octubre de 2016)*. Not available in English

[44] The administrative tasks of a client company were performed by a worker hired by a MUC, but the client company provided the organizational structure, by means of issuing orders, and the physical infrastructure needed for the job. *Supreme Tribunal Auto 5587/2015 of 30 of April 2015. (ATS 5587/2015 de 30 de Abril de 2015)*. Not available in English

[45] Cleaners were hired to perform housekeeping duties in Hotel, using the infrastructure and tools provided by the hotel, under the command structure of the hotel staff. *Supreme Tribunal Auto 9933/2015 of 10 of November 2015. (ATS 9933/2015 de 10 de Noviembre de 2015)*. Not available in English.

[46] R. Mendez, A. Blanco, D. Grasso, *Reyes de la Precariedad: así hunden los salarios las multiservicios*

This is but one example on how these types of negotiations were being made and applied. In the Autonomous Community of Navarra it is estimated that the average loss of yearly income for the MUC workers, compared to the sector agreements stipulations, sits at €8.713,00 (Salaries decreased from 14% to 51%), while number of hours increased by 100 per year.[47] The number of workers affected by the application of company agreements instead of sector ones is approximately 16.700 distributed in over 1.500 companies. These enterprises mainly deal in the activities of: Retail, Transport and Logistics, Hospitality, and Services (cleaning, landscaping, call-centres, administration, etc.).[48]

But, this technique worked only for a limited time, due to the actions of the mayor Unions, who brought the issue to the courts. In a Supreme Court Auto previously mentioned (ATS 9933/2015 of 10 of November 2015), the ruling favoured the workers by acknowledging that in this instance there was an illegal transfer of labour, as defined by Article 43 WS. But what is now worth noting is that this pronouncement also highlighted the practice Multi-Utility Companies have been famous -or rather infamous- for, which is cutting costs associated with an enterprise's peripheral activities by lowering labour standards for externalized workers. The Auto provides a clear example and goes as far as to state that: "...the Court understands that the intention is to have cleaners perform the duties of housekeepers, lowering the work conditions of those who provide that service, due to the fact that the contracted activity is not cleaning of the common elements of the hotel, but the completion of those activities that according to the hospitality collective agreement are to be executed by housekeepers with a higher wage, which can even be deduced from the service leasing contract that makes reference to housekeepers in its Fourth Numeral, truly hiring housekeepers instead of cleaners, but under the category of cleaners to avoid the application of the hospitality collective agreement so they can be payed a lower wage and to decrease their labour conditions."[49]

In recent years, Trade Unions and Worker Associations have also brought these types of practices into the spotlight, and so far they have succeeded by

con la reforma laboral, in *El Confidencial,* 2016, Available at https://www.elconfidencial.com/empresas/2016-12-30/precariedad-reforma-laboral-empresas-multiservicios-convenios_1308910/ (Accessed on September 7, 2017).

[47]Gabinete Técnico, *Condiciones Laborales En Las Empresas Multiservicios. Actuaciones Para Combatir La Precarización*, UGT - Navarra, May 2017, 1-21

[48] Ibid.

[49] *Supreme Tribunal Auto 9933/2015 of 10 of November 2015. (ATS 9933/2015 de 10 de Noviembre de 2015).* Not available in English.

repealing over 40 of those agreements.[50] In most cases the main issue with the these company agreements is not the type of conditions that they pose, but rather a technical flaw that has been uncovered. Negotiations lacked, from the workers' side, a real representative presence due to the fact that the agent bargaining for the workers -brought from only one workcentre- would only be able to stand for the interest of one work location, and even if the company had national reach[51].

This seems contradictory to what is now stated in law, so we ask: If the company agreement has preponderance over the sector agreement, why aren't these collective negotiations valid (even if they are ethical or not)? Well, the devil is in the details, and in this case the limitation is set by Article 63 WS. This article explains that the negotiation power of the workers' representative is limited to the work location he or she is representing. A committee can be appointed to represent several work locations through a collective agreement provision, but this committee cannot be instituted right away on the first collective agreement. This seems to have been the point that many of the new MUC missed. Another point to take in consideration is that, even if there is a legally formed committee formed to negotiate for several work locations, any new work location would not be included in the scope of the reach of said negotiations, effectively leaving any new contracts that a MUC could have -performing duties for new companies at their facilities- outside of the company's collective agreement[52]. This is noted on the ruling of the Supreme

[50] Trade Unions(UGT and FeSMC) have managed to bring to the courts and successfully nullify 44 company agreements between 2012 and 2016 belonging to: Adaptalia Especialidades de Externalización, SL.; Activa Innovación y Servicios; Alliance Outsourcing, S.L.; Alterna BPO, S.L.; Altocu Servicios Integrales, S.L.; Aniser Facility, S.L.U.; APC Bussines Proyect, SL.; Avanza Externalización de Servicios, S.A.; Bercose, S.L.; Citius Outsourcing Enterprise, S.L.; Clarosol Facilities SLU (formerly known as Intecons S.A.); CPM Expertus Field Marketing SAU; Denbolan Outsourcing, S.L.; Doctus España, SAU (Adecco Outsourcing S.A.); Duna Tecnics S.A.; ELA Hiermor Asociados SLU; ESC Servicios Generales, S.L. (Prosegur); Exeo Gestión Integral SLU; Experius, Consultores en Selección y Formación, S.L.; Expertus Multiservicios, S.A.; Expertus Servicios Hoteleros, S.L.; Externa Team, S.L; Fidelis Servicios Integrales, S.L.; Fissa Servicios Auxiliares, S.L.; Grupo Constant Servicios Empresariales, SLU; GSA Soluciones Empresariales, SLU.; Hottelia Externalización S.L. ; Iman Corporation, S.A. (Grupo Iman); Initial Facilities Services, S.A.; J2Y Serhotel Outsourcing, SLU; Jobs Management, S.L.U.; Lloyd Outsourcing, S.L.; Mantrol Servicios, S.L.; Mediterranea Merch S.L.; Merchanservis, S.A.; Risk Steward, S.L.; SGE Quality Services S.L.; Sherco al Detalle, S.L.; Sial Servicios Auxiliares, S.L.; SPN Empauxer, S.L.; Stock Uno Grupo de Servicios, S.L.; Translimp Contract Services, S.A.; Tuntac Invest, S.L.; Úrsula Consulting, SLU. From UGT and FeSMC, *Empresas multiservicios, o cómo precarizar el empleo*. In *Informe del Gabinete Técnico de FeSMC-UGT*, UGT-FeSMC, 2016, 1-61.

[51] Vicente Palacio, *op. cit., 4*

[52] Ibidem.

Court (STS 3286/2015 of 10 of June 2015) that not only describes and upholds the nullification of an illegal collective agreement but, also sets precedent regarding the capacity of companies with only one work centre to negotiate agreements with national influence. The Court states: "to convene a nationwide collective agreement it is necessary for the company to have work centres in more than one Autonomous Community and, in addition, that in the negotiations all the workers' representatives of those centres are present". [53]

7. Up, up we go. Evolution of "Multi-Utility" Companies

The MUC phenomenon has been on the rise in the last decade, but, without an accurate definition, how do we measure the number of these types of enterprises? That is a challenge since the wide arrange of possible activities that these entities perform might disguise their true numbers. Taking and inductive approach helped us find a way to create a general landscape of the scope of action of the MUC. The catalogue system (CNAE – European Activity Classification) used by the INE (National Statistics Institute of Spain) is the tool used to identify the type of companies we are dealing with. Even though it is restrictive in scope, it provides clear data that can help us create, at least, a partial picture of the reality of these enterprises.

To guide us in the process of identification, we considered as a starting point the analysis of real enterprises known to be MUC. To do so we analysed the findings of the 2016 study published by FeSMC-UGT Technical Board[54]. Therein a list composing of 214 collective agreements of multi-utility companies was made public. Taking the company names of each of these negotiations, we dug into the nature of their primary activity, as logged in the National Mercantile Registry.

The finding of this enquiry gave us results for 209 out of the 214. Tabulating the number of activity types, we found 30 different ones[55] that are actively used

[53] *Supreme Tribunal Sentence 3286/2015 of 10 of June 2015. (STS 3286/2015 del 10 de junio de 2015).* Not Available in English

[54] UGT and FeSMC, *op. cit., 16*

[55] The 30 commercial activities associated with the collective agreements of the companies we looked at, as defined by the CNAE Rev 2, are: 26 - Manufacture of computer, electronic and optical products, 33 - Repair and installation of machinery and equipment, 41 - Construction of buildings, 43 - Specialized construction activities, 46 - Wholesale trade, except of motor vehicles and motorcycles, 49 - Land transport and transport via pipelines, 52 - Warehousing and support activities for transportation, 53 - Postal and courier activities, 58 - Publishing activities, 59 - Motion picture, video and television program production, sound recording and music publishing activities, 63 - Information service activities, 68 - Real estate activities, 69 - Legal and accounting activities, 70 - Activities of head offices; management consultancy activities, 71 - Architectural and engineering activities; technical testing and analysis, 73 -

to describe the companies there involved. But what was truly notable was to find that only 6 economic activities represent over 77% of the total number of collective agreements.
The table below shows the six Activities, as described by the CNAE that are most popular among the companies considered to be MUC, grouping 165 of the 213 collective agreements examined.

Table 1. Number and percentage of Collective agreements by Main Activity (CNAE)

Main Activity (CNAE)	**Agreements**	**Percentage**
74 Other Professional, scientific and technical activities	13	6.10
78 Employment activities	17	7.98
80 Security and Investigation activities	23	10.80
81 Services to buildings and landscape activities	68	31.92
82 Office administrative, office support and other business support activities	34	15.96
96 Other personal services activities	10	4.69
Total	165	77.46

Source: Own table based on the company types of the collective agreements listed by FeSMC-UGT Technical Board (2016)[56].

Almost a third (31.92%) of the negotiations we analysed concerned companies whose main activity is Building Services and Landscaping Activities, followed

Advertising and market research, 74 - Other professional, scientific and technical activities, 77 - Rental and leasing activities, 78 - Employment activities, 80 - Security and investigation activities, 81 - Services to buildings and landscape activities, 82 - Office administrative, office support and other business support activities, 84 - Public administration and defense; compulsory social security, 85 - Education, 88 - Social work activities without accommodation, 89 - Mining and quarrying n.e.c.,93 - Sports activities and amusement and recreation activities, 94 - Activities of membership organizations, 96 - Other personal service activities, 97 - Activities of households as employers of domestic personnel.

[56] UGT and FeSMC, *op. cit.*, 16.

by Office Administration Activities (15.96%), Security Activities (10.80%), Labour Activities (7.98%), Other Professional Activities (6.10%), and, Other Personnel Services (4.69%).

Given the fact that these companies perform many various roles, and taking into consideration that those activities are offered – in many cases- to other companies to complement the "non productive" needs that affect their efficiency and productivity, we were curious to see how these types of companies fared during the economic downturn that the Spanish economy experienced over the last decade. So, we looked into the evolution of these specific types of companies from 2008 to 2017.

The result was that all of these economic activities have seen a meteoric increase in the number of enterprises that claim to provide those services, ranging anywhere from about 13% to an astonishing 70% in the brief period of 9 years. Unfortunately, due to the nature of the MUCs many more might be mislabelled and not accounted for within the scope of peripheral services. Also it is important to underline the inductive nature of the study.

The data presented here was made available, after some digging, in the INE's (National Statistics Institute of Spain) database[57]; unfortunately the economic activities are only tracked from 2008 on. As it was previously mentioned the story of the MUC goes all the way back to 1999, and diving into the early history of Multi-Utility Companies would, at this moment, divert us from the period of study.

In table 2, we see the total annual number of active companies for each sector previously mentioned. They vary widely, depending on the activity from 2890 - with the fewest- to 101,094 -with the most- in the first year. What they do have in common is that their numbers have increased in a nine year period.

[57] Instituto Nacional de Estadisticas (National Statistics Institute – Spain) www.nie.es.

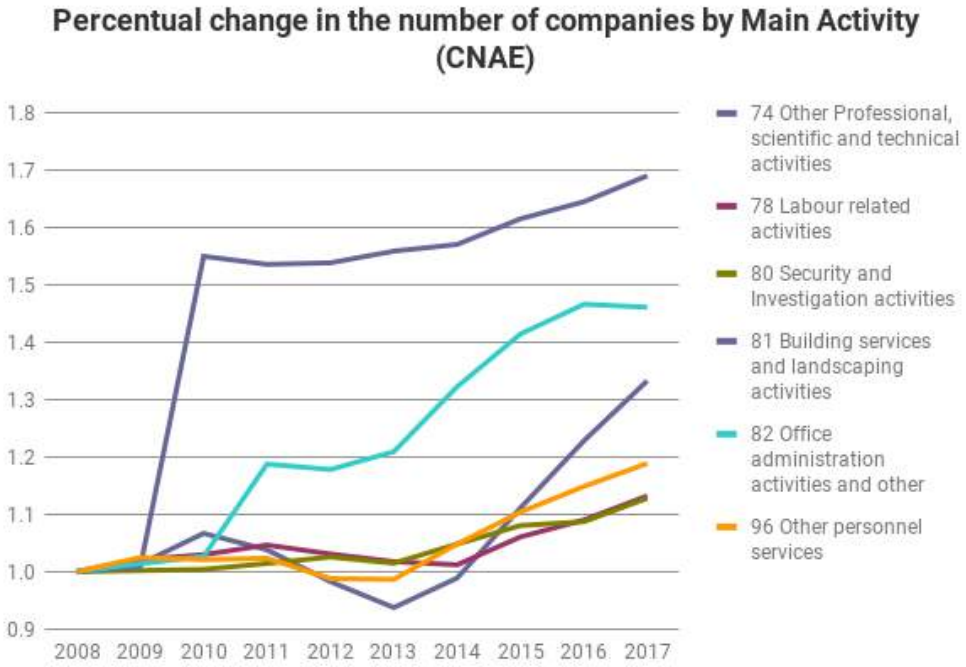
Table 2. Total number of companies by Main Activity (CNAE) 2008 - 2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
74 Other Professional, scientific and technical activities	39,188	39,710	41,830	40,631	38,371	36,634	38,524	43,245	48,304	53,369
78 Labour related activities	4,444	4,536	4,576	4,653	4,580	4,519	4,494	4,713	4,852	5,056
80 Security and Investigation activities	2,890	2,895	2,901	2,931	2,964	2,932	3,030	3,128	3,149	3,278
81 Building services and landscaping activities	25,703	25,906	39,960	39,401	39,504	40,308	40,781	42,610	43,877	45,869
82 Office administration activities and other enterprise support activities	67,071	67,995	68,854	79,961	79,192	81,663	90,930	99,301	104,450	103,915
96 Other personnel services	101,094	103,570	103,196	103,431	99,767	99,635	105,781	111,689	116,679	121,379

Source: Own table based on information taken from the (INE) National Statistics Institute of Spain (2017).

Overall, there are upward trends as shown in Graph 1 and we see those sectors are clearly more robust by the end of the period shown there. The information presented in Graph 1 represents the growth percentage from one year to the next. Even though the raw data ranges shown in Table 2 are massively different, the growth trend is very comparable among this activity lines.

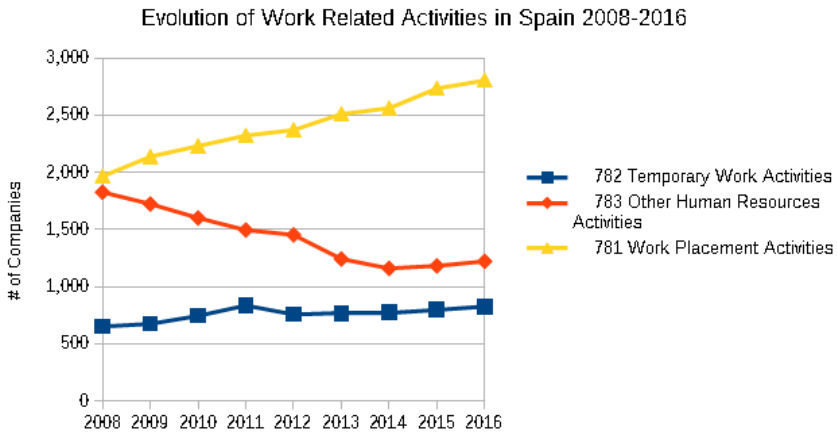
Graph 1



Own graph created using data from INE. The starting point is "1" representing the 100% of the companies by each "Main Activity". Every decimal represents a percentage point.

Then talking about the companies that provide labour, interesting trends emerge. In Graph 1 we saw that employment related activities saw a modest 9% increase from 2008 to 2016. But when we open up the activity and analyze the sub groups that form that category we notice that 782 Temporary Work agencies have had a minimal growth, consistent with what was mentioned earlier in this document. Also, 783 Other Human Resources Activities, the more traditional ones, have shrunk in a significant way. But, the 781 Work Placement Activities agencies managed to multiply and generate an upward trend that keeps on going year after year, from around 2000 to somewhere in the neighborhood of 2800 (40%) in the same period of time (2008 – 2016).

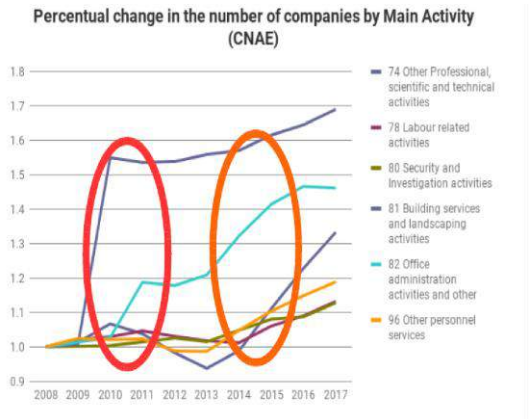
Graph 2. Evolution of Work related activities in Spain 2008-2016



Source: Own graph created with data from INE

But, what is important to notice is that there are 2 clear sections of interest. The first one goes from 2009 to 2011 and shows a clear spike in the numbers of 4 of these activities. And the second one, between 2013 and 2015, where all of them register a boost in their numbers. The latter trend is persistent until 2017 for all except one of the activities analyzed.

Graph 3. % Change in the No. of Companies by Main Activity (CNAE)



Own graph created using data from INE. The starting point is "1" representing the 100% of the companies by each "Main Activity". Every decimal represents a percentage point. Coloured circles represent the moments of greater expansion for companies by "Main Activity".

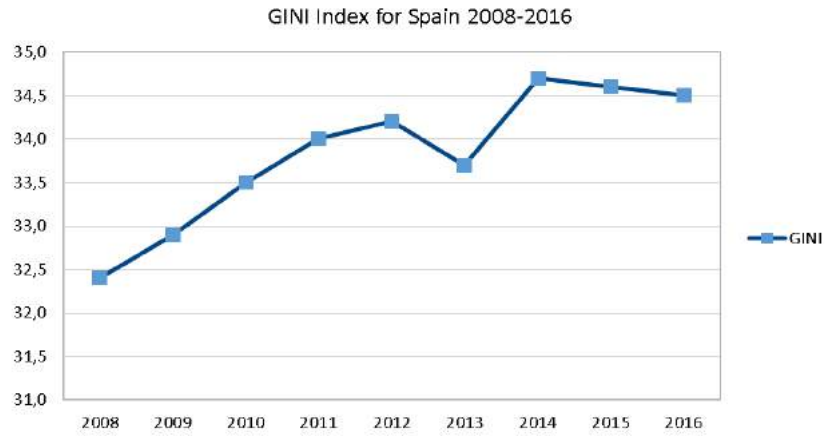
The question then is: What happened in the country to provide such a fertile ground for these types of enterprises to flourish? This enquiry has to be set against the backdrop of the economic situation of the country. The red circle represents the beginning of the most intense period of the economic crisis the country has experienced in the last 15 years. With soaring unemployment (20.11% in 2009 climbing to 22.56% in 2011)[58], and even with a contraction in the GDP of more than 3 percentage points and in 2009[59] alone, the creation of companies in those activity lines exploded. A total of 26,396 new enterprises were created during this period of time using one of the Main Activities above mentioned.

The orange circle represents the period in which all the activity lines increase (38,995 new companies were created) and is known among the official voices as the beginning of the period of recovery. Unemployment dropped from 25.73% in 2013 to 20.90% in 2015, a trend that is constant until today. In addition, GDP dropped in 2013 but miraculously climbed back up in 2015 to levels almost comparable to the pre-crisis levels of 2007. All of this was cause for celebration among government officials. But, there is a little more to it.

The GINI Coefficient[60] and the Poverty Risk data[61] show a different picture. Both of which seem to be at their peak in the period comprised within the purple circle (2013 – 2015).

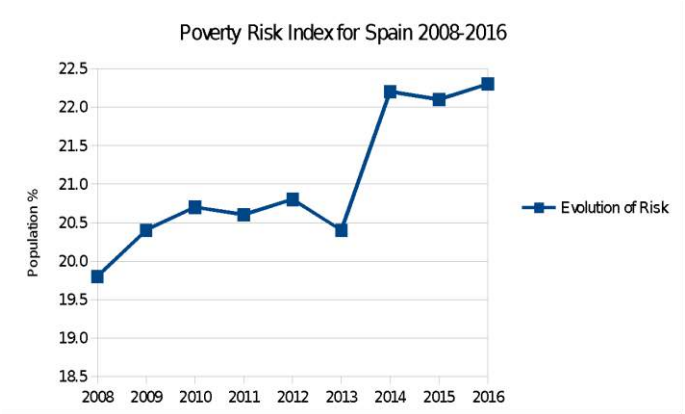
[58] National Statistics Institute (INE in Spanish)
[59] Ibidem.
[60] Ibidem.
[61] Ibidem.

Graph 4. GINI Index for Spain 2008-2016



Source: Own graph created with data from INE

Graph 5. Poverty risk in Spain 2008 - 2016.



Source: Own graph created with data from INE.

Then a question pops up again, what happened that allowed these companies to multiply, even though the country was facing serious social, labour and economic issues? The answer might be too complex, but we can factor in powerful changes in the Spanish legislation that contributed to this phenomenon.

5. Conclusion

New types of enterprises are appearing constantly, adaptive, ever evolving with the times and swing of the increasingly interconnected and global economy. Multi-Utility Companies are nothing but a product of the times and circumstances. They, as other organizational structures before them, are tools used to streamline the productive processes of other enterprises by means of shedding off the "unproductive" bits and keeping the "productive" parts.

The expansion of these enterprises is unprecedented, specially taking into consideration the thought economic Spain has gone through in the last decade. Their impact in the labour market and on the society as a whole is yet to be determined, but it must be noted that the rise of their numbers coincide with the rise of two of the main societal wellness -or lack thereof- indicators: Risk of Poverty and GINI index.

The legal changes that took place at the beginning of the decade in the labour protection contained in the Workers' Statute became the scaffolding necessary, or at least a big contributing factor, for the increase in numbers and relevance of this type of company. By allowing dismissals to be easier to accomplish -without government oversight, and for a myriad of reasons-, in addition to the identification of the "main activity" of a company, paired with the lack of protection for those workers subcontracted to perform tasks not related to it, provided the opportunity for client companies to be less exposed to the "risks" associated with Social Security responsibilities, and allowed them to bypass potentially expensive sector agreements. The modifications acted on both, the legal market, and the MUC. The thinning of the client companies created the demand for the external services; also, the same dismissal process could be used by Multi-Utility Companies to get rid of their payroll once their commercial contracts were done.

Another critical piece of the puzzle to understand the functioning of these companies is embedded in the newly acquired relevance of the Company Agreement over the Sector Agreement. Worker conditions are no longer delineated by the intricacies of consultation and negotiation processes that could involve large parts of the society, instead, the company is bestowed a higher bargaining power to set standards, especially in the case of companies with poor workers' representation or Union presence. But, in some cases this power was overreaching. Even if the texts in these agreements were not used to better the situation for the workers - but sometimes going as far as providing less protection and pay than other workers performing the same tasks- the nature itself of these types of companies makes it hard for them to utilize effectively the Company Agreement.

Subcontracting has been and will be a powerful tool for business owners,

providing flexibility and independence to the companies that hire external help. It is ludicrous to assume that it will stop any time soon, but it is important to notice that it could evolve into a situation where the question becomes "Who is the real employer?" and evolves into "who is responsible for the well-being and conditions of the workers?". That is a theme to explore in these new types of enterprises.

In essence, profits and economic growth are necessary and desirable but they should not be enshrined and uplifted with the diminishment of labour and social rights. Why does it always come down to the rights of the enterprise versus the rights of the individual? To find a balance between the sustainability of a productive structure, of a national economy, and the protection of the hard fought rights of those that make up society as a whole, that is the crux of our current situation.

Human Resource Management and Sector Analysis in Emerging Countries. A Comparative Study of Automotive Subsidiaries Operating in Latin America

Cecilia Senén, Redi Gomis, Bárbara Medwid [1]

Abstract

Purpose - The purpose is to compare the human resource management strategies of MNCs in the automotive sector from two countries: Argentina and Mexico. The leading questions for research were a) Do multinational companies employ different HRM strategies toward workers and union representatives across different countries? b) Do HRM practices in similar sectors tend to converge in these host countries? and c) Do American companies apply similar HRM practices in the automotive sector regardless of the characteristics of those countries in which they are implemented?

Design/methodology/approach - The data used was provided by the Survey of Multinationals (SMNs) carried out in Argentina and Mexico within the remit of INTREPID international research project. Interviews were conducted in 38 companies in Mexico and 19 in Argentina. In Mexico those companies employed 180,864 workers while in Argentina they registered 34,900 employees.

Findings - Differences in HRM strategies were confirmed but not in the way expected. On the one hand, the sector is a relevant variable. There are convergences in HRM practices in automotive sector across different countries, regardless of variations in the institutional frameworks.

Originality/value - The sectoral analysis has allowed us to contrast the theoretical debates proposed. There is a significant lack of knowledge regarding management practice in international automotive firms in Latin America. Additionally, the research contributes to the debate on the comparative labour relations in Latin America.

Paper Type - Research paper

Keywords: *HRM, Emerging Countries, Automotive Subsidiaries, Latin America*

[1] Cecilia Senén is based at the University of Buenos Aires. Redi Gomis (corresponding author) works at El Colegio de la Frontera Norte (Mexico). Email address: rgomis@colef.mx. Bárbara Medwid works at the National University of La Pampa (Argentina).

Introduction

The study of human resource management focused on Multinational Companies (MNCs) operating in Latin America is still in its infancy. During recent years, several studies have been conducted to identify the impact of MNCs' Human Resources Management (HRM) strategies on host countries' industrial relations systems. This discussion is situated in a broader debate that enquires whether the internationalization of the economies and new technologies tend to converge in labor relations practices, regardless of local institutional arrangements.

According to Bechter, Brandl and Meardi [2], Katz and Darbishire [3] suggest that "owing to internationalization, industrial relations systems tend to converge within sectors but diverge between them" [4]. In this sense, we intend to compare HRM strategies from MNCS in two Latin American countries — Argentina and Mexico— within the automotive sector. Even though at first glance Argentina and Mexico seem to have similar labour relations systems, considering that both are developing countries, there are significant literature and empirical data indicating that MNCs tend to behave differently in those countries [5]. While there is some consensus that parent companies tend to implement their own practices in host country subsidiaries, other studies suggest that local responses are shaped by host countries' institutions and actors [6]. Therefore, three related questions arise.

---

[2] B. Bechter, B. Brandl, G. Meardi, Sectors or countries? Typologies and levels of analysis in comparative industrial relations, in European Journal of Industrial Relations, vol. 18, n. 3, 2012, 185–202.

[3] H. C. Katz, O. Darbishire, Converging Divergences Worldwide Changes in Employment Systems, Cornell Studies in Industrial and Labor Relations, Cornell University Press, Ithaca, United States, 2002.

[4] B. Bechter, B. Brandl, G. Meardi, *op.cit.*, 187.

[5] G. Bensusán, J. Carrillo, I. Ahumada Lobo, ¿Es el sistema nacional de relaciones laborales mexicano: un obstáculo o una ventaja para la competitividad de las CMNs?, in Revista Latinoamericana de Estudos do Trabalho, vol. 16, n. 25, 2011, 121–154; J. Carrillo, I. Plascencia, R. Zárate, La inversión extranjera directa y las corporaciones multinacionales en América Latina y México, in J. Carrillo, La importancia de las multinacionales en la sociedad global. Viejos y nuevos retos para México, El Colegio de la Frontera Norte/Juan Pablos Editor, México, D. F., 2012; M. Novick, H. Palomino, M. S. Gurrera (ed.), Multinacionales en la Argentina : estrategias de empleo, relaciones laborales y cadenas globales de valor, Programa Naciones Unidas para el Desarrollo (PNUD) / Ministerio de Trabajo, Empleo y Seguridad Social, Buenos Aires, 2011.

[6] A. Ferner, J. Quintanilla, Between Globalization and Capitalist Variety: Multinationals and the International Diffusion of Employment Relations, in European Journal of Industrial Relations, vol. 8, n. 3, 2002, 243–250; A. Ferner et al., Policies on Union Representation in US Multinationals in the UK: Between Micro-Politics and Macro-Institutions, in British Journal of

First of all, do the HRM strategies that MNCs carry out in Mexico and Argentina differ? If so, is it a matter of different labour relations systems or union actors, or there are other explanatory factors? The other two questions are concerned with determining the reasons for these eventual differences.
Second, do HRM practices in similar sectors tend to converge in those countries, despite their countries' institutional diversity? In this regard, we intend to describe and analyze similarities and differences in an emblematic sector: the automotive industry. The importance of this sector stems from the significant presence of automotive MNCs in both countries. In addition, this sector has undergone extensive changes over the past 20 years. Large traditional establishments have downsized their personnel and there have been significant transformations in work organization as well as technological innovation (Taylorism, Fordism, and Toyotism) [7]. This sector has particular importance, not only due to significant number of people they employ: 89,735 workers in Argentina [8] and 450,000 workers in Mexico [9], but also because they integrate powerful unions with strong "structural power" [10] and "strategic position" involved in the general productive economic process [11].
Taking into account the global magnitude of the MNCs, the significant quantity of capital of US origin in both Argentina and Mexico in the automotive sector, our third question is: are North American owned companies implementing different strategies in these countries or are their practices standardized as some of the literature [12] suggests?
The data used to examine these issues come from a Survey of Multinationals (SMNs) that operate in Argentina and Mexico within the remit of an international research project (INTREPID '*Investigation of Transnationals' Employment Practices: An International Database*' group).[13] Based on the database

Industrial Relations, vol. 43, n. 4, 2005, 703–728; A. Tempel et al., Subsidiary responses to institutional duality: Collective representation practices of US multinationals in Britain and Germany, in Human Relations, vol. 59, n. 11, 2006, 1543–1570.

[7] J. Humphrey, Y. Lecler, M. S. Salerno (ed.), Global Strategies and Local Realities. The Auto Industry in Emerging Markets, MacMillan, London, 2000.

[8] Author, 2006, 77–111.

[9] P. Gil Lamadrid et al., Ventaja comparativa del sector automotor de México, Comercio Exterior, 2003, 43–54.

[10] B. J. Silver, Fuerzas de trabajo / Workforce: Los movimientos obreros y la globalizacion desde 1870, Ediciones Akal Sa, Madrid, 2005.

[11] M. Wallace, L. J. Griffin, B. A. Rubin, The Positional Power of American Labor, 1963-1977, in American Sociological Review, vol. 54, n. 2, 1989, 197.

[12] P. Almond, A. Ferner, American Multinationals in Europe: Managing Employment Relations Across National Borders, Oxford University Press, Oxford, United Kingdom, 2006.

[13] This survey was conducted in Argentina by Marta Novick, Undersecretary of Labour Studies, in the Ministry of Labour, Employment and Social Security under the supervision of Hector Palomino, Director of Labour Studies and Silvana Gurrera, and in México by Jorge

on MNCs provided by El Colegio de la Frontera Norte (México) and The Ministry of Labour (Argentina), this paper seeks to shed light on country and sector differences, focusing on the role played by the country of origin and host country debate.
The article is structured into four sections. The first one describes the main debates about multinationals and their role in Latin America. Also, in this part the characteristics of labor relations systems and differential human resources strategies in Argentina and Mexico are briefly developed. In the second section, the methodology is presented. In the third, the results are discussed. And finally, we present our conclusions.

1. Alike but not Identical: Multinationals and Industrial Relations System in Latin America

1.1. *Labour Relations and the Origin of Capital: Their Effect on the Host Country*

There are several theoretical debates encompassing MNCs studies. Broadly speaking, one group focuses on analyzing the system of labour relations (the role of labour institutions, contextual factors, institutional frameworks), while another emphasizes the analysis of employment practices or of human resources (hiring, selection and training policies, communication, salary policies, among other aspects).
The theoretical perspectives about "*country of origin*" feature among these debates. Ortiz *et al.* [14] recognize the so-called "*host country effect*" in those cases in which the multinationals adapt their practices to the local contexts in which they are operating. In contrast, other scholars describe the "*country of origin effect*" in those cases in which the subsidiary tends to extend their HR strategies to the host countries regardless of the local framework.
For several authors [15], the parent company attempts to implement their own human resources practices (HR) in the countries where they establish their subsidiaries. They try to implement their own "best practice" manual in the

Carrillo. A multinational team has been collaborating for the last 5 years. In the initial stage, researchers from England (Tony Edwards, Paul Marginson, Anthony Ferner), Ireland (Patrick Gunnigle), Canada (Gregor Murray, Christian Lévesque) and Spain (Javier Quintanilla) developed and conducted the survey. In the second stage, in addition to Latin-American countries like Mexico and Argentina, Australia, Singapur, Denmark and Norway are also collaborating.

[14] L. Ortiz et al., Relaciones laborales en fusiones y adquisiciones transnacionales. Una aproximación política (Labour Relations in International Mergers and Takeovers. A Political Approach), in Reis, n. 120, 2007, 11.

[15] A. Ferner et al., *op.cit.*; A. Ferner, J. Quintanilla, *op.cit.*; A. Tempel et al., *op.cit.*

host country regardless of the specificities of the local context. Thus, they leave little or no room for local managers to adapt to local labour union demands or even to local legislation. Quoting Quintanilla *et al.*, "their tendency is to transfer practices and policies to their subsidiaries in a highly standardized and formalized manner" [16]. The problem arises when local formal and informal institutions differ significantly, as they do, for instance, in the Mexican and Argentinean cases with respect to European and North American frameworks. Thus, studies of the "institutional duality", that is to say those that analyze how subsidiaries are submitted to "dual pressures" are associated with the "country of origin".

The HR practices of North American companies within the diverse national labour relation systems merits special attention. In broad terms, this is defined as an *"Americanization"* effect on the practices adopted by the HR departments of US companies in their subsidiaries. The definitive features of these practices are their ethnocentrism, their high level of centralization and their standardization [17]. The head offices design these practices without considering the unique aspects that the labour relations of the host country itself could present. This leaves little space for the managers to be able to act as mediators.

In relation to the role of the multinational companies and their subsidiaries in Latin America (LA), Carrillo *et al.* [18] state that during the 90s the region attracted a high volume of investment as a result of economic measures based on the deregulation of the economy, the liberalization of commercial activities and the provision of horizontal incentives consisting of deregulation and the privatization of state owned companies. According to these authors, the profits of these companies and of foreign direct investment (FDI) in LA are subject to controversy and debate since while they may have achieved significant modernization and transformation (export platforms in Mexico and telecommunication networks for example), they have also taken advantage of abundant low-cost labour. A large part of the FDI in that decade in Latin America stemmed from buying existing companies, not creating new value. For instance, European firms BBVA (Spain) HSBC (United Kingdom), Electricité (France), and the US firms (automotive and auto part) that concentrated their presence in the manufacturing sector.

[16] J. Quintanilla, L. Susaeta, R. Sánchez-Mangas, The Diffusion of Employment Practices in Multinationals: "Americanness" within US MNCs in Spain?, in Journal of Industrial Relations, vol. 50, n. 5, 2008682.

[17] T. Edwards, A. Ferner, Multinationals, Reverse Diffusion and National Business Systems, in MIR: Management International Review, vol. 44, n. 1, 2004, 49–79.

[18] J. Carrillo, I. Plascencia, R. Zárate, *op.cit.*

In 2004 [19] 50 of the largest multinationals had an income of US $258,000 million in Latin America, with 22 US companies topping the list, although altogether there are 24 European companies, 3 Asian and 1 Australian. Most of the companies are manufacturing firms, of which 5 of the 10 largest are from the automotive sector, either US (Chrysler, General Motors, Delphi and Ford) or German (Volkswagen), 3 of the other most important firms are in the telecommunication sector (Telefónica from Spain and Telecom Italia). Most of them operate in the 3 largest markets: Brasil, Mexico and Argentina [20].
However, the evolution of FDI in Argentina and Mexico has diverged [21]. At the beginning of the 90s the volume of FDI was similar, but starting from 1992 Mexico began to grow more than Argentina, and by around 2010 it had tripled the volume of investment. In Argentina, FDI showed a continual growth throughout 2004, was interrupted by the 2008 crisis, but recovered its ascendency afterwards. Among the sectoral differences related to these flows of FDI, the same authors [22] point to the orientation of investment in Mexico towards manufacturing for export, with a marked trajectory towards 'maquila' (*offshoring/outsourcing*), and due to this enjoying, a privileged access to the US market. In contrast, in Argentina investment is directed towards natural resources and services. As for market strategy, in Mexico more than half of the MNCs orient their sales to the regional market and in Argentina more than 80% of the MNCs sales are destined for the domestic market [23]. Also, in the Mexican case, in the year 2010 among the top largest 10 MNCs, 5 are automotive, 3 are service providers, 1 is in trade and, regarding their country of origin, 6 are North American, 2 Spanish, 1 German and 1 is Japanese.
Argentina and Mexico seem to have considerable institutional differences in terms of their industrial relations systems. In the next section we describe the main features of the labour relations systems of both countries from a comparative perspective.

1.2. The National Systems of Labor Relations Systems in Argentina and Mexico

At first glance, these Latin American countries don't seem to have great differences between them. From a macroeconomic perspective, both countries are emerging economies and, in both cases, similar cultural practices and frameworks coexist. They look similar especially when compared with the main

[19] CEPAL, La Inversión Extranjera en América Latina y el Caribe 2004, CEPAL (Comisión Económica para América Latina y el Caribe), Santiago de Chile, 2005.
[20] J. Carrillo, I. Plascencia, R. Zárate, *op.cit.*
[21] Author, 2012, 73–108.
[22] Author, 2012, *op.cit.*
[23] Author, 2012, *op.cit.*

Anglo-Saxon or continental European economies. However, when micro levels of analysis are reached it is possible to identify with greater clarity and sharpness the similarities and contrasts between the two countries.

Broadly speaking, the Argentinian and Mexican labour relations systems have been categorized by specialized literature as "corporatist systems" [24].[25] The particularity of these systems is the strong bond existing between the trade unions, the employers and the State in the determination of labour relations associated with the intervention of the state.

In this sense, state intervention in both countries has a party political character. The Argentinian case is characterized by an alliance between the Justicialist Party and the main unions grouped together in the CGT;[26] while in the Mexican case an alliance is formed between the Institutional Revolutionary Party (PRI)[27] and the main national unions. In both cases, significant social rights and protection have been achieved for workers during their welfare state experiences [28].

Despite these similarities, it must be highlighted that these labour systems have had and continue to have a very dissimilar "performance" in terms of results. Even though the state has a foregrounded presence derived from the establishment of strong regulatory frameworks, the impact as well as the enforcement of these norms has affected labour relations in each country in a differentiated way. These differences are partly due to the divergent commitments that the states have historically assumed in relation to the

[24] G. Bensusán, Diseño legal y desempeño real: México, in G. Bensusán, Diseño legal y desempeño real: Instituciones laborales en América Latina, Universidad Autónoma Metropoliana/Miguel Ángel Porrúa, México, D. F., 2006, 313–410; S. Etchemendy, R. B. Collier, Down but Not Out: Union Resurgence and Segmented Neocorporatism in Argentina (2003–2007), in Politics & Society, vol. 35, n. 3, 2007, 363–401; M. V. Murillo, Sindicalismo, coaliciones partidarias y reformas de mercado en América Latina, Nueva ciencia política de América Latina, Siglo XXI, Madrid, 2005; P. C. Schmitter, Reflections on where the theory of neo-corporatism has gone and where the praxis of neo-corporatism may be going, in G. Lehmbruch, P. C. Schmitter, Patterns of corporatist policy-making, Sage modern politics series 7, Sage Publications, London ; Beverly Hills, Calif, 1982, 259–279.

[25] The "state corporatism" in some Latin American countries is characterized by the leading intermediatory role of the state in the interests of civil society, in general, creating those interests or subordinating society to the state. This characteristic differentiates it from "social corporatism" or "neocorporatism" (distinctive of North European countries) see B. Marques-Pereira, "Corporativismo societal" y "corporativismo de Estado": Dos modos de intercambio político, in Foro Internacional, vol. 39, n. 1 (155), 1999, 93–115..

[26] Justicialist Party, party political expression of the Peronist movement, born in 1943; and the CGT (General Confederation of Labor), founded in 1930.

[27] Named National Revolutionary Party in 1928, later Party of the Mexican Revolution and from 1946 onwards PRI.

[28] G. Bensusán, "Diseño legal y desempeño real: México", *cit.*

working class, to the establishment of labour regulations that haven't been modified for more than 70 years such as in Mexico and the institutional rupture or discontinuity that Argentina has suffered due to the military dictatorships.

In the last two decades both countries have gone through profound processes of deregulation and flexibilization that have had an impact on the triad: State – Union – Companies. Indeed, quoting Dombois "…the role of the State as regulator and supervisor being the differential feature of labour relations in Latin America, it is important to know how the neoliberal transformation of the 90s impacts, accepting that neoliberalism encourages the withdrawal of the state from its regulatory functions. Therefore, it is appropriate to ask, to what extent the withdrawal of the state has modified the relations of power in labour relations between the unions and businesses..." [29].

While in Argentina a profound change to labour regulations was produced, due to more flexible labour laws during the 90s, which in turn weakened the labour unions' power, in Mexico reforms took place first in practice, and later became enshrined in labour laws. Labour flexibility was introduced in firms before the modification to the Federal Employment Law was approved [30].[31]

Those reforms affected labour relations and union actors in the two countries differently. In Argentina, although the unions lost power, the norms related to union structure remained intact, being unaffected by the neoliberal laws of the 90s. Therefore, the unions conserved their monopoly of representation (*personería gremial*),[32] meaning only one union per industrial branch or activity, which gave them greater representativity and autonomy in relation to the employers. In the case of Mexico, the union representation is decided on a company level, the employer being able to choose their preferred union interlocutor, generating a style of union representation with the need to

[29] R. Dombois, Tendencias en las transformaciones de las relaciones laborales en América Latina. Los casos de Brasil, Colombia y México, in L. Pries, E. De la Garza, Globalización y cambio en las relaciones industriales, Fundación Friedrich Ebert, México, D. F., 1999, 18.

[30] E. De la Garza, Reestructuración productiva y respuesta sindical en América latina (1982-1992), in Sociología del trabajo, n. 19, 1993, 41–68.

[31] The Federal Labor Law, passed in 1917 is the most important legal regulatory framework for labor rights.

[32] "*Personería gremial*" (union recognition) is the legal norm through which the state awards a "monopoly of representation" to the union with the largest number of members in each branch of activity or company. Thus, the authorities recognize the union's right to represent collective or individual interests, including those of non-affiliates, to collect union dues through the deductions that the employers make, and to administrate their own welfare schemes. Other characteristics of the Argentinian union model can be seen in Author, 2011. On the Mexican model of labor regulation see G. Bensusán, Diseño legal y desempeño real: México, *cit.*

"please" the employer if they want to maintain their role as negotiator, distancing the union in many cases from the interests of the workers. However, in neither of the countries, up until now, have alternative institutionalized forms of representation independent of the unions been consolidated by the workers with the power of representation and negotiation.

At the start of the 21st century, the situation across different Latin American countries is very disparate. In several countries, there have been or are currently taking place transformations that give space to processes of economic reactivation and restructuring that, at the same time, bring with them the strengthening of labour institutions. As Leite argues, "the growth of the economies, the expansion of the employment market and the arrival of progressive governments have benefited a greater union presence in the political and economic decision-making spheres" [33]. In the Argentinian case, after a serious economic, social and political crisis in 2001, economic growth, the fall of unemployment, greater state intervention in the economy and policies oriented towards the domestic market have made the revitalization of trade union power and action possible. An example of the change of context is the drop in the rate of unemployment from 21.5% in 2002 to 7.1% in 2014 and the rate of unregistered employment which went from 38% to 32.8% in the same period, marking its largest decrease since the 1980s[34]. In other cases, like Mexico, no substantial change in the orientation of labour relations has been generated although in 2012 a labour reform with a predominantly pro-business orientation was passed, which formalized a flexibility that has been growing in the country over the last few decades [35].

The characteristics of the labour relations systems and the positioning of the union actors could a priori affect the form in which the companies of foreign capital choose to implement their HR strategies within their subsidiaries.

In the next section, we will focus on the differences in the HR strategies utilized in both countries by the MNCs based on how the decisions of the MNC and the local institutional framework interact. We will also look at the characteristics of the labour force and their representation in relation to the type of subsidiary firm and its place in the global economy.

[33] M. de P. Leite, Los desafíos actuales de la Sociología del Trabajo en América Latina, in Sociología del Trabajo, vol. 0, n. 75, 2012, 29-52.

[34] Ministry of Employment and Social Security, Trabajo, ocupación y empleo: 2010-2014, Ministry of Employment and Social Security, Buenos Aires, Argentina, 2014.

[35] G. Bensusán, Reforma laboral, desarrollo incluyente e igualdad en México, Estudios y perspectivas 143, CEPAL (Comisión Económica para América Latina y El Caribe), Santiago de Chile, 2013.

1.3. Differential Human Resources Strategies in Each Country

As has been argued, the origin of the capital of the MNCs and the labor relations systems of the host countries are dimensions "matters" of the study of MNC human resources strategies. In general terms, the companies form bonds with their employees by complying with two main factors: the HR practices belonging to the company, whose country of origin is often a determining variable as has been demonstrated in numerous studies; and the characteristics of the labour relations system belonging to the country in which they are installed. However, there are other existing variables that intervene in the strategies that the MNCs utilize to create bonds with their employees: a) market strategies of the company, b) sector of activity, c) size of the firms according to the number of employees.

The comparative literature from these two countries, Argentina and Mexico, is produced by researchers who form part of INTREPID and have carried out studies looking at, for example, the form that trade union representation takes in the workplace [36]; or exploring the participation of the multinational firms in their respective global value chains (GVCs) [37]. In this sense Bensusán and Martínez [38] have pointed out the differences in the insertion strategies of the MNCs, highlighting that while 41% of Argentinian MNCs have the domestic market or the broader internal market of Mercosur as their final destination, the MNCs established in Mexico export a great part of their products abroad; in the majority of cases they are intra-industrial sales within the same company.

In relation to studies carried out just in Mexico, Bensusán *et al.* [39] analyze the advantages and disadvantages of the Mexican national system of labour relations for the competitiveness of the MNCs, while the study carried out by Pozas and Gomis [40] analyzes the multinational companies established in the

[36] G. Bensusán et al., Regímenes sindicales y entornos políticos-económicos en la Argentina y México: representación sindical en firmas multinacionales, in in Ministerio de Trabajo, Empleo y Seguridad Social (ed.), Trabajo, ocupación y empleo, Investigaciones 2013: Estudios sobre multinacionales y evaluación de políticas públicas, Serie Estudios 12, Ministerio de Trabajo, Empleo y Seguridad Social, Buenos Aires, Argentina, 2013, 31–54.

[37] J. Carrillo et al., Las filiales de la Argentina y México en la cadena global de valor, in M. Novick, H. Palomino, M. S. Gurrera, Multinacionales en la Argentina : estrategias de empleo, relaciones laborales y cadenas globales de valor, Programa Naciones Unidas para el Desarrollo (PNUD) / Ministerio de Trabajo, Empleo y Seguridad Social, Buenos Aires, 2011, 129–154.

[38] G. Bensusán, A. Martínez, Calidad de los empleos, relaciones laborales y responsabilidad social en las cadenas de valor: evidencias en la cadena productiva de VMW, in J. Carrillo, La importancia de las multinacionales en la sociedad global. Viejos y nuevos retos para México, El Colegio de la Frontera Norte / Juan Pablos Editor, Ciudad de México, 2012, 133–184.

[39] G. Bensusán, J. Carrillo, I. Ahumada Lobo, *op.cit.*

[40] Author, 2010.

North of Mexico and point out that one of the greatest incentives to setting up in that region is the search for a cheap labour force in the initial stages of the process of creation of global value.
In the case of Argentina, Novick *et al.* [41] approach in an interdisciplinary way the study of MNCs and their impact on employment, human resources management, labour relations, innovation and the connection between the subsidiaries that operate in that country and global value chains.

2. Methodology

The data for the empirical analysis comes from a Survey of Multinationals (SMNs) that was conducted in Argentina and Mexico in 2009, within the remit of INTREPID international research project. The survey covered a representative sample of MNCs stratified by sector, size and origin of capital; in Argentina, the questionnaire was applied to 155 entities, while in Mexico the sample size was 171.
In sectoral terms, in Argentina, 49.7% of the firms correspond to the manufacturing sector and 50.3% to the service sector. In Mexico, 78.9% belong to manufacturing and 21.6% to services. In relation to the origin of capital, in Argentina 38.1% of cases have their head office in the USA, 43.2% in Europe, and the remaining 18.7% in other countries and regions; in Mexico, the corresponding percentages are: 43.9% in the USA, 17.5% in Europe, and 38.6% elsewhere.
Taking the generated employment as an indicator, we can appreciate the importance of this type of company in the economies of the two countries. Through projections using the survey data, Carrillo *et al.* [42] determined that in Argentina MNCs employed 300,000 people, representing 21% of the total number of employees in private companies. In Mexico, the figure is 2,500,000 workers, 20% of the total number of registered workers in the manufacturing and service sectors [43].
The survey included a set of questions essentially related to the employment practices and labour relations strategies of these important economic actors. Among these were questions related to the, structure of operations, salaries, bonuses or performance awards, training, employee participation and communication, union representation in the workplace, management of human resources in the global context, etc. The survey was carried out through face-

[41] M. Novick, H. Palomino, M.S. Gurrera, *op.cit.*
[42] J. Carrillo et al., "Las filiales de la Argentina y México en la cadena global de valor", *cit.*
[43] J. Carrillo et al., Metodologías para el estudio del impacto de las multinacionales relacionadas con el empleo y el trabajo en México, Reporte, El Colegio de la Frontera Norte/UAM-X, Ciudad de México, 2016.

to-face interviews with executives or managers of human resources at the corporate level.

It is important to note that a comprehensive definition of the MNC was used for the investigation. An MNC can be made up of several production plants and/or service units. The unit of analysis was not the individual plants but rather the corporate unit that would encompass them all. In operational terms, for a company to be considered a multinational, it must meet the following criteria: a company with a minimum of 100 employees in the country of application of the survey and at least 500 employees in the world.

Three variables are key to the analyses we develop in order to empirically address the questions presented at the beginning of this paper. These are: the origin of the MNCs, the sector they belong to (especially whether or not it is the automotive sector), and the HR strategy. The first was always part of the base, as it was one of the questions in the survey. The second and third were constructed for the purposes of this study.

In the case of the sector, the North American Industry Classification System (NAICS) code was used to filter the MNCs belonging to the automotive sector. All the MNCs in the database had previously been identified according to four digits within this classification. Thus, those corresponding to the following codes were catalogued within the sector: 3262 (Rubber Product Manufacturing), 3361 (Motor Vehicle Manufacturing), 3362 (Motor Vehicle Body and Trailer Manufacturing), 3363 (Motor Vehicle Parts Manufacturing), 4231 (Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers), 4411 (Automobile Dealers), 4412 (Other Motor Vehicle Dealers), 4413 (Automotive Parts, Accessories, and Tire Stores), 5321 (Automotive Equipment Rental and Leasing), 8111 (Automotive Repair and Maintenance).

The survey database included 38 multinational companies in Mexico and 19 in Argentina belonging to the automotive sector. It is worth pointing out that these 57 do not represent the entirety of MNCs in each sector, given that excluded from the analysis are some companies that weren't interviewed when the survey was carried out. Regarding size, considered starting from the total number of employees, we can see that the MNCs in the sector in Mexico tend to be larger than their counterparts in Argentina. Actually, while 63% of the automotive companies in Mexico employ more than 1000 workers, this same percentage corresponds to the number of companies in Argentina with less than 1000 employees. This size feature is important, because it has a close relationship to the human resource management strategies.

Regarding the HR strategy, we draw on a previous study of the Argentinian case Palomino et al. [44], in which different MNC strategies are summarized such as:

- *Direct strategy*: high level of communication between management and the employees, consultation and information with the aim of avoiding any type of mediation between workers' representation and the managers. In this type of strategy, the HR departments, which are prominent, are composed of a fairly well developed individual performance appraisal system.
- *Mediated strategy by the union actor*: this is the type of strategy where the link between the company and the workers is highly mediated by trade union representation. Here we do not observe high levels of communication between the workers and management. It is the trade union that intervenes, discussing with management the needs of the workers and their participation in the workplace.
- *Mixed strategy*: combines the mediation of union representation alongside intermediate levels of communication between management and workers. In this type of strategy, we find the presence of unions in the determination of working conditions and collective bargaining without elimination the relationship between the HR department and the workers.

In order to define these strategies for our study, based on the aforementioned research [45], we have first identified which of the variables used in that study were equally relevant for comparative purposes between Argentina and Mexico (see Table 1). And afterwards we design a cluster analysis for determining the three groups of human resources strategies. The chi-square test was carried out to assess whether there were significant differences in the distributions of each variable by country.

[44] Estrategias de gestión hacia los empleados y sus representantes en las firmas multinacionales con operaciones en la Argentina, Paper presented at Conference on Employment Relations in Multinationals, School of Industrial and Labor Relations, Cornell University, Ithaca, New York, September 2010.

[45] H. Palomino et al., *op.cit.*

Table 1. Variables of indicators of managerial strategies towards employees and their representatives

Variables	Categories	Country		ToT	Chi-square	
		MEX	ARG		Value	Sig.
Information and consultation	Without	10%	24%	17%	29,9	0,000
	Medium	33%	50%	41%		
	High	56%	27%	42%		
	Total	100%	100 %	100 %		
Involvement mechanisms	Low (absence of work teams)	21%	38%	30%	20,5	0,000
	Medium (teams with less than 50% LOG employees)	42%	19%	30%		
	High (teams with more than 50% LOG employees)	37%	43%	40%		
	Total	100%	100 %	100 %		
Approach towards trade union representation	Hierarchical (management decides unilaterally about two areas: salary and career planning)	16%	30%	25%	10,7	0,001
	Consultative (management consults about at least two areas. If only one area is consulted on, the other they decide alone)	23%	35%	31%		
	Bargaining (management negotiates at least one of the two areas)	61%	34%	44%		
	Total	100%	100 %	100 %		
Union Representation in the workplace	Absence of representatives (no workers affiliated to unions and no non-union representation)	26%	28%	27%	4,3	0,12
	Non-union representation (without union affiliation (workers' association or committee, complaints and demands system)	11%	5%	8%		
	Union membership and union presence in the workplace	63%	67%	65%		
	Total	100%	100 %	100 %		
Performance appraisal system	Without	18%	9%	14%	4,8	0,03
	With	82%	91%	86%		
	Total	100%	100 %	100 %		

Source: Databank on MC provided by El Colegio de la Frontera Norte (México) and the Ministry of Labour (Argentina) 2009

The X^2 test design shows that in almost all dimensions except for that of union representation one, the variables behave differently in each country. Indeed, when p-value is lower than 0.05 it means that there is not a wide margin of error in this assessment. Hence, this variable was excluded in our case. Considering then the rest of the variables, a hierarchical cluster analysis was performed to determine the three groups corresponding to the HR strategies, whose distribution is presented below, in the results section.

3. Results

This section is structured following the same order of the questions presented at the beginning of this paper.

3.1. Argentina and México: divergence within Convergence in HR strategies

With the aim of providing an answer to our first question about how HR strategies are different in Argentina and Mexico, as mentioned above, we draw on a previous study of the Argentinian case Palomino et al. [46], in which different MNC strategies were typologised as direct, mediated by the union and mixed.

In table 2 we can observe the three human resources strategies already defined. The chi-square test shows that the distribution of this variable is significantly different in each country. In addition, the above-mentioned arguments can be verified: trade union representation seems to satisfy different goals: greater degrees of participation in the Mexican case (73%) and an attitude that varies between hostile (27%) and participatory (51%) depending on the company in the Argentinian case. In Mexico, the subsidiaries are more inclined to include union mediation probably, as we mentioned in the second section, because they can choose their interlocutor and the unions have a less confrontational culture of organization and thus they are more collaborative. So, though (perhaps) involuntarily, the union is functional to the goals of the multinationals. In the case of Argentina, even though there is a strong presence of strategies "mediated by the union actor", there is a significant group of companies that employ direct strategies (27%), avoiding contact with the union. In the case of Mexico only 11% of companies employ direct strategies and just 16% choose a mixed one.

[46] *Op.cit.*

Table 2. Human Resources strategies of Argentinian and Mexican MNCs

Strategy	Country of application		Total	Chi-square	
	Mexico	Argentina		Value	Sig.
Direct	11%	27%	22%	6,48	0,039
Mixed	16%	23%	20%		
Mediated	73%	51%	58%		
Total	100%	100%	100%	-	-

Source: Databank on MC provided by El Colegio de la Frontera Norte (México) and the Ministry of Labour (Argentina) 2009

Before answering our second question regarding whether HRM practices in similar sectors tend to converge in both countries despite their countries' institutional diversity, we will now briefly outline the importance of the automotive sector in both countries is briefly presented.

3.2. The Automotive Industry and its Development in Argentina and Mexico.

In Argentina, the selection of the automotive sector corresponds to the fact that: a) it is a large employer of labour and constitutes the vanguard in terms of transformations in the organization of labour (Taylorism, Fordism, Toyotism); b) it has played a prominent role in the generation of employment and a revitalizing role in the intermediate goods market and consumption during the period of import substitution (1950-1973). At the current conjuncture of economic reactivation this industry has again driven forward production and employment (from 2003 when the sector employed 39,686 workers to the current date in which 89,735 workers are employed). According to data from Centre for Studies in Argentinian Development [47] the sector represents 22.4% of GDP, nearly half the total of industrial exports, and a quarter of total commodities exported. However, during 2014 this industry showed warning signs of a coming recession, which won't be taken into consideration given the year in which the survey was carried out.
Another key factor to take into account is the relatively high bargaining power that unions have in this sector. Silver (2005) describes it as "structural power" while others refer to it as "strategic position" in the general productive economic processes (Wallace, Griffin y Rubin 1989). Broadly speaking, a strike

[47] Centro de Estudios para el Desarrollo Argentino (CENDA), El trabajo en Argentina. Condiciones y Perspectivas, Informe trimestral, Centro de Estudios para el Desarrollo Argentino (CENDA), Buenos Aires, 2005.

action affects the economic cycle according to the position of the economic sector in which the strike is carried out, and this disruptive capacity becomes a resource of structural power.

In Mexico, the importance of the automotive industry is crucial, due to its highly competitive and dynamic nature, both in production and in employment. As of December 2015, the automotive sector was responsible for 875,382 direct jobs of which 81,927 correspond to the manufacture of cars and trucks, and 793,456 are located in the auto parts sector; contributed 3.2% of GDP and 27% of export income was derived from this sector.[48]

Beyond a few differences, in both countries more than 90% of the main companies in the sector belong to foreign investment: all final assembling plants are MNCs as are most autopart companies. Most these have been established in host countries for several decades. For example, in Argentina, the incorporation of MNCs began during the 60s, they withdrew in the 80s and returned in the 90s (e.g. General Motors and Fiat).

In contrast, Mexico, starting from the 1980s, began to occupy a privileged position on a global level in the production of cars and auto parts. Two fundamental factors have been responsible for this process. As Contreras *et al.* [49] show, on the one hand we can identify a territorial proximity to the North American market that everybody competes for.[50] And on the other hand, as this same author also suggested, low production costs are associated with higher levels of productivity [51], which is a comparative advantage of the Mexican labour market.

Broadly speaking, the automotive sector is composed of: final assembly plants (mostly subsidiaries of large, globally recognized MNCs) and autopart companies among which suppliers of the first and second level can be distinguished [52] [53]. The automotive sector creates important chains with other sectors or productive industries (textile, plastics, chemicals, steel), making the

[48] ProMéxico, La industria automotriz mexicana: situación actual, retos y oportunidades, ProMéxico / Secretaría de Economía, Ciudad de México, 2016, 20.

[49] O. F. Contreras, J. Carrillo, J. Alonso, Local Entrepreneurship within Global Value Chains: A Case Study in the Mexican Automotive Industry, in World Development, vol. 40, n. 5, 2012, 1013–1023.

[50] This also constitutes an element of fragility, as the sector is strongly dependent on the dynamics of the US economy and market and, in this sense, possibly more susceptible to foreign crises.

[51] O.F. Contreras, J. Carrillo, J. Alonso, *op.cit.*

[52] Author, 1997, 237–276.

[53] At the first level are found companies controlled by the terminals and that belonging to the same business group. At the second level there are supplier companies that manufacture materials, parts and critical input materials, some possess a foreign license while others are independent auto part manufacturers.

environment of labour relations more complex [54]. In relation to this point, a marked vulnerability or retraction in response to the international crises of the world economy is also characteristic of the sector, such as occurred with the financial crisis of 2008. In Mexico although the productive concentration generates a high density of interactions with the local economies [55], it is not primarily Mexican companies that are integrated into the chains of production.

3.3. Human Resources Strategies in the Automotive Industry in both Countries

In Table 3 it can be observed that the impact of the strategies and the way in which the MNCs organize their human resources in their subsidiaries do not present great differences between the countries under comparison.
In both countries within the automotive industry (61% in Mexico and 67% in Argentina), management encourages the involvement of workers and the creation of work teams to enhance work processes. In both countries, there is a clear policy of consultation and negotiation in relation to the unions: 73% of the companies in Mexico and 63% in Argentina have a marked tendency of bargaining with unions. Lastly, the presence of union representation in the plants is quite overwhelming: 87% and 89% in Mexico and Argentina respectively.
At first glance, this apparent convergence could be explained by the similarities between the national labour relations systems and HR practices. However, when the performance of the automotive sector is compared with the other sectors in an aggregate manner in both countries, the results of the human resources strategies display different outcomes.
As we have emphasized, the policy towards the unions is more consensual in the Mexican case than in the Argentinian and in the other sectors. MNCs in Argentina have a higher degree of acceptance of the unions. This could be because law obliges them to behave that way. Another difference is that MNCs in the automotive sector tend to display more strategies toward work involvement and communication than the other sectors.

[54] G. Bensusán, A. Martínez, *op.cit.*
[55] O.F. Contreras, J. Carrillo, J. Alonso, *op.cit.*

Table 3. Human Resources variables in the automotive sector and other sectors

Variables	Categories	Automotive		Other sectors	
		Mexico	Argentina	Mexico	Argentina
Information and consultation	Without	5%	26%	12%	22%
	Medium	34%	32%	32%	53%
	High	61%	42%	56%	25%
	Total	100%	100%	100%	100%
Involvement mechanisms	Absence of teams	6%	17%	27%	41%
	Medium	33%	17%	45%	19%
	High	61%	67%	29%	40%
	Total	100%	100%	100%	100%
Approach towards trade union representation	Hierarchical	0%	13%	26%	35%
	Consultative	27%	25%	20%	36%
	Bargaining	73%	63%	54%	29%
	Total	100%	100%	100%	100%
Union Representation in the workplace	No representation	11%	11%	29%	30%
	Non-union representation	3%	0%	14%	6%
	Union representation	87%	89%	57%	64%
	Total	100%	100%	100%	100%
Performance appraisal system	Without	13%	5%	19%	9%
	With	87%	95%	81%	91%
	Total	100%	100%	100%	100%

Source: Databank on MC provided by El Colegio de la Frontera Norte (México) and the Ministry of Labour (Argentina) 2009

However, as can be seen in Table 4, upon analysing the cluster some of the differences that we have previously indicated can be confirmed. The preferred strategy for the multinationals in Mexico is clearly the intervention of the union in human resources issues (81%). While in the automotive sector in Argentina, this strategy is also employed by most companies (60%), a good proportion of the multinationals (27%) prefer to avoid union intervention and to deal directly with the workers.

In the other sectors, even if the tendency is maintained, the inclination to utilize strategies mediated by union actor are significantly lower than in the

automotive sector; in these other sectors there is an increased use of the mixed strategy.

Table 4. Human resources strategies in the automotive sector

Variables	Categories	Sector/Origin			
		Automotive		Other sectors	
		Mexico	Argentina	Mexico	Argentina
Strategies grouped by results of the cluster	Direct	10%	27%	13%	26%
	Mixed	10%	13%	22%	25%
	Mediated	81%	60%	65%	49%
	Total	100%	100%	100%	100%

Source: Databank on MC provided by El Colegio de la Frontera Norte (México) and the Ministry of Labour (Argentina) 2009

3.4. The Automotive Sector and The Origins of Capital

Finally, remaining is the question of whether the country of origin is a determining variable when defining HR strategies in the automotive sector. This corresponds to the third question initially raised. Despite the extensive literature that arguing that North American owned companies have a reputation for avoiding unions as much as possible, our findings suggest otherwise. In the automotive sector, there is a tendency toward embracing the participation of unions in the firms regardless of the country of origin.

Moreover, not only are North American owned companies likely to include unions within the workplace but they are also less inclined to apply direct strategies towards employees. As unexpected as this result may be, European companies having the lowest percentage of mediated strategies is also an unforeseen result. Most of the European companies in our sample are German or French, both countries with strong ties to unions and protective labour relations systems. It might be expected that given a strong union system at home, German firms would have a more amicable approach to the unions than the American ones. One explanation of the low percentage of mediated strategies could be that due to the long E.U. tradition of close collaboration between firms and unions, the essence of their work environment was less conflictive between these actors.

Nonetheless, the inclination towards mediated strategies in European firms is still high. The high degree of mediated strategies implemented by "Other Countries" is also noteworthy, with Japan, Canada and Mexican MNCs leading the list.

Table 5. Human resources strategies by country of origin in the automotive sector

Strategy	Country of Origin			Total
	US	European	Others	
Direct	10%	21%	17%	17%
Mixed	20%	14%	0%	11%
Mediated	70%	64%	83%	72%
Total	100%	100%	100%	100%

Source: Databank on MC provided by El Colegio de la Frontera Norte (México) and the Ministry of Labour (Argentina) 2009

4. Conclusion

As mentioned above, the data used in this survey was drawn from a larger research project carried out by some researchers from Argentina and Mexico within the INTREPID group. The main purpose of this article was to compare HR management strategies from MNCs in two Latin American countries in the same sector. Even though in recent years there have been significant contributions regarding the comparison of these two countries, little has been done to analyse sectorial aspects. Therefore, this paper contributes to the literature by examining how HRM strategies from MNCs differ and coincide in these two countries in the same sector: the automotive industry.

Several questions have been addressed in order to achieve this goal: Do the MNCs apply different HRM strategies in host countries? Regarding this first question, the data seems to suggest that they do. Even in countries with rigid labour relations systems MNCs apply different strategies. Moreover, labour unions seem to achieve different goals depending on the country. While Argentinian unions seem to be stronger, with higher levels of labour representation of in general, Mexicans unions seem to be more consulted and participative than their Argentinians counterparts. As a result of our analysis, we've emphasized that 73% of the MNCs consulted in Mexico are inclined to apply strategies mediated by unions while only 51% of the MNCs located in Argentina do. More significantly, 27% of MNCs in Argentina are willing to avoid the unions. Only 11% of the MNCs in Mexico seek to avoid the unions altogether. There is not much difference when analysing strategies other than union involvement: in Mexico, MNCs tend to have higher degrees of communication with their employees. In this regard, another question arises: why do MNCs carry out different strategies regarding union involvement in Mexico and Argentina? Our preliminary assumption is that unions in Mexico tend to be more "business friendly" than most of the unions in Argentina. But

in order to justify this hypothesis further qualitative research must be carried out.

The second question originally posed aimed at shedding some light on whether practices in the same sectors tend to converge in different countries, regardless of their countries' institutional differences. The analysis of the data suggests support for that idea. Despite the flourishing literature (Pulignano 2006) discussing whether or not convergences in HRM practices are homogeneous, in the automotive sector strategies appear to be similar regardless of the country. MNCs opting for anti-union strategies in those countries are at a significantly low level. MNCs in the automotive sector in both countries are more inclined to include the unions than in the other sectors (whether manufacturing sectors or service). Also, union recognition is significantly higher in both countries in the other sectors.

Finally, the third question raised at the beginning of this study assumed that the MNCs' country of origin was a determining variable when applying HRM strategies. North American owned companies have a reputation of avoiding unions as much as possible, as well as standardizing and extending the HRM strategies applied at home to offshore subsidiaries. The findings presented in this article suggest otherwise. In the automotive sector, the country of origin doesn't seem to be an explanatory variable. Strategies tend to converge regardless of the home country. Moreover, North American owned companies are not more likely to employ "union avoiding" strategies then European ones. European owned companies are more likely to adopt direct strategies towards employees than North American owned ones. Other countries, with Japan top of the list, adopt mediated strategies regarding union presence and involvement.

Lastly, sectoral analysis has allowed us to contrast the theoretical debates proposed. On the one hand, we have shown the convergence of HRM practices in one sector across different countries, regardless of variations in the institutional frameworks. On the other hand, we have shown that the multinationals' country of origin is not an explanatory variable, due to finding that North American companies do not implement standardized approaches, nor do they reject unions.

For the next stage of the research it would be useful to ask if this interaction between the multinationals and the unions is due to the characteristics of the MNCs in the sector themselves, or of the union actors. To achieve this aim we would hope to go into greater detail in the personal interviews with the relevant actors.

Disability and Employee Well-being in Collective Agreements: Practices and Potential

Mariapaola Aimo and Daniela Izzi [1]

Abstract

Purpose. The article analyses the most interesting developments in Italian collective agreements for promoting the well-being of workers with disabilities. The aim is to raise awareness about and disseminate existing best practices and to identify persisting problems that need to be addressed.

Design/methodology/approach. After a preliminary illustration of the key concepts concerning disability at work in the framework of international and EU law, the article seeks to investigate the solutions provided by the Italian social partners to promote the full inclusion of disabled people and to enforce national law.

Findings. The interest towards disabilities and serious diseases is growing in Italian collective bargaining at both national and company level. The framework provided at the national level of course plays a crucial role, but company-level bargaining is the most effective one to address issues related to actual inclusive measures for workers with disabilities.

Research limitations/implications. The results achieved thus far at the company level are still few and far between, heterogeneous, and involve a small number of large-sized companies.

Originality/value. A number of collective agreements concluded at the national level are investigated, together with some pilot projects devised on the part of large-sized companies.

Paper type. Research paper.

Keywords: *Disability, Collective Agreements, Reasonable Accommodation, Disability Managers and Bilateral Observatories.*

[1] Associate Professors of Labour Law at the University of Turin (Email address: mariapaola.aimo@unito.it; daniela.izzi@unito.it). Though this paper is the result of a joint analysis, Daniela Izzi authored par. 1 to 3, while Mariapaola Aimo produced par. 4 and 5. A draft version of the paper was presented at the XXII World Congress of the International Society for Labour and Social Security Law (ISLSSL) on *Transformations of Work: challenges for the National Systems of Labour Law and Social Security,* held in Turin, 4-7 September 2018.

1. Persons with Disabilities, Collective Bargaining and the Promotion of Well-being at Work

The United Nations Convention on the Rights of Persons with Disabilities – adopted in December 2006 "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities" (Art. 1.1) – gave fresh momentum to the protection systems for people with disabilities in States Parties[2].

Recently, these protection schemes have been put in place to seek a new objective. Originally intended to provide mere assistance, they now need to ensure the social inclusion and active citizenship of people with disabilities.

In this respect, the Convention has stepped up the anti-discrimination provisions already in place for persons with disabilities, in line with EU rules (Article 19 TFEU, Articles 21 and 26 CFREU and, with special reference to employment, Directive no. 2000/78), and broadened the concept of disability (as will be explained in par. 2), thus widening the already large base of people covered by such protection.

The European Union, which ratified the UN Convention through Decision no. 2010/48 after actively contributing to the definition of its content[3], lays much store by the Convention in the context of its commitment towards people with disabilities.

Examples of this is the attempt on behalf of the European Commission to make the effective implementation of this Convention one of the cornerstones of the European Disability Strategy 2010-2020[4] and, more importantly, the decisive role assigned by the Court of Justice to the Convention at the time of interpreting EU sources, especially as a parameter for harmonising the meaning of European secondary legislation[5].

---

[2] For an in-depth analysis of the whole Convention, see V. Della Fina, R. Cera, G. Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary*, Springer International Publishing, Cham, 2017, and C. O'Mahony, G. Quinn (eds.), *Disability Law and Policy: An Analysis of the UN Convention*, Clarus Press, Dublin, 2017.

[3] In particular, and with regard to anti-discrimination rules, see G. Quinn, *Disability discrimination law in the European Union*, in H. Meenan (ed.), *Equality Law in an enlarged European Union*, Cambridge University Press, Cambridge, 2007, 232.

[4] COM (2010) 636 final, 15 November 2010.

[5] Confirming this aspect, and for a more detailed analysis, see CJEU 11 April 2013, C-335/11 and C-337/11, *HK Danmark*, par. 28-32, and the report by D. Ferri, A. Lawson, *Reasonable accommodation for disabled people in employment contexts*, European Commission, Brussels, 2016, 44-45.

Italy ratified the Convention through Law no. 18/2009, which led to the establishment of the National Observatory on the Condition of People with Disabilities. The latter then introduced two biennial action plans featuring a general scope, in line with the UN requirements.

In spite of the far-reaching nature of the action plans and the UN Convention, it is in the field of employment – whose scope is limited yet decisive to achieve the social integration of people with disabilities – that the most significant changes are taking place. In this sense, the transposition of Directive no. 2000/78 into Italian law through Legislative Decree no. 216/2003 has strengthened existing legislation, particularly following the necessary amendments made to this piece of legislation (i.e. par. 3 *bis*, Article 3, as will be outlined in par. 3) as regards the obligation placed on both public and private employers "to adopt reasonable accommodation, as defined by the United Nations Convention on the Rights of Persons with Disabilities".

Indeed, the obligation established by Article 5 of Directive no. 2000/78 on the part of employers to provide reasonable accommodation for persons with disabilities constitutes a key aspect of the EU regulations, which introduced this additional safeguard exclusively for people with disabilities[6]. This holds true if one considers the set of tools put in place to protect individuals regarded "at risk", that is the prohibition of direct and indirect discrimination (as laid down in Article 2.2. of Directive no. 2000/78) and the legitimacy of affirmative actions (as specified in Article 7 of the same Directive). As we will see below (in par. 3), a unique feature of reasonable accommodation is its adjustable and non-standardized nature. This means that flexible sources such as collective agreements – that potentially could have broad application in regulatory terms (see par. 4) – are particularly suitable at the time of defining it. This is true especially if one considers collective agreements concluded at the company level. Tellingly, the limited diffusion of this type of agreements in Italy has not affected the setting-up of pilot projects on the part of large-sized companies (see par. 5).

Considering the set of measures put in place to ensure the full social inclusion of workers with disabilities, collective bargaining can play a decisive role, as has been reasserted by a number of documents produced by institutions operating at both European and national level. By way of example, reference could be made to the explicit invitation made by the European Economic and Social Committee to workers' and employers' unions to include in collective agreements specific clauses concerning disabilities in order to promote an

[6] An examination of the possibilities of extending this obligation also to people without disabilities is provided in the report by E. Bribosia, I. Rorive, *Reasonable Accommodation beyond Disability?*, European Commission, Brussels, 2013.

inclusive labour market and thereby implementing the objectives of the European Disability Strategy[7]. In a similar vein, mention should be made of National Observatory's biennial Action Plan of October 2017, where it was repeatedly stressed that there is a need "to define support measures and a system of incentives in the context of collective bargaining at the national and company level promoting flexibility, "work-life-care" balance for people with disabilities and serious or chronic diseases, and for workers serving as caregivers for people with serious disabilities (Chapter 7, Action 5). This certainly constitutes a decisive move to support and further develop the innovative measures already put in place by the social partners in this field (see par. 4 and 5).

The Action Plan already referred to also highlights the need to devise experimental projects. In this sense, private companies can appoint figures such as Disability Managers, who are nominated unilaterally, and/or establish bodies such as Company-level Disability Observatories, which are set up as a result of negotiation (as will be explained in par. 5). Importantly, collective bargaining should not replace the measures put in place by firms on a voluntary basis – which might also be part of Corporate Social Responsibility programmes. Rather, it should complement them. Indeed, employers' commitment to the full inclusion of persons with disabilities in the workplace is actually justified by a number of reasons, both economic and non-economic ones, among which is the prevention of employment discrimination lawsuits.

2. Developments in the Concept of "Disability"

Ever since Directive no. 2000/78 required Member States to comply with the prohibition of employment discrimination based on disability, the legal definition of the concept of disability has become a key issue all over Europe, compelling national governments to reconsider previous rules for the protection of persons with disabilities in the light of the principle of equality.

When asked to clarify the meaning of the concept of disability employed in the Directive, the Court of Justice initially made use of the traditional approach, regarding physical, mental or psychological impairments as "a limitation […] which hinders the participation of the person concerned in professional life"[8]. In the same judgement, and also in consideration of the long-term nature of such impairments, the Court categorically ruled out the possibility of qualifying certain diseases as handicaps, therefore denying the protection of European

[7] EESC Opinion on the European Disability Strategy 2010-2020, SOC/403 of 21 September 2011.

[8] CJEU 11 July 2006, C-13/05, *Chacón Navas*, par. 43-47.

anti-discrimination law to workers suffering from health problems other than a handicap.
However, the ratification of the UN Convention by the EU and the Court of Justice's willingness to look at the notion of disability in a dynamic and social fashion rather than in a medical and individual one – a point made in the Convention itself – marked a turning point in EU case law, so now the response of surrounding environment to individual impairments also bears relevance.
Case law's new course began with the *HK Danmark* judgment where – in line with recital *e)* of the Convention mentioned above – the Court of Justice first recognized that "disability is an evolving concept" resulting "from the interaction between persons with impairments and attitudinal and environmental barriers". Subsequently, it referred to the definition of "persons with disabilities" contained in the same document (Article 1.2), explaining that this condition is apparent when a long-term "limitation, which results in particular from physical, mental or psychological impairments ..., in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers"[9].
In this decision the Court moved beyond the rigid distinction between disability and disease that was in place before and that raised criticisms, recognizing that "an illness medically diagnosed as curable or incurable" may be at the origins of the aforesaid "long-term" limitation.
The new notion of disability adopted by EU judges, later on confirmed and further clarified[10], expresses an acquired awareness of the problematic effects caused by chronic diseases in the workplace which, according to comparative analysis, are still governed by distinct regulations in different national legal systems and cannot always be considered as a form of disability, despite the impact on the working ability of those suffering from them[11]. Italian lawmakers have not remained indifferent to the need to come up with a more evolved concept of disability. Indeed, defining the outlines of the legal reform for the so-called targeted recruitment of persons with disabilities, par. 1 (*c*), of Article 1, of Legislative Decree no. 151/2015 provides for the need of "biopsychosocial assessments of a disability".

[9] CJEU 11 April 2013, C-335/11 and C-337/11, *HK Danmark*, par. 37-41 and 47.
[10] See CJEU 18 March 2014, C-363/12, *Z.*, par. 76-81; CJEU 18 December 2014, C-354/13, *Fag og Arbejde*, par. 58-60; CJEU 1 December 2016, C-395/15, *Daouidi*, for further details on the concept of long-term limitation.
[11] See S. Fernández Martínez, *L'evoluzione del concetto giuridico di disabilità: verso l'inclusione delle malattie croniche?*, in *Diritto delle Relazioni Industriali*, 2017, n. 1, 74 ff., and S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, in *Rivista italiana di diritto del lavoro*, 2018, n. 1, I, 109 ff.

The Court of Justice further broadened the scope of application of the anti-discrimination protection established by Directive no. 2000/78 for people with disabilities, extending it to workers looking after people with impairments. In *Coleman*, the Court explained that the effectiveness of the Directive would be seriously limited if it were to be considered to apply "only to people who are themselves disabled" and not to cover also situations of "discrimination by association"[12].

3. Employers' Obligation to Provide Reasonable Accommodation

Article 5 of Directive no. 2000/78, with a provision specifically targeting people with disabilities (as mentioned in par. 1) and regarded as "the gravity centre of anti-discrimination protection"[13], requires employers to adopt "reasonable accommodation" for them, i.e. "appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer". It goes on to state that such a burden cannot be considered "disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned". This provision is explained in recitals 20 and 21 of the same Directive. The first one describes reasonable accommodations as "effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources". The second recital makes an attempt to clarify under which circumstances these measures "give rise to a disproportionate burden", stressing that "account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance".

Despite these clarifications, Article 5 of the Directive has left a number of uncertainties that the Court of Justice has started to remove, albeit partly, drawing on the provisions of the UN Convention on the Rights of Persons with Disabilities. In particular, in the previously cited *HK Danmark* judgment, the Court focussed on the broad concept of "reasonable accommodation" established by Article 2 of this Convention, arguing for the need of a broad interpretation of the measures laid down in Article 5. Drawing on a national

[12] CJEU 17 July 2008, C-303/06, *Coleman*, par. 51.

[13] M. Barbera, *Le discriminazioni basate sulla disabilità*, in Ead. (ed.), *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale*, Giuffrè, Milano, 2007, 81.

dispute concerning the dismissal of two women who had become unable to work full time due to illness, the Court clarified that "a reduction in working hours could be regarded as an accommodation measure, in a case in which reduced working hours make it possible for the worker to continue employment". The same judgment leads one to infer that failure to adopt reasonable accommodation, in line with the provisions of the UN Convention (Article 27, although the latter was not referred to by the Court), would constitute unlawful discrimination against persons with disabilities[14].

Yet in EU law, it still remains to be clarified whether the obligation to adopt reasonable accommodation, expressly established by Article 5 in favour of persons with disabilities, can also be extended to workers who serve as caregivers. As we shall see below (par. 4 and 5), however, collective bargaining in Italy has already taken action to deal with the working needs of caregivers.

Because of the inadequate transposition of Article 5 of Directive no. 2000/78, Italy has been condemned by the European Court of Justice, which considered national legislation subjectively as well as objectively insufficient, since the safeguards and benefits provided by the relevant laws (i.e. by Law no. 68/1999 on the targeted recruitment of persons with disabilities, the Framework Law for assistance and social integration of persons with disabilities no. 104/1992, Law no. 381/1991 on social cooperatives and Legislative Decree no. 81/2008 on safety in the workplace) did not cover all persons with disabilities, all employers and all aspects of the employment relationship[15]. The legislative gap was filled in 2013 when the already mentioned provision expressly requiring the adoption by both public and private employers of reasonable accommodation for persons with disabilities was included in par. 3 *bis,* Article 3 of Legislative Decree no. 216/2003. This simple provision has been regarded as playing an "essential function […] systematically bringing together the rules protecting workers with disabilities" in force in our country and strengthening them. In particular, in case of dismissal of workers following the onset of physical or mental unfitness, which is fairly frequent, it has been argued that the newly introduced limitation may impact the exercise of the employer's power to terminate the contract, calling into question the "case-law dogma" regarding the inviolability of the employer's organisational and managerial decision-making[16].

---

[14] This is the view taken by A. Riccardi, *Disabili e lavoro*, Cacucci, Bari, 2018, 197.

[15] CJEU 4 July 2013, C-312/11, *European Commission v. Italian Republic*, par. 67. A comment to this judgement is provided in M. Cinelli, *Insufficiente per la Corte di Giustizia la tutela che l'Italia assicura ai disabili: una condanna realmente meritata?*, in *Rivista Italiana di Diritto del Lavoro*, 2013, n. 4, II, 935 ff.

[16] See S. Giubboni, *Disabilità, inidoneità sopravvenuta, licenziamento*, in *Rivista Giuridica del Lavoro*, 2016, n. 3, I, 633-635 (from which the quotations in the text above are taken) and F. Limena, *Il*

4 Which Answers does Collective Bargaining Provide at the National Level?

Serious diseases and disabilities are issues that are attracting growing interest on the part of collective bargaining at both the national and company level. Understanding the main results obtained in negotiations thus far may raise awareness, favour the dissemination of existing best practices and help to identify persisting definition and application problems that need to be addressed. The starting point could be an analysis of collective agreements concluded at the national level in which disability is dealt with in different ways[17]. It should be said at the outset that disability is referred to in many provisions contained in the collective agreements scrutinised providing for the suspension of the employment relationship in case of illness[18].

Some collective agreements require special treatment for workers suffering from particularly serious diseases (cancers, multiple sclerosis, muscular dystrophies, AIDS or similar serious illnesses), that is a better form of protection than the one provided to most workers placed on sick leave. Favourable terms include the different relevance assigned to absences resulting from serious diseases, because these are chronic and often degenerative diseases, the progression of which involves recurring and/or prolonged time off from work.

In some collective agreements, these days of absences fall outside the employment-protected period[19], while in others longer employment-protected

restyling *della legge sul collocamento dei disabili*, in *Il Lavoro nella Giurisprudenza*, 2016, n. 5-6, 431. In a similar vein, though from a wider perspective, see P. Lambertucci, *Il lavoratore disabile tra disciplina dell'avviamento al lavoro e tutela contro i licenziamenti: brevi note a margine dei provvedimenti attuativi del c.d.* Jobs Act *alla "prova" della disciplina antidiscriminatoria*, in *Argomenti di Diritto del Lavoro*, 2016, n. 6, 1147 ff., and A. Riccardi, *Disabili e lavoro*, cit., 197-200. On the problem of dismissing workers suffering from a supervening illness, see M. A. Martínez-Gijón Machuca, *La extinción del contrato por enfermedad/discapacidad del trabajador*, Editorial Bomarzo, Albacete, 2018, who deals with, though not on an exclusive basis, Spanish Law.

[17] See the detailed analysis of collective agreements carried out by Associazione Italiana Sclerosi Multipla (AISM), *Sclerosi multipla, gravi patologie, disabilità*, https://allegati.aism.it/manager/UploadFile/2/20171215_723.pdf (accessed May 25, 2018) and S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, ADAPT LABOUR STUDIES e-Book series 33, 2014.

[18] Italian law - namely Article 2110 of the Civil Code - protects sick workers, allowing them to keep their job for a period established by law or by collective agreements (a 'protected period' during which only dismissal for just cause is permitted), ensuring them their right to remuneration or paid sick benefits.

[19] E.g. the collective agreement signed by Poste Italiane on 30 November 2017, or the one concluded on 27 February 2014 by Work Agency.

leave is provided (the duration of which varies greatly)[20]. In both cases, and depending on the agreement, there can be an exhaustive or illustrative list of diseases that are considered as serious ones, while the concept of "serious illness" can also be employed, which is often accompanied by a restrictive provision related to the need for life-saving and/or temporarily incapacitating therapies. An exhaustive list of certified, serious illnesses "is necessarily exclusive"[21]. However, when the improved terms are associated to the concept of "serious disease", an issue arises at the time of identifying those serious illnesses granting access to treatment featuring such improved terms (along with the problems of identifying who is in charge of the evaluation and the parameters to be used).

The Court of Justice has already examined the issue of the treatment of disabled workers related to their absences from work resulting from illness (which can be entirely or partially attributable to disability), stressing that, compared with a worker without a disability, "a worker with a disability has the additional risk of an illness connected with his disability. He thus runs a greater risk of accumulating days of absence on grounds of illness"[22]. Even following the line of reasoning contained in these statements, Italian courts have considered that applying the same parameters for calculation purposes to both people with and without disabilities amounts to indirect discrimination based on disability, and that granting this leave as separate from the employment-protected period may be regarded as a reasonable accommodation within the meaning of par. 3 *bis,* Article 3 of Legislative Decree no. 216/2003[23] (see par. 2 above).

Moreover, some collective agreements granted special monetary benefits to workers suffering from serious diseases, the amount of which is almost the same as their wage and is provided for leave resulting from illness, even in the event of prolonged, employment-protected periods.

In particular, these workers are excluded from the scope of application of collective rules tackling absenteeism, namely the provision laying down reduced wages paid by the employer in cases of short and recurring periods of illness[24]. Moreover, some collective agreements provide for special treatment in

[20] E.g. The collective agreement signed by Credit on 31 March 2015 and the one signed by ANIA Insurance on 22 February 2017.

[21] S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, cit., 260.

[22] See CJEU 11 April 2013, C-335/11 and C-337/11, *HK Danmark*, par. 76, and CJEU 18 January 2018, C-270/16, *Ruiz Conejero*, par. 39.

[23] Trib. Milano, 28 October 2016, in *Rivista Giuridica del Lavoro*, 2017, n. 4, II, 475, commented upon by F. Malzani, *Soluzioni ragionevoli ed effettività della tutela antidiscriminatoria del lavoratore disabile*.

[24] E.g. the collective agreement signed by metalworkers on 26 November 2016 and the one signed by Credit on 31 March 2015.

relation to unpaid leave, ensuring the right to keep one's job for a given period of time that can be extended in case of serious diseases[25].

Secondly, disability is referred to in some provisions regulating working time laid down in collective agreements.

Drawing on measures already envisaged by collective bargaining[26], in 2015 Italy made an important step forward to protect workers suffering from serious diseases. Paragraph 3 of the new Article 8 of Legislative Decree no. 81/2015 provides for the right to move from full-time to part-time employment – which is reversible upon request – not only to workers who have been diagnosed with cancer (they were given this right in 2003), but also to those suffering from chronic, progressive, and degenerative diseases reducing their work ability[27].

Both before and after this legislative change, some collective agreements widened the base of those who could enjoy this right also to workers suffering from serious diseases certified by the local health authority[28].

Measures concerning working time reduction and/or re-modulation and flexible hours targeting workers with disabilities – especially when one's health conditions are likely to worsen – are closely linked to the issue of reasonable accommodation (see par. 3 above). These measures, coupled with other workspace and time flexibility instruments (like the development of smart and remote work), can help employers find ways to meet the obligation to adopt reasonable accommodation, and constitute tools that safeguard the health and expertise of workers, who need to remain active for social integration purposes.

Still on the organisation of working hours, disability is also referred to in some collective agreements in provisions regarding leave and time off from work as well as in those concerning colleagues who donate their days of leave to people with disabilities or caregivers.

Statutory entitlements are also supplemented by a set of other safeguards supporting the need to reconcile work and care[29]. This is a highly sensitive issue because, in addition to their obvious effectiveness in practical terms,

[25] E.g. the collective agreement concluded by Farmworkers on 22 October 2014 and the one signed by Credit on 31 March 2015.

[26] E.g. the collective agreement signed by metalworkers on 26 November 2016 and the one signed by cleaners working for cooperatives on 20 April 2016.

[27] See S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, cit., 131 ff.

[28] E.g. the collective agreement signed in the printing and publishing industry on 19 February 2018 and in the textiles and footwear sector on 14 December 2017.

[29] E.g. the collective agreement signed by in the food industry on 5 February 2016.

relying on these measures is reassuring for both workers with disabilities and caregivers[30].
Lastly, disability is mentioned in a few collective agreements and included in provisions promoting the setting up of joint bodies for disability protection, in the context of equal opportunity commissions or other bilateral bodies[31]. The agreements concluded in these contexts are both interesting and innovative ones, although they mostly concern large-sized companies and are negotiated at enterprise level.

4. Good Practices in Collective Agreements concluded at the Company Level

Although the framework provided at the national level of course plays a key role, the company level is the most effective one when it comes to addressing issues related to actual inclusive measures for workers with disabilities.
The growing importance of negotiations entered into at the company level was emphasized in the 2016 Stability Law (Law no. 208/2015) promoting so-called "contractual welfare" through tax incentives for the variable items of remuneration linked to productivity (which can be entirely or partly replaced by welfare goods and services) and other welfare benefits offered to workers (which are more affordable for employers if covered by company-level collective agreements, as compared to those granted unilaterally)[32].
Examples of welfare benefits provided following the conclusion of company-level collective agreements include: income support supplied to employees suffering from serious diseases during the suspension of the employment contract[33], additional paid leave and reimbursements for assistance or the purchase of equipment to deal with the illness of workers or their family members with a disability[34], leave and time off donated by peers to colleagues with family members having with a disability[35] and, more generally, actions put in place to identify and remove physical and cultural barriers hampering the inclusion and development of workers with disabilities[36].

---

[30] See AISM, *Sclerosi multipla, gravi patologie, disabilità*, cit., 5.
[31] E.g. the collective agreement signed by Credit on 31 March 2015.
[32] See art. 51 of Presidential Decree no. 917/1986 (TUIR).
[33] One of the first most important initiatives in this area is contained in collective agreement signed by Luxottica on 17 October 2011, which ensures up to 100% of remuneration after 180 days' leave.
[34] See the agreements signed by Unipol and Assimoco.
[35] See the Busitalia Agreement 18 February 2015, http://www.filtcgil.it/documenti/mobi19feb15_1.pdf (accessed May 25, 2018).
[36] See *L'impegno della Banca d'Italia per le diversità*, https://www.pianetapersona.org/wp-content/uploads/2017/01/abstract_04.pdf (accessed May 25, 2018).

Thus, company-level collective bargaining provided for and regulated bilateral bodies safeguarding people with disabilities[37]. The results achieved thus far in this area are still few and far between, heterogeneous, and involve a small number of large-sized companies. Yet they are worth examining because these bodies represent the best way to seek employee well-being, in terms of inclusion and development of workers with disabilities.

The involvement of experts can help overcome the "one-size-fits-all" approach contained in the contractual provisions towards disabilities which we have witnessed so far. While important, this line of reasoning often proves inadequate because it fails to provide instruments to assess the actual impact of specific diseases on work performance, that can vary depending on one's occupation, tasks etc.; with these assessments that are necessary to identify a reasonable accommodation[38].

Some companies (like IBM, ENEL and UNICREDIT) have already appointed a Disability Manager for some time, with overall positive results in terms of employee well-being. The Disability Manager plays a fundamental role, facilitating relationships within the company[39] and is responsible for identifying the best technical and organisational means for the inclusion of employees with disabilities. In other words, they facilitate their recruitment and retention, taking account of objective factors linked to accessibility, as well as subjective ones, e.g. worker satisfaction and relations with colleagues. Although the Disability Manager's primary aim is to strike a balance between the company's needs for efficiency and competitiveness and the right of inclusion of workers with disabilities, they are always to be considered as the employer's "trusted men", namely the result of a unilateral choice made by the company as a part of a Corporate Social Responsibility strategy. As such, they are certainly an excellent and inexpensive marketing tool[40].

As we have seen for large-sized companies, this is precisely why it is important that collective bargaining makes provisions for the introduction of a body made up of the same number of workers' and employers' representatives – along with technical staff, e.g. prevention and protection service manager and

[37] See the cases outlined in http://www.superando.it/files/2017/06/CISL-disability-managemente-giugno-2017.pdf and in http://lablavoro.com/disabilitymanagement2016/materiali-dm-2016 (both accessed May 25, 2018).

[38] M. Tiraboschi, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in *Diritto delle Relazioni Industriali*, 2015, n. 3, 721.

[39] D. Del Duca, F. Silvaggi, *Il Disability Management: come gestire la disabilità nel luogo di lavoro*, @bollettinoADAPT, 29 June 2015.

[40] More generally and from a customer-based perspective, see the "Diversity Brand Index", https://www.diversitybrandsummit.it (accessed May 25, 2018).

the occupational doctor – thus playing a monitoring and guidance role as far as the tasks of the Disability Manager are concerned.
The most widespread, and already implemented, practices can be divided into two groups. The first group includes joint committees that were initially set up within the company for other purposes and have later on been granted further powers to promote the inclusion and development of workers with disabilities. Their members interact, although with different degrees of effectiveness, with Disability Managers (e.g. UNIPOL and BANCA D'ITALIA's "Equal opportunity commission", Intesa Sanpaolo's "Welfare, safety and sustainable development committee", and UNICREDIT's various bilateral boards).
The second group comprises joint bodies purposely set up in the context of company-level collective agreements to safeguard people with disabilities Examples of this include an experimental project included in an agreement concluded in March 2017 between the management of a chemical-pharmaceutical multinational, Merck Serono, and the CGIL, CISL and UIL union representatives, which made provisions for the establishment of an ad-hoc Observatory of Workplace Inclusion and the appointment of a Disability Manager[41]. In order to implement this agreement, Merck Serono signed a "local partnership agreement supporting corporate disability management policies" with trade unions and the Italian Multiple Sclerosis Society (AISM) in February 2018, with programs under way to integrate workers with multiple sclerosis into the company (pursuing so-called "competent employment inclusion"). These actions will be monitored by the National Observatory on the Status of Persons with Disabilities (see par. 1 above) in order to create a system of best practices in the area of inclusion and development of workers with disabilities, which will be useful for other companies as well.
These projects benefit from professionals' expertise (both those working at the company or with joint bodies). They play a fundamental role in identifying and implementing proper reasonable accommodation in the workplace - including changes to work organisation that would otherwise be difficult[42] - in order to ensure the equal treatment of people with disabilities within a specific production context and to tackle discriminatory practices.
The expected "Guidelines for the Targeted Recruitment of Persons with Disabilities" should provide stimulus to establish other joint bodies. These guidelines are to be adopted pursuant to par. 1, Article 1 of Legislative Decree

[41] See also the collective agreement between Lindt & Sprungli, RSU, Fai-Cisl, Flai-Cgil signed on 8 September 2011 (see S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, cit., 53).
[42] S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, cit., 252.

No. 151/2015[43], and must promote the conclusion of local agreements with the social partners to encourage the employment of persons with disabilities and the designation of a "work integration manager" tasked with devising customised projects for persons with disabilities, while dealing with problems related to working conditions.

In line with the objective of supplementing the targeted recruitment system of disabled workers with effective tools and in consideration of lawmakers' increasing interest in this issue, the recent provisions included in Legislative Decree No. 165/2001 (TUPI) through Legislative Decree No. 75/2017 introduces new operational mechanisms. Articles 39 *bis* and 39 *ter* TUPI establish, respectively, the creation of a "National Board for the Integration of Persons with disabilities at Work" (to be established pursuant to Ministerial Decree 6.2.2018) and the obligation for public administrations with more than 200 employees to appoint a "Manager in charge of Inclusion Strategies" who should ensure "the proper integration of persons with disabilities into the work environment".

Therefore, the establishment of a manager operating "in the field" in private and public employment, from the planning phase to the verification of the implementation of the integration process, can mark a major step forward towards the inclusion and development of workers with disabilities[44]. The hope is that these provisions are fully implemented through the cooperation and supervision of the parties involved (institutions, trade unions and managers), so that workers' disability can be managed on a case-by-case basis through reasonable accommodation, ensuring well-being at work in compliance with the principle of equal treatment.

[43] See D. Garofalo, *Jobs Act e disabili*, in *Rivista di diritto della sicurezza sociale*, 2016, n. 1, 94 ff. and C. Spinelli, *La sfida degli "accomodamenti ragionevoli" per i disabili dopo il Jobs Act*, in *Diritti, lavori, mercati*, 2017, n. 1, 44 ff. Unfortunately, three years later the guidelines have not yet been issued.

[44] C. Galizia, *Misure per l'inserimento dei lavoratori con disabilità*, M. Esposito, V. Luciano, A. Zoppoli, L. Zoppoli (eds.), *La riforma dei rapporti di lavoro nelle pubbliche amministrazioni*, Giappichelli, Torino, 2017, 121.

Framing the Crisis in Industrial Relations. Contrasting the "Fiat Case" and FCA-UAW Agreement

Francesco Nespoli [1]

Abstract

Purpose - The purpose of this paper is to establish a new theoretical framework for analyzing communication in industrial relations, by describing framing theory from a new rhetorical perspective. To this end, the paper analyses and compares corporate and trade union communication in the Fiat Case, by also making reference to collective bargaining that took place in the US automotive industry in autumn 2015.

Design/methodology/approach - After putting forward a theoretical framework that combines framing theory with new rhetoric, the paper analyzes the communication strategies adopted by Fiat Chrysler and trade unions both in Italy and the USA.

Findings - The findings reveal that different national cultural contexts and industrial relations systems, and different public communication practices in collective negotiations has led to divergent dynamics, given way to different kinds of argumentation, even when the same company operating globally is involved. The findings also suggest that such a controversial strategy may fail to build both immediate and long-lasting consensus.

Research limitations/implications - This research proposes an analytical framework, which calls for future empirical investigation.

Originality/value - The paper adopts an unusual perspective for the analysis of industrial relations dynamics and draws scholarly attention to public communication practices, not just as a tool for gaining consensus but as a fundamental dimension in negotiations in the current social and industrial scenario.

Paper type - Case study paper.

Keywords: *Communication, Rhetoric, Framing, Industrial Relations, Automotive, FCA, UAW, Fim, Fiom, Italy, USA.*

[1] Francesco Nespoli is a Post-Doctoral Fellow at the University of Modena and Reggio Emilia (Italy). Email address: nespoli.francesco@gmail.com.

1. Theoretical Framework. The Notion of 'Framing'

This article will repeatedly make reference to the notion of 'framing'. While overly-used, this concept has gained relevance in academic research in the last fifty years. This terminology is widely employed across many disciplines. As for communication studies, it has been used to examine media representations. Only recently have scholars of communication studies made use of framing to investigate speakers' statements, which come before media representations.

Perhaps the very fact that no traditional links exist between political communication and the notion of a frame has led to literature promoting the application of framing theory to consider the latter as unrelated to rhetoric.

Yet the term 'frame', irrespective of the context in which it is employed, is always associated with words identifying concepts that form part of rhetoric. To some extent, 'frames' refer to the ability of a statement to affect audience interpretation, relying on some literary devices (metaphor, metonymy, and narration, among others) while establishing close links with concepts such as 'emotions' and 'ethics'.

In his 1993 article, *Framing: Toward Clarification of a Fractured Paradigm*, Entman, who at the time taught at Northwestern University, suggested treating framing as a paradigm to study communications, while arguing that "a literature review suggests that framing is often defined casually, with much left to an assumed tacit understanding of reader and researcher" (Entman 1993, 52). One might also note that the word 'frame' is also used loosely in English to refer to 'a single complete picture in a series forming a film' or to 'the rigid structure surrounding something such as a picture'. The notion of a frame can thus be employed as a metaphor to denote a vague concept, which can be summarised as follows: the definition of a situation considering a number of relevant aspects.

Framing theory was construed in the field of sociology. In his 1974 book, *Frame Analysis. An Essay on the Organization of Experience*, Goffman suggested considering reality as a sort of representation, concluding that collective organisation is governed by framing. In other words, individuals would be able to constantly understand the world only thanks to interpretation schemes – that the author defines 'primary frameworks' (Goffman 1974, 24) – which are used to classify new information and give meaning to surrounding reality.

The notion of framing soon developed to gain a cognitive dimension, and it was with this meaning that the concept was also employed in other fields. Examples include Kahneman and Tversky's 1979 seminal work in the disciplines of economics and psychology, which earned the former the Nobel Prize for Economics.

In their research, they examined how describing situations (framings) differently influenced people's choices, leading them to make certain decisions. The most known examples to explain the so-called 'framing effect' have been made in the medical field. Yet in the context of this paper, reference should be made to Bazerman and their 1983 research. This Stanford professor presented participants with two different framings of a similar logical scenario.

In the first frame, a large car manufacturer has recently been hit with a number of economic difficulties, and it appears as if three plants need to be closed and 6,000 employees laid off. Management has been exploring alternatives to avoid this crisis:

- Plan A: This plan will save one of the three plants and 2000 jobs.
- Plan B: This plan has a one-third probability of saving all plants and 6000 jobs, and a two-thirds probability of saving no plants and no jobs.

In the second frame, the plans referred to above have been described as follows:

- Plan A: This plan will result in the loss of two of the three plants and 4000 jobs
- Plan B: This plan has a two-thirds probability of resulting in the loss of all three plants and all 6000 jobs but has a one-third probability of losing no plants and no jobs.

Evidently, both versions of plan A and plan B are equivalent. However, the participants who had been given the two frames provided inverted answers. In other words, 80% of those who had been presented with the first frame opted for plan A, while 80% of those who had been illustrated the second opted for plan B.[2]

Finally, framing has been employed in behavioural economics as an elementary, pre-linguistic tool, and defined as a 'conceptual metaphor' by Lakoff, who invented cognitive linguistics.

When integrated into embodied cognition-related theories, the model underlining framing theory sees cognition as consisting of a limited number of

[2] When examining the way framing is employed in political communication, reference should be made to linguistics. So far, this terminology has been introduced considering semiotics, by making reference to the work of Fillmore, *Frame Semantics and the Nature of Language* (1976). According to the author, making use of this terminology means referring to an interpretation context (Fillmore 1982, 116-117). This is the same approach adopted when framing theory is adopted by media representation, in that it is argued that the way the news is reported by communication means can influence the way the audience interprets it. This theory then moves away from some approaches, among others agenda setting and priming theory, in that frame analysis prioritises *the way* discourse is represented. In other words, the main question no longer is: "Which topics are we led to believe in?" but "How are we encouraged to interpret a given question" and "How should we think of a certain topic?". This point was made by McQuail (1983 [2005]).

universal faculties and experiences. In a nutshell, human memory records perception and motorial experiences in a sketchy way, along with their emotional effects, to make it possible to compare them with similar experiences, establishing commonality and identifying chronological dimensions. Recent cognitive research – which has focused on how political language can be effective and produce positive outcomes – looks at the cerebral mechanisms developed by physical living which is perceptive, temporal, emotional and analogical. In terms of cognition, narration, framing as a metaphor, blending theory are all the result of analogical activities combining recorded experiences and feelings across space and time[3].

Some 25 years have passed by since Entman's *Framing: Toward Clarification of a Fractured Paradigm*, yet referring to framing as a cognitive or a cerebral element is a difficult task. This is particularly the case when one wants to draw a line between framing and metaphor, metonymy, narration, which are all closely intertwined. These terms are all employed to denote realities in textual and cognitive terms.

Many of them (e.g. narration, metaphor, *pathos*) are part of rhetoric terminology, which was given fresh momentum in social and political settings following World War II. In the US, it was Kenneth Burke who favoured this revival, as it made use of rhetoric in a broader semiotic sense, considering the former as an element of human communication and describing signification and communication as interactive elements aimed at forming meaning, a sort of a persuasive continuum. As for Europe, new-rhetoric drew on Perelman's and Olbrechts-Tyteca's research, which aimed to develop argumentation theory, describing how human beings apply reasoning to all those knowledge domains where value judgments are involved.

Prospects, analogy and psychological conditions are all elements forming part of framing. If considered through the rhetoric lens, framing is less disrupting than it seems, at least when applied to political discourse. In rhetorical terms, framing has the same meaning as "topic". Simply put, a frame can be regarded as a set of argumentative premises, hence the framing process is similar to classic *inventio*, that is the methodical search for commonplaces, premises, fundamental values and their hierarchies (Perelman, Olbrechts-Tyteca 1958 [2001, 90]).

Although without acknowledging a degree of continuity with new rhetoric, this is the trend that is `currently reported and that is nurturing a research field attempting to bring together rhetoric and cognitive sciences. As summarised by Venier, place-related discourse is important in that it "suggests how to

[3] A more detailed examination of the authors who contributed to defining the notion of a "frame", see Nespoli 2018, 4-21.

speculate on the omnipresence nature of a modern topic (which is yet to be elaborated). This would give reflections on rhetoric new momentum" (Venier 2013, 654).
In consideration of the above, proper academic research entails employing framing to refer to an inferential structure inherent to language that is part of speakers' culture and personal experience. A frame is thus a structure made available by language to a community of 'message' interpreters.

2. Justifying the comparison

Contrasting the system of industrial relations in place in Italy and the USA has become a widespread practice among experts in the field, especially since the merger between Fiat and Chrysler has led the two companies to share the same fate. While the theoretical perspective provided in the first paragraph of this article indeed allows one to contrast the communication aspects featuring the industrial relations systems under scrutiny, this theoretical background is not sufficient in itself to justify the usefulness of this comparison. This would also hold if the future of the US and the Italian automotive industry would depend on one industrial group. However, the following comparison is justified by the fact that the two contexts under examination feature a number of differences that might be worth pointing out.

2.1. Two Different Systems of Industrial Relations

The peculiarity of the industrial relations systems in place in Italy and the USA feature different rhetoric elements that emerge when looking at the external communication processes of trade unions and companies.
By way of example, US industrial relations are characterised by low membership rates. According to data provided by the OECD, trade union density in the US moved from an all-time high in 1999 (13.4%) to an all-time low in 2014 (10.7%). Conversely, Italy's trade union density swung between 33% in 1999 and 37% in 2013.
The foregoing difference can also be explained by the distinct industrial relations models implemented in the two countries. One example of this is that, unlike Europe, trade union confederations and industry-based collective agreements are inexistent in the USA. Limiting the analysis to the automotive industry, there exist two levels of bargaining in the USA. Three different collective agreements apply at the national level, one for each automotive group. At the lower level of bargaining, plant-level collective agreements govern a number of specific aspects, among others work organisation, career advancement and labour grievances. According to the statute laid down by the

United Automobile Workers (henceforth: UAW), 740 local offices of the union – called locals – hold elections to decide upon industrial action and the particulars of the collective agreements concluded at the national and the plant level.

The UAW had already managed to clinch a collective agreement in all the facilities of the companies operating in the automotive sector as early as the end of the 1940s. Indeed, the years between 1950 and 1980 (Baldissera, Cerruti 2012, 188) are universally considered the golden age of US unionism – especially in the sector under evaluation here – for a number of significant gains were obtained by the labour movement. Amongst others, the 1950 Treaty of Detroit set forth that the first collective agreement signed by one of the Big Three should be taken as a starting point in negotiations with the other two automotive companies based in Detroit, preparing the ground for so-called pattern bargaining.

In 1979, the UAW could pride itself on having 1,510,000 members. Yet the 1930s model of industrial relations would soon be challenged by overseas companies operating in southern states, owing to the fact that the latter implemented Japanese lean production. Significantly, the number of UAW members in 1990 was some 950,000, a 37% decline as compared to 1979. Nevertheless, the contractual power of trade unions was somehow affected by concession bargaining, which started to make inroads into union discourse. "Concession bargaining" did not mean that trade unions were willing to renegotiate past gains. Rather, they became aware of ongoing, industrial changes and opened up to the possibility of exchange-based negotiations, especially in relation to work organisation. The latter will bear significant relevance in US collective bargaining in the years to come (Ferigo 2012, 193).

"Jointness" is another concept that entered the scene in those years, although employers regarded that as employee "involvement", whereas workers' representatives preferred the word "participation". At any rate, profit-sharing appeared for the first time in collective agreements in 1982. Furthermore, a number of joint bodies were established in the plants managed by the Big Three at the end of the 1980s. As pointed out in the 1993 collective agreement concluded by Chrysler, these bodies were tasked with amending agreements concluded at the national level, when this move was necessary to save jobs.

It is precisely these differences in the industrial relations dynamics in the two countries analysed that might arouse interest and prompt comparative analysis. In this connection, the collective agreements concluded at the Pomigliano plant in 2010 and 2011 have led many to talk of the "Americanisation" of Italy's industrial relations, especially in relation to the advisability of setting up a single trade union. It is therefore interesting to look into this Americanisation process and its feasibility also in relation to the

communication strategies put forward by the unions. This would help us to understand the communicative implications resulting from labour movements operating in different cultural and economic contexts.

2.2 The Leading Role of the Automotive Industry

There are a number of aspects which are singular to the automotive industry which make the comparison between the Italian and the US cases deserving of further analysis. First and foremost, it might be fitting to point out that car manufacturing plays a significant role in both countries' industry. In the USA., the automotive sector alone makes up between 3% and 3.5% of national GDP and until 2015 it employed more than 1,500,00 people (cf. Hill, Maranger Menk, Cregger, Schultz 2015). As for Italy, the data produced by the Association of National Automotive Industry Manufacturers (Anfia) tells us that there were 500,000 people employed in car manufacturing in 2015 (cf. Aa.Vv. 2015b). If one considers the full production chain – e.g. manufacturing and distribution – the automotive industry accounts for almost 5% of GDP.
As a result of this state of play, union-related issues in this sector have traditionally received significant media coverage in both countries (cf. Martin 2004, X e 72-101). It is precisely the interest of public opinion the aspect that is worth a discussion in examining the Pomigliano case and the negotiations entered into in 2015 by Fiat Chrysler Automobiles (from now on: Fca) and the UAW. The degree of media attention given to collective bargaining in the USA is somehow unusual if one considers that industrial relations are not a hot topic across the pond, especially on TV.
According to research carried out by Subervi from the School of Journalism of the Texas State University, only 0.3% of broadcast news in 2008, 2009 and 2011 concerned labour issues (organised labour, collective bargaining and strikes). However, the attention received by negotiations between Fca and the UAW can be explained by their controversial nature, especially considering that US history brims with violent demonstrations. In fact, it is this form of industrial action that was given wide media coverage in the past in the USA (cf. Pasadeos 1990) and this could also have been the case in 2015, as UAW's declarations and the elections through which its members endorsed possible strikes seemed to confirm this approach. Significantly, the *New York Times* defined as "painful" the 5-month talks taking place in 2015, even though no protest took place in plants. Collective bargaining led to the conclusion of a new company-level collective agreement, which entered into force in November 2015, lasted 4 years and applied to all workers of the Big Three – Fiat Chrysler, General Motors and Ford. The new collective agreement contained significant gains for employees, among others pay raises and bonus

increases. Negotiations to reach agreement were marked by intense wrangling and were also affected by employee consent that was expressed through voting. The media were most interested in the relationship between trade unions and their members.

3. Framing the "Fiat Case"

Fiat's saga began with talks about the revival of the Pomigliano D'arco plant, in the municipality of Naples (Italy). Restoring the company to its former glory has attracted wide media coverage and has become the most important IR topic ever discussed in Italy. Overall, this story lasted almost three years, if we only factor in the chain of events stretching from the presentation of the new Fiat plan, which took place on 30 March 2010, to the ruling of Italy's Constitutional Court of 3 July 2013[4].

In 2010, Fiat reported a positive trend again, mainly the result of the profits made by US and Brazilian plants. Conversely, the plant based in Pomigliano D'Arco had halted production for more than one year. 4,600 employees were granted a wage guarantee fund and only half of them resumed work for three days a month. Not to mention that most of the area surrounding the plant was under the control of organised crime.

The plan put forward by Marchionne called for the need to provide the plant with a new platform, to make it possible to produce the new Panda, which at the time was manufactured in Poland. Management made clear the following conditions were necessary in order not to "miss out on favourable opportunities: plant maximum utilisation; flexibility as regards shifts and work days; internal mobility; reduction of anomalous forms of absenteeism"[5].

Talks with the worker representatives followed – which lasted 80 days and included 14 bargaining sessions – in which all trade unions participated. Fim, Uilm and Fismic issued a joint press release in which they stated that they were open to negotiations[6].

In the morning of 21 April 2010, the plan to save the plant of Pomigliano D'Arco became even more relevant in Fiat's strategies. In his Turin-based office, Marchionne presented a 5-year industrial plan, consisting of some 100

[4] A detailed description of the events related to the Fiat saga is provided in Francesco Nespoli 2018, *Fondata sul lavoro. La Comunicazione politica e sindacale del lavoro che cambia*. ADAPT University Press.

[5] Press release Fiat Group 30 marzo 2010, *Futura Panda allo stabilimento Giambattista Vico*, in *www.fcagroup.com*.

[6] Press release Fim-Cisl, Uilm-Uil, Fismic 9 aprile 2010, *Segreterie nazionali Fim Uilm Fismic al termine dell'incontro all'Unione industriale di Napoli sull'ipotesi di rilancio dello stabilimento Fiat di Pomigliano*, in *www.uilm.it*.

pages written in English to investors, the media and trade unions. It was a plan aimed at expanding and internationalising the company, and which therefore required trade unions to agree upon special conditions.
On the following days, the pressure exerted by Fiat on the unions become evident. On 22 April, Marchionne released a statement specifying that investing in Pomigliano was dependent upon the conclusion of the collective agreement, stressing how detrimental it was for unions to have divergent views.

> We will make a €20-million investment in the Pomigliano plant, although five years will be necessary to allocate it. I think that trade unions can settle for that […] We need to close down that plant and if we don't, we cannot proceed with the investment […] Without the agreement no investment can be made. €700 million are awaiting that someone reaches agreement[7].

It was soon clear that there was little room for negotiation. The then secretary of Fiom, Gianni Rinaldini (who was later on replaced by Maurizio Landini), had not signed the joint press release dated 9 April, commenting on the current state of affairs as follows, "negotiations, as such, do not require trade unions to sign an agreement which has been imposed on them". Fiom refused to discuss some of the terms of the agreement, especially industrial peace, which would have hampered its ability to engage in industrial conflict. But there were other aspects of the agreement about which Fiom was reluctant. Among them were work organisation, break adjustments, the fact that lunch breaks should be scheduled at the end of the shift, and the ERGO-UAS system to jointly assess production needs, work-related ergonomic issues and work fatigue, which faced considerable resistance as a tool to tackle absenteeism.
On 10 June, Fim proposed to Landini that they hold a referendum to decide whether the agreement under discussion at the time should be made mandatory on trade unions. After negotiating separately with Fiom, Landini argued against the current version of the agreement, irrespective of the result of the referendum. Therefore, Fim Cisl, Uilm, Fismic, Ugl and AQCF informed Paolo Rebaudengo, a Fiat representative, that they would accept the agreement put forward, scheduling the referendum for 22 and 23 June.
From this moment on, Fiom launched a massive communication campaign, introducing the "anti-constitutional" frame once the agreement had been signed. Fiom's intention to engage in a communication campaign was clear if one looks at the letter Landini sent to newspaper and radio directors on 17 June 2010, titled 'Pomigliano's Separate Agreement'. In the message, Landini argued that the press coverage given to the story, although wide, was not

[7] *Fiat, Marchionne: «Per Pomigliano non investiamo senza accordo»*, in *Corriere della Sera*, 22 aprile 2010.

sufficient and much needed to be done to raise awareness of the fact that some fundamental rights were at stake.
As for management, Marchionne released a few statements, stating his disapproval about the timing and the content of the public debate. On 18 June, he made a number of comments that seemed to broke no agreement:

> In Newspapers and on the TV […] discussions are held about ideological principles which are no longer relevant, as they could be topical 30, 40, or 50 years ago. We still talk of conflict between an employer and a worker, which no longer exists […] As an industrialist, I do not identify with the comments made by Fiom […] As it is in the USA, we only need one interlocutor to refer to, not twelve[8].

As far as internal communication was concerned, Fiat sought direct contact with staff, at least on three occasions. On 9 June 2010, a letter was sent to Pomigliano employees written by the plant manager, Sebastiano Garofalo[9]. An attachment to the letter provided a sketchy description of the terms of the agreement submitted to trade unions on the previous day. On 19 June, that is three days prior to the referendum, a torchlight procession was held in support of the "yes" vote, which was also covered by national TV news (TG3)[10]. According to Landini, the regime was behind this: "we have been told by many workers that Fiat management is contacting each and every staff member to 'invite' them to take part in the demonstration"[11].
After the alleged pressures made on employees to join the torchlight procession, Fiat sought to make further contact with staff. On 22 June, that is the first day of the referendum, an explanatory DVD was circulated at the plant, and some employees had already received it via post[12]. At the beginning of each shift, workers were shown the footage, and subsequently some time was devoted to questions and to further extrapolation of the terms of the agreement. This incident led Landini to denounce the illegitimate nature of these meetings and the climate of intimidation in which they took place. As recounted by workers who were Fiom members, Cgil's regional office too distributed some leaflets, surprisingly encouraging workers to vote 'yes' (D'Alessio 2011, 88). The Cgil general secretary, Guglielmo Epifani, followed suit, although in a more covert fashion. Yet the Fiom collective decided to act

[8] *Fiat, l'allarme di Marchionne: «Senza accordo non esisterà più industria»*, in *Corriere della Sera*, 18 giugno 2010.
[9] *La lettera ai dipendenti del direttore dello stabilimento Fiat di Pomigliano d'Arco*, in *Il Sole 24 Ore*, 9 giugno 2010.
[10] In *http://t.co/oY09y2xm1B*.
[11] Press release Fiom-Cgil 19 giugno 2010, *Fiat. Landini (Fiom): "A Pomigliano una manifestazione di regime"*.
[12] In *https://goo.gl/R3RZh6*.

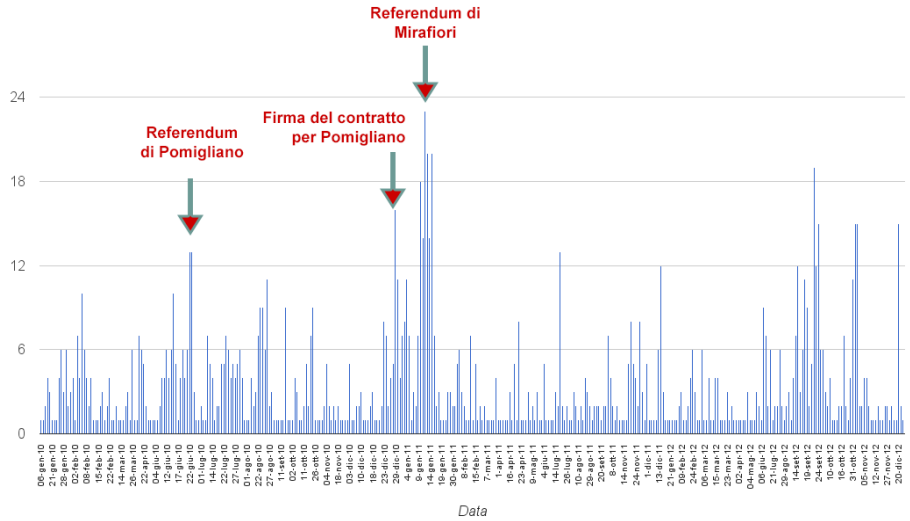
on its own. It created a Facebook group and called it 'Pomigliano does not bend' (*Pomigliano non si piega* in Italian). On the morning of 24 June, around 6 o'clock, Fiat workers were informed about the first results of the referendum, with many journalists and television crews that gathered at the Pomigliano plant. The agreement was approved by 2,888 people, that is 63% of votes validly cast, while those opting for NO were only 37%. As pointed out by the press, this was neither a plebiscite, as hoped by Marchionne, nor Fiom's complete defeat[13].

The final approval to the investment would only arrive on 9 July, concurrently with a letter of consent signed by trade unions endorsing the investment. Significantly, this letter also imposed a further condition, namely that of setting up a new company, which was not referred to in the agreement for which the referendum was held. The new company was called *Fabbrica Italia Pomigliano*, and was not a member of Confindustria.

At some point, the media coverage given to Pomigliano started to dwindle. In the following months, discussions concerning the Turin-based Mirafiori plant resembled those taking place around Pomigliano D'Arco. The draft agreement negotiated for Mirafiori was finalised between October and December 2010, concurrently with the withdrawal from the national collective agreement in force at the time and with the launch of the 'Fabbrica Italia Pomigliano' project. On 23 December 2010, Rebaudengo informed union representatives that the company intended to set up a joint venture between Fiat and Chrysler. To this end, a referendum was scheduled for 14 and 15 January, in which 5,431 workers participated. As it was with Pomigliano, the media and those opposing the company's move gathered around the plant on the days of the referendum. Coverage of the Fiat saga reached its peak in the 2009-2015 period.

[13] See the article *Referendum di Pomigliano, vincono i sì, ma non c'è il plebiscito: i contrari al 36%*, in *Corriere della Sera*, 22 giugno 2010.

Figure 1. Fiat Coverage in the TV News, 2010-2012



Source: Author's elaboration on the data collected by Osservatorio di Pavia.

The outcome of the referendum was uncertain, because never in the last fifteen years have "yes" voters won in the Mirafiori plant. Yet this time advocates of a joint venture won by a narrow margin. The vote of white-collar workers was decisive to ensure victory, especially in consideration of the fact that among blue-collar workers the "yes" vote prevailed only by 9 points. Overall, 'yes' voters were 2,735 out of 5,060 (54% of the electorate).

After promoting the Mirafiori agreement, the discussion between Fiom and Fiat mostly concerned some legal aspects, which were frequently intertwined with communication ones. The collective agreement signed for *Fabbrica Italia Pomigliano* made reference to Article 19 of the Workers' Statute, according to which only trade unions that signed the agreements related to each production unit have the right to set up company-level representative bodies. Against this backdrop, Fiom was not entitled to participate in the election of bodies representing workers at the company level. For this reason, they filed an appeal to the Tribunal of Turin to challenge this decision, which gave rise to the issue of the constitutionality of Article 19. On 3 July, a ruling of the Constitutional Court determined that the foregoing article was unconstitutional, as amended by the referendum of 1995. Namely, the disputed paragraph was the one establishing that company-level union representation should only include those unions that signed the collective agreement concerning each production unit, thus also excluding those that participated in relevant negotiations (Fiom's

case). In spite of significant press speculation, Fiom did not take part in the election of the company-level representative bodies, nor did it participate in negotiations for the collective agreement, the terms of which did not distance themselves from those arrived at when the Pomigliano agreement was laid down[14]. On 21 November, Fiat issued a number of letters through which – starting from 1 January 2012 – the company withdrew from the 19 agreements applied at the company-level and from the national collective agreement. On 13 December 2011, the final version of a new collective agreement was signed by Fim, Uilm and Fismic at the office of Unione Industriale Torino. No worker was dismissed and pay was increased by an average of €360 per year before taxes (some €30 per month). Starting from 1 January 2012, Fiat applied its own collective agreement in all its plants.

3.1 Critical Considerations on the Italian Case

By examining the news broadcast in the prime evening hours between 2009 and 2015, it emerged that in 2010 the Fiat saga was treated as a political issue, as the number of Fiat-related stories featuring political content was higher than those in which no reference was made to politics (Nespoli 2018: 186).
Media coverage was relevant especially if one considers that at the time of the facts, trade unions made little use of social networks. Suffice it to say that in 2010, Fim-Cisl, Uilm, Fismic did not even have an official Twitter account, so they lacked a strategy for social communication. As seen, it was workers themselves that set up a Facebook page to encourage their peers to vote 'no'.
Leaders opposing rhetorical approaches were based on the traditional topics of new management and Marxism. On the one hand, the amendments to working conditions were pictured as a way to share responsibilities and involve employees, bringing together different skills under the same organisational culture. On the other hand, cultural differences were the result of certain employee status, and the changes made to work organisation were seen as a way to review the rights of workers represented by the national agreement, by legislation, the Constitution and the European treaties.
Prior to the Pomigliano referendum, the contrasting rhetorical views complemented one another, and it is company-level communication that provided the antagonistic approach with elements that could be challenged. In communication terms, Marchionne's words somehow justified Landini's re-

[14] In the press, the article by Maresca, *Ma tra il Lingotto e la Cgil i rapporti non cambieranno*, in *Il Sole 24 Ore*, 4 luglio 2013, which can be found in *Boll. ADAPT*, 2013, n. 26, seems to take a different approach. In the union, Di Maulo (Fismic) observes that "Fiom has never taken part in negotiations, so it falls outside the scope of application of the ruling" (cf. footnote 142.).

framing, which was based on retaliation. Marchionne and Fiat created a link between the result of the referendum and the future of the plant.
Marchionne's communication also involved business sustainability. Describing the Piano Fabbrica Italia, he did not refer to it as a plan to save the company, but as a tool to relaunch production and ensure corporate stability. Consequently, his view was that company needs and social interests are not opposed, and a balance should be stricken between them, with the support of institutions and the social partners.
Signatory trade unions struggled to communicate the terms of the agreement and how they contributed to negotiations. Because of the controversy resulting from company and union rhetoric, trade unions were often considered as seeing eye to eye with management. Indeed, they gradually accepted all the terms imposed by the company in order to have a say on work organisation and interact with company representatives *from within*.
It should be pointed out that Marchionne did not look favourably at the choices of the unions which, especially since the Pomigliano agreement, represented the majority of workers at Fiat and Chrysler plants. In this respect, it is worth touching upon the US case, where the relations between Marchionne and trade unions changed significantly earlier than they did in Italy, giving rise to some fascinating communication practices from both sides.

4. The Fca-UAW saga

4.1 "Tier 2" and the New Remuneration Scheme

In order to put the issues under examination into perspective, we need to go back to the 2007-to-2009 period, that is when the US financial crisis reared its head, bringing about serious implications in the car industry (one might note that GM and Chrysler warded off bankruptcy only thanks to the help of the federal government). In 2010, the UAW reported the lowest number of members since World War II (355,00), and unlike the past, trade unions were compelled to make a number of concessions, particularly concerning the cost of labour.
Unlike other car manufacturing companies, Fiat agreed to support the US government in its bid to save Chrysler, though this would come at a stiff price: seven plants were shut down in the following two years, decreasing to 13 the number of operating factories. The UAW played a key role even after Fiat took a 20% share in Chrysler, as the union still held 68% of the membership interests in the company, thanks to a retirement fund (Veba). It was Chrysler's shaky financial conditions that prompted trade unions and management to work in harness. In exchange for the company's rescue plan, Marchionne

managed to obtain from union representatives the limitation of certain professional classifications and the promise not to engage in industrial action until 2015. Yet the most important concessions made by trade unions was the opportunity provided to management to hire new workers by making use of so-called Tier 2, a special, two-tier remuneration scheme in place since 2007. Because of this new remuneration system, newly-hired staff would be paid significantly less than senior workers (€15/19 against €28 per hour).

In 2010, Marchionne released a forthright interview to the *Wall Street Journal*[15], arguing that "UAW's leadership understands our situation fully […]. We'll be fine as long as we agree on the need to be the most competitive company". Starting from 2011 – that is the last year the collective agreement signed prior to that concluded in October 2015 was in force – Tier-2 was applied. This means that those workers hired under this remuneration scheme had no possibility to reach the same remuneration levels as those recruited previously.

Five years later, data proved Marchionne right. In January 2015, orders at Fiat Chrysler Automobiles grew by 14% in January 2015 – an all-time high since 2007 – reporting increases in sales for the 58th consecutive month. Accordingly, Fca – as well as Ford and GM – managed to shore up their finances right before entering into negotiations.

However, an unexpected turn of events took place on 9 June 2015: Al Iacobelli, Fca's HR manager and negotiator resigned, with Glenn Shagena who soon took his place. The appointment of Dennis Williams as UAW President did not bode well, either, as he was determined to win back the concessions given up in 2009. Such willingness on the part of trade unions to fight tooth and nail can be summarised by the motto "it's our time". This slogan was printed on all the T-shirts worn by union representatives during the annual convention, was forcefully reasserted on several occasions in public statements and even appeared at the foot of the document accompanying the collective agreement concluded in September.

In 2015, lower labour costs helped Fca fare better than its competitors. On average, the labour costs at Fca were reported at being at $48/hour, thus well below the $55/hour and the $58/hour applied at Ford and GM, respectively. In this sense, trade unions made an attempt at restoring the limitations to the Tier 2 remuneration scheme that were previously in place. Conversely, Marchionne aimed at favouring early retirements and introducing performance-based pay for newly-hired staff.

The above helps us to better appreciate the controversial statements made by Marchionne on several occasions (31 October 2011, 6 May 2014, 12 January,

[15] P. INGRASSIA, Resurrecting Chrysler, in *The Wall Street Journal*, 3 July 2010.

14 July and 15 July)[16] when he dismissed the two-tier remuneration scheme as "not viable over the long run", "almost offensive" and "unsustainable". Union members were flummoxed by Marchionne's words, as they thought that Fca management and union representatives shared the same views in relation to this form of pay.

It was estimated that Fca would be more affected than its competitors by this new remuneration policy. This was true in consideration of the fact that the collective agreements concluded between the UAW, GM and Ford already established caps on the number of workers they could hire. According to the UAW, the share of new hires out of the total workforce at GM and Ford in 2015 was 29% and 20%, respectively. At Fca, this percentage would rise to 45%. On 6 August 2015, Marchionne held a press conference in a relaxed atmosphere announcing the beginning of negotiations[17] and reasserting the willingness to continue collaboration with union representatives. Commenting on rumours of a possible merger with other car manufacturing companies, Marchionne was keen to point out that: "Whatever happens in terms of consolidation, it would never ever be done without the consent and the support of the UAW. It's that simple".

In a surprising move, on 13 September 2015 the UAW announced that Fca would be the main negotiation party in the auto industry in the new bargaining session. This aspect was anything but trivial, in that pattern bargaining provides that the terms agreed upon in the first collective agreement would also apply to the subsequent ones, i.e. those concluded with GM and Ford.

Significantly, Fca was the weakest of the three automotive companies financially. Moreover, the UAW granted it the most generous concessions between 2007 and 2009, when Fiat saved Chrysler. Ideally, these two aspects would make it easier for the union to make claims and obtain gains that both Ford and GM would be compelled to accept. Therefore – and just three days after Fca was designated as the main negotiation party in collective bargaining taking place at the industry level – a preliminary version of the new collective agreement was agreed upon. The news of the agreement was broken in a press

[16] Cf. B. WERNLE, D. PHILLIPS, *Marchionne: 2-tier wage structure isn't viable*, in *Automotive News*, 31 October 2011; L.P. VELLEQUETTE, *Marchionne Q&A: CEO discusses Alfa, aluminium and UAW wages*, in *Automotive News*, 6 May 2014; B. SNAVELY, *Fiat Chrysler to invest $2 billion on next minivan, seeks to end two-tier wages*, in *Detroit Free Press*, 12 January 2015; B. SNAVELY, *FCA CEO Marchionne aims to eliminate 2-tier UAW wages*, in *Detroit Free Press*, 14 July 2015.

[17] See the video *Q&A – Kick-off of UAW and FCA U.S. 2015 Negotiations*, in *https://www.youtube.com/watch?v=-eUPZbG1x70*.

conference, with many commentators that stressed the singularity of this event[18].

The first tentative agreement did not set aside the two-tier remuneration scheme in a strict sense, as it only set forth that wage disparities between workers with different seniority would be reduced. Specifically, staff hired after 2009 would be immediately entitled to a pay raise ranging from $17 and $24, depending on seniority. In addition, these workers would be granted a minimum wage of between $22 and $25 per hour by 2018. Nevertheless, veterans (e.g. senior workers) were entitled to a maximum hourly wage of $28 and a pay raise leading them to earn $30 per hour, at most.

As seen, the UAW's statute determined that the collective agreements concluded by the union had to be approved by members through voting. On 15 September, trade unions announced that – pending members' approval of the draft agreement – the collective agreement previously in force would be extended on an hour-by-hour basis, that is without setting a deadline and ruling out the possibility to engage in industrial action. Union members met this move with mixed reactions.

The post that was issued on Facebook with which the union broke the news was shared 920 times, received 581 likes and was commented by 360 viewers – an all-time high in terms of statistics.

Many rounded on the union for this move – as it was interpreted as a sign of weakness – while others berated union representatives for providing little information («I want an hour by hour update then», «The local news will probably tell our contract before our union do something»…)[19].

On 1 October, the UAW reported that 65% of members voted against the terms of the contract. Only in 1982 did the elections produced a similar outcome. Dennis Williams argued that "We don't consider this a setback; we consider the membership vote a part of the process we respect"[20], while the company issued a press release voicing its disapproval, although specifying that "The company will make decisions, as always, based on achieving our industrial objectives, and looks forward to continuing a dialogue with the UAW"[21].

At this point, the UAW was faced with three choices: interrupting negotiations with Fca and starting bargaining with the other two companies, holding a new round of elections in relation to the same tentative agreement, or discussing its

[18] Cf. D. BARKHOLZ, L.P. VELLEQUETTE, *UAW, Fiat Chrysler reach tentative labor deal*, in *Automotive News*, 15 September 2015; A. PRIDDLE, B. SNAVELY, G. GARDNER, *2-tier wages, health care part of UAW-FCA agreement*, in *Detroit Free Press*, 15 September 2015.

[19] The Comments made on Facebook can be seen at *https://www.facebook.com/uaw.union/posts/10153499236231413*.

[20] *A message from UAW President Dennis Williams*, in *https://uaw.org*, 5 October 2015.

[21] *Statement Regarding UAW Ratification Vote*, in *http://media.fcanorthamerica.com*, 1° October 2015.

terms again. The union chose this latter option, allowing that some shortcomings in the union communication strategies contributed to the rejection of the first version of the tentative agreement. This aspect was evident in the closing remarks of the statement issued by Dennis Williams on 5 October, where the UAW President promised to provide more regular information and asked members to be wary of news found on unofficial websites and social profiles: "Outside groups like to stir people up. You, our members need to make decisions based on what's best for you and your families […]. We are going to continue to bargain on your behalf. We are also going to tell the whole story. This is a very serious situation. I ask that you get the facts as we continue to address your issues. Over the next several days we will be posting more facts and explanations, hoping to get these facts into your hands. Please keep checking Uaw.org and the Uaw International Union Facebook page for updates"[22].

Williams made reference to the World Socialist Web site which, during the first election round, disseminated unofficial information, promoted the establishment of groups opposing the agreement and organised demonstrations outside Fca plants "by using social media"[23].

Change was evident in the communication strategy put in place by the union. Thanks to some journalists of the Detroit Free Press, word got around that the UAW had concluded a contract with Berlin Rosen, a New York-based press agency specialised in political communication. An information campaign on social media followed through which the particulars of the negotiation process and the terms of the new agreement announced on 9 October were broken down.

The second agreement laid down pay raises for veterans, too, paving the way for the harmonisation of remuneration levels, which took place in the following eight years, that is to say during negotiations for a new fourth-year collective agreement[24]. On 20 October, the UAW broke the news that the tentative agreement was approved by 77% of voters and was also used as a basis for negotiations with GM and Ford.

The bargaining process between GM and the unions was also fraught with difficulties. On 6 November, the production workers voted in favour of the tentative agreement, whereas the skilled workers rejected it, as had been the case twice in the past. Under the UAW's statute, the agreement cannot be ratified without discussing it with skilled workers. This system has been

[22] *A message from UAW President Dennis Williams*, *op. cit.*

[23] Something along these lines already took place in 2011, when a situation marked by difficult negotiations on certain concessions and low membership rates was worsened by the involvement no-union plants (cf. Baldissera, Cerruti 2012, 201).

[24] This is similar to what the UAW negotiated for Canadian workers in 2012.

criticised by specialised journalists (many have even defined it as "the imbroglio of skilled workers") and the union became an easy target for those who accused it of backwardness and reluctance[25]. Nevertheless, after two weeks of uncertain and secret negotiations, the union demanded an amendment to the collective agreement concerning the employee grading system and the way seniority increases were calculated, which were also welcomed by GM workers.

The union was also engaged on another front, because another draft agreement was concluded with Ford, although member approval was pending. Also in this case, the possibility of having the agreement rejected was all but a remote one. The first results seemed to bode well, but things changed following the vote cast by workers from larger plants. All those concerned were on tenterhooks, because they were aware that approving or rejecting the terms of the collective agreement would depend on a handful of votes. Indeed, only 52% of union members endorsed the new collective agreement concluded between the UAW and Ford. On the same day, an accord with GM was also clinched following a second round of elections.

It was as though union members' feelings of uncertainty leading to the disapproval of the agreement put forward by Fca had given way to growing confidence, which resulted into the few amendments made to the accord entered into with GM and the conclusion of the early version of the one concluded with Ford. The new arrangements were met with mixed reactions by experts, too. However, there was agreement on the fact that the three agreements laid down better terms for employees. Overall, two frames were used by the media to break the news. Alisa Priddle and Brent Snavely of the *Detroit Free Press* spoke of "years of labor peace and prosperity as the industry heads to record U.S. sales"[26]. The New York Times Editorial Board also praised the agreements, stressing that this is an example of "what a union can do for the US middle class", with implications that would be seen in the US automotive industry at large[27]. The assumption that the recent gains obtained by the union with the Big Three would increase union presence in non-unionised companies was not a far-fetched one. A nice example of this was the unionisation process taking place at the Volkswagen plant in Chattanooga, which came after many and unsuccessful attempts to establish a union presence in southern companies. The New York Times went on to say that the

[25] This is the comment made in a tweet by Larry P. Vellequette from *Automotive News* (*https://twitter.com/LarryVellequett/status/667704607762743296*) concerning the article by M. WAYLAND, *UAW skilled trades workers lack veto power*, in *The Detroit News*, 19 November 2015.

[26] Cfr. A. PRIDDLE, B. SNAVELY, *UAW-Ford deal passes, and new era begins for Detroit 3*, in *Detroit Free Press*, 20 November 2015.

[27] *Auto workers point the way to higher pay*, in *The New York Times*, 26 October 2015.

agreement concluded by Fca would also reaffirm "the power of unions to use the threat of a strike to demand a fairer share".
An anti-union sentiment characterised the second communication strategy and prevailed in many comments released at the time. Joan Muller of *Forbes* talked of a "union which is not a union"[28], while *Detroit News*' editorialist, Daniel Howes argued that these agreements were the result of a "powerful union" and "weak companies"[29], envisaging a step backwards in the industrial relations system of the automotive industry. The best possible balance between remuneration levels and number of jobs had been the one reported in the pre-crisis years, while the gains obtained by the UAW would hint to a return to some union privileges in place in the past, among others the Jobs Bank[30] and the Cost-of-Living Allowance (COLA), the latter defined by Howes as "a wage escalator masquerading as a cost-of-living adjustment". This latter frame points to a sort of trade-off between work quality and number of jobs provided.

4.2 Events and Critical Considerations

Looking at the negotiations entered into in the US between Fca and the UAW, one cannot fail to note that the way events are recounted followed a different path from the account of the bargaining session taking place at the Pomigliano plant. The peculiarity of the Italian case – especially when compared to the US one – can be seen when considering the letter sent to Chrysler workers by Marchionne soon after the merger with Fiat31. The new company structure was defined by the CEO as a breakthrough which "marks a new beginning for Chrysler and the North American automotive industry". In this sense, the role of workers was also acknowledged: "You have been through a great deal of hardship and uncertainty over the recent past and I want to start by recognizing your commitment to Chrysler and acknowledge the many sacrifices you have made to help get an American icon back on its feet". Marchionne thus recognised the sacrifices made by employees in the name of a company epitomising American culture, relying on their willingness to prosper again "For those reasons, today is a day for optimism". It was only after praising the qualities of employees that Marchionne invoked their sense of

[28] J. MULLER, *When a union isn't a union: A weakened and divided UAW struggles to get workers to march in step*, in *Forbes*, 19 November 2015.
[29] D. HOWES, *Howes: Memory, fantasy collide in UAW contract drama*, in *The Detroit News*, 19 November 2015, available on *Boll. ADAPT*, 2015, n. 42.
[30] This programme enabled unionised workers who were dismissed to be paid 95% of their remuneration. This scheme was set aside by the UAW in 2009.
[31] The article is available on *Boll. ADAPT*, 2009, n. 17, *New CEO Marchionne outlines Chrysler Group's future*.

responsibility, which is prompted by their pride for being American and linked to the role of the CEO. It seems as though little to no barriers existed between workers and management: "I ask each one of you to take on a leadership role and work with me to restore Chrysler to being a fully competitive and profitable company once again". At this point in the letter, Marchionne attempted to increase his credibility by referring to his 5-year experience as Fiat CEO, during which staff was given high levels of accountability: "[…] most of the people capable of remaking Fiat had been there all the time. Through hard work and tough choices, we have remade Fiat into a profitable company that produces some of the most popular, reliable and environmentally friendly cars in the world […]. […] we created a culture where everyone is expected to lead". It is therefore the Italian case that has been used as an example in the American context. This was notwithstanding the different challenges unions in the two countries were dealing with.

Indeed, the concessions made by US unions were far more generous than those made by their Italian counterparts (among other things, workers in Italy were not asked to reduce their pay32). This is the reason why in his interview with Paul Ingrassia for the *Wall Street Journal* in 2010, Marchionne was keen to thank to both US workers and trade unions[33]. During that conversation, Marchionne seemed to forebode the negotiations that took place at the industry levels in the autumn of the same year. Questioned about the possibility of union to share the fruits of a Chrysler recovery, he says, "well, that's a conversation I'd like to have"[34]. If we restrict our analysis to the statements issued by Marchionne between the summer and the autumn of 2015, "sustainability" and "reaction" were the two frames, which were both the result of the Tier-2 remuneration scheme.

The "reaction" frame was picked by the union on several occasions when referring to the opportunity of winning back the concessions made in 2009 and

[32] The agreement concluded at the Pomigliano Plant did not provide for wage cuts, and even the reduction of the time allowed for rest periods was compensated with pay increases. In April 2015, management and trade unions discussed about variable pay. On several occasions, FIOM has reported that an Fca worker can earn less that what established by the national collective agreement. Instead, FIM has pointed out that the first-level specific contract concluded by Fca, the average remuneration is higher than that specified in the collective agreement concluded at the national level and that a share of profits is distributed among all workers. Equally in this case, the two arguments made are correct but are intended to support different conclusions. A comparison can be done by looking at the FIOM flier *CCNL vs CCSL*, in *iMec*, 2017, n. 1, and at the press release issued by Fim Cisl on 25 January 2017, *FCA, Uliano: ai lavoratori 307 euro mensili e 1.230 euro di premio annuo, più investimenti e lavoro. E la Fiom?*

[33] P. INGRASSIA, *op. cit.*

[34] *Ibid.*

was summarised by the motto "now it's our time", which was chosen by Dennis Williams. This would translate into the setting aside of two-tier remuneration system, which means granting newly-hired staff the same pay as those hired before 2009. In this sense, UAW members' disappointment with the first draft of the tentative agreement could be ascribed to the ambiguous terminology employed to explain to them that the two-tier remuneration system would be shelved. In January 2015 – and although making reference to the arrangements made with Ford and not to those in force with Fca – Dennis Williams made use of the expression "close the gap" when speaking of the contractual terms that the union would gradually obtain: "Our workers have sacrificed and this is just a milestone within our contract to *begin* to close the gap in rewarding all of our members" [emphasis added][35]. This wording is misleading in that it had been used by car manufacturers since 2008 to refer to the need to reduce labour costs to keep up with non-unionised foreign companies based in the US southern states.

This is the same goal pursued by Marchionne during the press conference hold prior to enter into negotiations with the UAW. Within the frame of increased sustainability, he pointed out that the two-tier remuneration scheme was "unsustainable" and referred to "a path" to shelve it. Indeed, he stressed that "there is as much as a 50% chance that the UAW and Fca US will effectively eliminate the two-tier structure in this round of negotiations"[36]. It is significant that the process outlined by Marchionne should be considered against employee performance, as he also hinted at other measures, such as performance-based pay and profit-sharing schemes: "We are going to try our darnedest to close it up […]. We need to design a career path for people who come into this business that tells them that if they work hard they can get there"[37]. The gradual implementation of the initiatives agreed upon was also evident on the day Fiat CEO announced the tentative agreement: "The team has crafted together a very thoughtful process, where the issue will go away over time"[38]. However, a difference can be seen in the language used by the union to outline the agreement with Fca. Specifically, in the Contract Summary, the words "to close" and "bridge" were reformulated as follows: "narrowing the gap in wages and benefits"[39].

From a strictly linguistic point of view, "to close" implies actual wage equalisation, whereas "to bridge the gap" only entails filling a vacuum, so it did

[35] *UAW President Dennis Williams and UAW-Ford Vice President Jimmy Settles announced today that the union is delivering on its promise to convert workers*, in *www.prnewswire.com*, 30 January 2015.
[36] B. SNAVELY, *FCA CEO Marchionne aims to eliminate 2-tier UAW wages*, cit.
[37] *Ibid.*
[38] *2015 UAW FCA Agreement Announcement Q&A*, in *https://youtu.be/HSsAJfhx0bs*.
[39] *UAW-FCA US LLC Contract Summary: Hourly Workers September 2015*, in *www.autonews.com*.

not necessarily refer to harmonising remuneration levels. The latter option was indeed the one laid down in the first version of the tentative agreement that was subsequently rejected. The agreement provided for benefits and insurance arrangements that placed newly-hired staff and veterans on the same footing, although not in terms of remuneration. The new contractual conditions were indeed well summarised by the expression "to bridge the gap", which was dear to Dennis Williams.

As seen, the meaning attributed by workers to the motto "this is our time" was that they would be entitled to the same remuneration as their senior peers, especially considering the union's pledge to tackle disparities. However, reference has already been made to the fact that, beginning from 2018, a $5-per-hour difference would have existed between new and senior staff members, had the first version of the agreement been approved. Furthermore, Williams' words referred to workers as a sort of uniform category, thus failing to consider that there were significant differences among them in terms of remuneration, even after wages were adjusted upwards. The motto chosen by Williams hinted at employee subordination to management. Consequently, after being compelled to make a number of concessions for the sake of survival, workers were then ready to voice their claims again all together. Dennis Williams employed the terminology "to bridge the gap" as early as 5 June 2014 to point out the disparity between "rich and poor people in the USA"[40]. But the UAW referred to workers as a continuum on many occasions. On the sidelines of a meeting with other trade union representatives that took place at the Wayne State University on 22 April 2015, Williams posited that "What I've said all along is bridging the gap is not just about wages at the Big Three or wages with UAW members, it's about society as a whole"[41]. The same happened on 30 January 2015, when the UAW Vice-President, Jimmy Settles, described the setting aside of the two-tier system as a first move towards the establishment of the minimum wage: "It is our time to show America that the road to the living wage begins now"[42]. It was precisely the pay disparities among workers the disvalue highlighted by the World Socialist Web Site[43] in its conspiracy theory: "In the name of "closing the gap" between senior (tier one) and newer (tier two) workers, the wage ceiling for tier two workers will

[40] The President employed the word "to eliminate" when referring to the two-tier system: "We are all committed to eliminating the two-tier system": cf. B. WOODALL, *UAW's Williams to U.S. automakers:'no more concessions'*, in *Reuters United States*, 5 June 2014.

[41] M. WAYLAND, *UAW, automakers look to 'bridge the gap'*, in *The Detroit News*, 22 April 2015.

[42] *Ford on verge of promoting newer UAW hires to top-tier pay for first time*, in *Automotive News*, 30 January 2015

[43] Cf. *The UAW-Fiat Chrysler deal: A conspiracy against autoworkers*, in *World Socialist Web Site*, 17 September 2015.

reportedly be gradually raised over eight years from $19.28 an hour to approximately $25 an hour. This is significantly less than the $28 currently received by tier one workers, who have endured a decade-long wage freeze that has sharply cut their real wages (adjusted for inflation). They will be driven out of the plants by means of grueling work schedules and other measures. The result will be a work force uniformly paid substantially less than what Big Three workers received a decade ago". They went on so far as to argue that the imbroglio was also evident in linguistic terms "By means of "profit sharing" arrangements, nominal wage increases will increasingly be tied to increased levels of exploitation".

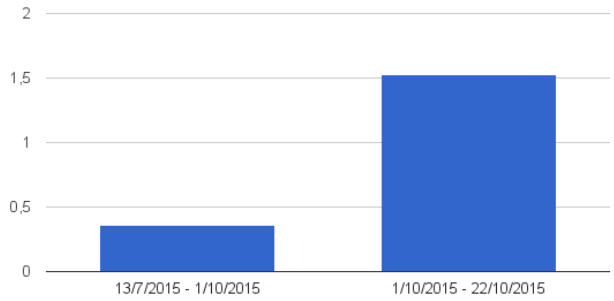
The lack of statistics or interviews makes it difficult to assess the effects of the conspiracy theory put forward by the UAW opponents on union members. Yet it is interesting to note that this theory is based on the wording "closing the gap", which might hide higher levels of exploitation. At any rate, the "tremendous gains" mentioned by Williams in his letter to workers were rejected by a large majority of workers[44]. On close inspection, socialists' conspiracy theory was not aimed at pointing out a form of blackmail, but at highlighting that the agreement would undermined workers' rights. The lack of communication and necessary information on the part of the union – which formed the basis of the conspirers' allegations – makes the theory fairly plausible. The fact that both the union and management failed to disclose enough information was evident during the press conference where the tentative agreement was announced. As the socialists pointed out, on that occasion the accord was only announced, not presented: at the press conference, both Williams and Fca Chief Executive Officer Sergio Marchionne refused to reveal any details of the agreement[45]. This aspect was stressed again in a tweet with which the article referred to was made public: "The #FiatChrysler deal: A conspiracy against autoworkers: Nothing the #Uaw says can be believed"[46].

While the author of this paper does not agree with the conspiracy theory, one cannot fail to note that the reasoning underlying their allegations might not seem completely far-fetched when considering the UAW's response to them, especially if an employee perspective is taken. We have already seen that the post published on Facebook on 15 September 2015 announcing the renewal of the previous collective agreement pending the referendum – which recorded the largest number of "shares" – received many negative comments from members, who accused the union of providing little information (see par.

[44] *UAW-FCA US LLC Contract Summary: Hourly Workers September 2015*, cit.
[45] *The UAW-Fiat Chrysler deal: A conspiracy against autoworkers*, cit.
[46] *World Socialist Web Site*, in *https://twitter.com/WSWS_Updates/status/644647435319570433*.

2.4.3). This shortcoming was fully acknowledged by the UAW, up to the point that a contract was signed with Berlin Rosen – a communication consulting firm – and some positive effects could soon be seen in the information provided via social media and the production of informative materials.
Significant differences emerged in terms of communication quality and quantity if one looks at the information disseminated by the UAW during the 2015 bargaining session, viz. Facebook posts, tweets, videos uploaded on YouTube and the news appearing on the UAW official website). Information related to the negotiations entered into by the union with other car manufacturers – Detroit, Ford and GM – was also considered.
Since 13 July 2015, which marked the beginning of negotiations with GM, the UAW has published 96 messages (one might note that the agreement with Ford was ratified by workers on 20 November 2015, that is 130 days later). Of the 61 messages concerning collective bargaining with Fca, 29 were published before 1 October 2015, that is the day workers rejected the first version of the agreement. This amounts to 29 messages in some 80 days. The remaining 32 messages outlining negotiations with Fca were issued at a later stage (the last one – a Facebook posting – was dated 22 October 2015, that is the collective agreement was finally approved).
The quantitative analysis referred to above indicates that the complexity of negotiations with Fca is the most-discussed topic in the messages issued by the union, making up two-thirds of the corpus scrutinised. For the sake of clarity, one should say that this state of affairs was the result of the rejection of the first version of the collective agreement and the willingness on behalf of the UAW to intensify interaction with members. The graph below shows the average daily number of messages produced in the two periods mentioned above and helps to picture this increase.

Figure 2.



Average daily number of messages (by time-period)
Source: author's own elaboration on data collected manually.

The decision to provide more information represents a communication model in itself and marks a distinctive trait in Williams' statements. This is true if one looks at the message sent out on 5 October, where members were reassured that sound information would be given from that moment onwards and that they should be wary of the news gathered by alternative sources. Clearly, he was making reference to the World Socialist Web Site: "Outside groups like to stir people up […]. We are […] going to tell the whole story […]. Over the next several days we will be posting more facts and explanations […]. Please keep checking Uaw.org and the Uaw International Union Facebook page for updates"[47].

The increase in the number of messages posted by the UAW through different channels was therefore part of an overall strategy which also relied upon the richness of the documents disseminated. By way of example, the Contract Summary of the second version of the tentative agreement contained details about contractual terms and the Fca industrial plan. Information concerned the number of jobs created and manufacturing changes in each plant, along with a pledge to invest $5.3 million over a 4-year period.

In Williams' views, this should be sufficient to dispel doubts about workers' future[48]. The first collective agreement. The first contractual arrangements put forward by the UAW and Fca provided that so-called "in progression workers" would be entitled to up to $25,32 per hour over a three-year period. While this move would not have eliminated wage inequalities between veterans and those hired after 2009, this provision would halve the $10-dollar-per-hour existing gap.

The second draft of the collective agreement, which was later on accepted by 77% of voters taking part to the referendum, succeeded in placing the two categories of workers on an equal footing in terms of remuneration, by setting the maximum hourly rate of pay at $29. This wage equalisation would be implemented in the span of eight years, so there was a risk that further negotiations taking place in this period could change the terms agreed upon in 2015. Further amendments concerned a $3,000 bonus for entry-level workers and a $4,000 bonus for employees with higher seniority.

Maybe the case study outlined here would have also benefitted from an investigation from an economic psychology perspective, taking account of Kahneman e Tversky's theories. In this sense, Kristin Dziczek, the director of the labor and industry group for the Center for Automotive Research in Ann

[47] *A message from UAW President Dennis Williams*, cit.

[48] Cf. B. SNAVELY, A. PRIDDLE, *Jobs, raises, bonuses part of UAW contract with FCA*, in *Detroit Free Press*, 9 October 2015.

Arbor, argued that "this contract was presented much more clearly […] It included larger raises for the people who were considered tier two before and are now called 'in progression workers […] they packaged it in a way that was much more appealing even though it likely doesn't cost Chrysler more money than the first agreement"[49]. The elements we have do not make it possible to assess the impact of the model used for the second tentative agreement on workers' perception of it. But there is no doubt that communication played a key role that was seriously considered by the union to gain consent, up to the point that measures were taken to make up for little information provided to union members, by resorting to digital information means.

For this reason, the 2015 negotiations between the UAW and Fca is an interesting case for scholars of communication studies and deserves further consideration. The author of this paper interviewed Brian Rothenberg, who in January 2015 was appointed as the UAW's new spokesperson. Questions concerned observations appearing on the local and specialised press according to which the first draft agreement was rejected because of the disappointment with the union, which had pledged to set aside the two-tier remuneration system, but it only managed to close the wage gap between new and senior staff.

Rothenberg questioned this assumption, arguing that the reason for the rejection was that meeting employees' demands in times of prosperity is more difficult than doing so in times of economic crisis. Workers' expectations would be the result of the positive trend and the concessions made until then and not of Williams' motto "it's our time", which only described workers' perceived company climate. In other words, the slogan did not produce an increase in employee demands. Rothenberg also spoke in favour of the expression "bridging the gap", the latter being part of a negotiation strategy aimed at upping the ante in negotiations. He also admitted that the rejection of the first tentative agreement taught UAW leaders a great deal and stressed the importance of communication in union discourse. Rothenberg focused on three aspects. The first one was that only 20%-30% of union members had access to the Internet at work. This means that, while the UAW struggled to provide their affiliates with relevant information about the agreement via traditional channels, the conspiracy theory was already known among workers. In other words, a copy of the collective agreements concluded had already circulated among workers in plants and can also be used by those opposing it, while the union delegates – who were those in charge of explaining the contractual terms to employees – were on their way back from Detroit.

[49] A. PRIDDLE, B. SNAVELY, *Done deal: UAW confirms ratification of FCA contract*, in *Detroit Free Press*, 22 October 2015.

Rothenberg's insights were interesting, but the author of this paper is under the impression that there is more than meets the eyes. Besides harmonising operations and ensuring more investments on digital channels, the changes in the union's communication strategy also affected the way the contractual terms were formulated. The union did so to put the money where its mouth was, i.e. to show workers that wage equalisation was actually implemented, although gradually.

Conclusions

It is interesting to note that both in the US and Italian industrial relations system, the search for a win-win solution and the assumption that negotiations are not a zero-sum game are faced with controversial views originating from the ways work is traditionally classified. As pointed out by Rothenberg, an antagonist vision has prevailed in US industrial relations prompting a desire to designate victors and vanquished. He was of the opinion that the fate of the company and that of workers are closely intertwined, irrespective of the parties being aware of this. Of course this does not rule out the possibility that the union can step in if the company does not work properly.
In sum, the approach based on the frame of "sacrifices" made by both workers and the union – which in the US case has also been used by the company – as well as that focused on "unaccommodating accountability" adopted by the only union operating in the US automotive industry, did not escape allegations or conspiracy theories. Although these elements were not as decisive as they were in FIOM accusations towards FIAT in Italy, they played a part in US union discourse all the same. Nevertheless, one might also argue that the Americanisation of Fiat in the process leading to the creation of Fca has not been evaluated yet, at least as far as industrial relations are concerned. And this also relates to the communication strategy put in place by the actors involved, which has to take account of evident cultural differences.
For instance, remuneration was not a hot topic in negotiations taking place in Italy and was barely referred to in the agreement concluded at the Pomigliano plant. Collective bargaining here focused on working conditions – which many thought it could limit some rights workers had obtained in the past – and trade union latitude – which could be hampered by the proposals laid down by management. Conversely, talks between the union and management in the USA concerned wages, especially hourly pay rates and seniority increases. Workers' rights were never discussed across the pond. It was the monetary frame (pay and insurance benefits) that bore relevance in the tentative agreements. The way the UAW described the concessions made by workers to Fca never referred to work organisation, their alleged exploitation and internal

pressures to be more competitive, as they were always defined in terms of economic sacrifices. The fact that priority was given to the economic frame factor was evident if one considers the "ratification bonus" unionised workers would have been entitled to, had they approved the second tentative agreement concluded between the UAW and Fca. This monetary benefit, although implemented in other countries, would have been regarded as an anti-union practice in Italy and would have been seen as a form of commodification.

It might be safe to argue that the rights frame and the economic-based model overlap in the US context, as they both refer to "employee rights to consumption" which is also acknowledged by the trade union. This explains why the union employed certain slogans (e.g. "proudly union made") to bring together the promotion of work and its output (production). This strategy was also suggested by Christopher Martin, an overt progressive who in his book – *Framed!* – calls unions to always acknowledge product makers[50]. Yet it would be difficult to implement a similar strategy without considering the "American pride", which is such a unifying factor that has led the Afl-cio to promptly support Donald Trump's set of measures falling under the motto "Buy America" and "Buy American"[51].

Marchionne too relied on the American pride when in 2009 wrote the letter with which he thanked workers for their sacrifices, which helped Chrysler, an American icon, to get back on its feet again.

There is also a further difference between the Italian and the US case, which deals with the strategy pursued by the two companies. As seen, in the run-up to the Pomigliano referendum, Fiat attempted to make direct contact with workers on several occasions, with questionable, if not counterproductive, effects. This was not the case in the USA, although the move to hold a joint conference press to present the first tentative agreement appeared controversial. But the conference was the result the criticisms levelled at the company for providing little information on the company's future. By way of email correspondence with the author, Jodi Tinson and Gualberto Ranieri, who were in charge of communication at Fca North America, argued that the choice not to seek direct contact with employees was also due to legal provisions in place in the US. They specified that "US labour law provides that employers cannot be involved in the contract approval process, which referendum-based. It is for the trade union to promote the terms of the

[50] *News for the Consumer Class*, in *Working-Class Perspectives*, 1 April 2013. Martin suggests that this should be done in the event of industrial action. Martin's quantitative research highlights that strikes are always portrayed by the media from the point of view of consumers and their disruption. Reference to union-made products would tackle the effect of the image provided by the media.

[51] *'Buy America' Good First Step for Working People*, in *https://aflcio.org*, 18 April 2017.

tentative agreement among its members. If a stalemate situation is reached, which was not the case here, the company might provide details about the benefits laid down in the contract. There is no doubt that the press conference represented a novelty, but it was only intended to communicate the willingness on the part of the company and the union to cooperate to deal with some contractual issues that the Fca CEO deemed to be unsustainable".

Overall, while the two case studies can be contrasted from a communication perspective, providing a comparison in terms of media coverage is a difficult task. The long lasting Italy's case epitomises a vicious circle in that industrial relations were given both mainstream media and political relevance, by making use of the general press. In 2010, Italian trade union barely used social networks strategically. This approach was different from Fiom workers who autonomously decided to organised also because the use of Facebook.

Although, political interference was not observed in the quick UAW-Fca negotiation story, the US one, but also the Italian one, will be remembered because social media was barely used by the union, while the antagonist group used Twitter massively. Which leads us to reflect upon the trend and the sentiment of specific groups of the public opinion. In 2015, the late smartphone-era, UAW was then compelled to revise its strategy and use communication substantially as a tool to negotiate the agreement.

References

Aa.Vv. (2011), *Pomigliano non si piega. Storia di una lotta operaia raccontata dai lavoratori*, A.C. Editoriale Coop

Aa.Vv. (2015b), *Il settore automotive nei principali paesi europei. Ricerca promossa dalla 10ª Commissione Industria, Commercio, Turismo del Senato della Repubblica*, Unioncamere, Prometeia

ADAPT (2016), *La contrattazione collettiva in Italia (2015). II Rapporto ADAPT*, ADAPT University Press

Baldissera A., Cerruti G.C. (a cura di) (2012), *Il caso Fiat. Una svolta nelle relazioni industriali?*, Bonanno

Bazerman M.H. (1983), *Negotiator Judgment. A Critical Look at the Rationality Assumption*, in *American Behavioral Scientist*, vol. 27, n. 2, 211-228

Berta G. (2015), *Introduzione* a P. Rebaudengo, *Nuove regole in fabbrica. Dal contratto Fiat alle nuove relazioni industriali*, Il Mulino, 7-22

Burke K. (1951), *Rhetoric – Old and New*, in *The Journal of General Education*, vol. 5, n. 3, 202-209

Burke K. (1967), *A Theory of Terminology*, in S.R. Hopper, D.L. Miller (a cura di), *Interpretation. The Poetry of Meaning*, Harcourt, Brace & World, 83-102, ora in W.H. Rueckert, A. Bonadonna (a cura di), *On Human Nature. A Gathering*

While Everything Flows. 1967-1984, University of California Press, 2003, 229-246

Calabrese S. (2013), *Retorica e scienze neurocognitive*, Carocci

Carinci F. (2011), *La cronaca si fa storia: da Pomigliano a Mirafiori*, in *ADL*, n. 1, 11-38

Carr T.M.Jr. (1993), *Some consequences of The New Rhetoric*: *A critical study*, in *Argumentation*, vol. 7, n. 4, 475-479

Cella G.P. (2010), *Dopo Pomigliano*, in *Il Mulino*, n. 5, 739-747

Cerruti, G.C. e Luciano, A. (2012), *La tradizione torinese di ricerca sociologica sulla Fiat Auto dagli anni Cinquanta all'era Marchionne: una rassegna di studi, ricerche e testimonianze*, in A. Baldissera, G.C. Cerruti (a cura di), *Il caso Fiat. Una svolta nelle relazioni industriali?*, Bonanno, 245-295

Compagnon A. (1999), *La réhabilitation de la rhétorique au XX^e siècle*, in M. Fumaroli (a cura di), *Histoire de la rhétorique dans l'Europe moderne. 1450-1950*, Presses Universitaires de France, 1261-1282

Cox J.R. (1981), *Argument and the "definition of the situation"*, in *Central States Speech Journal*, vol. 32, n. 3, 197-205

D'Alessio C. (2011), *Noi schiavi mai! Dalla rottura definitiva al referendum in fabbrica*, in Aa.Vv., *Pomigliano non si piega. Storia di una lotta operaia raccontata dai lavoratori*, A.C. Editoriale Coop, 87-97

Damasio A.R. (1994), *Descartes' Error: Emotion, Reason, and the Human Brain*, Avon Books (ed. it.: *L'errore di Cartesio. Emozione, ragione e cervello umano*, Adelphi, 1995)

DeGenaro W. (a cura di) (2007), *Who Says? Working-Class Rhetoric, Class Consciousness, and Community*, University of Pittsburgh Press

Di Costanzo M. (2011), *La nuova Pomigliano. La resistenza operaia alla cura Marchionne*, in Aa.Vv., *Pomigliano non si piega. Storia di una lotta operaia raccontata dai lavoratori*, A.C. Editoriale Coop, 31-40

Di Luca A. (2011), *Il lavoro nell'era Marchionne. Un'analisi dell'accordo sottoposto al referendum di Pomigliano*, in Aa.Vv., *Pomigliano non si piega. Storia di una lotta operaia raccontata dai lavoratori*, A.C. Editoriale Coop, 49-68

Di Pietro S. (2010), *Le metafore (politiche) possono uccidere. Un'intervista a George Lakoff*, in *Comunicazione Politica*, n. 2, 273-284

Entman R.M. (1993), *Framing: Toward Clarification of a Fractured Paradigm*, in *Journal of Communication*, vol. 43, n. 4, 51-58

Fahnestock J. (1999), *Rhetorical Figures in Science*, Oxford University Press

Fahnestock J. (2005), *Rhetoric in the Age of Cognitive Science*, in R. Graff, A.E.

Fauconnier G., Turner M. (2002), *The Way We Think. Conceptual Blending and the Mind's Hidden Complexities*, Basic Books

Ferigo T. (2012), *Le relazioni industriali nell'industria automobilistica degli USA: dalla centralizzazione alla diversità*, in A. Baldissera, G.C. Cerruti (a cura di), *Il caso Fiat. Una svolta nelle relazioni industriali?*, Bonanno, 181-204
Fillmore C.J. (1976), *Frame Semantics and the Nature of Language*, in *Annals of the New York Academy of Sciences*, vol. 280, *Origins and Evolution of Language and Speech*, 20-32
Fillmore C. (1982), *Frame semantics*, in The Linguistic Society of Korea (a cura di), *Linguistics in the Morning Calm*, Hanshin, 111-137
Gage J.T. (a cura di) (2011), *The Promise of Reason. Studies in The New Rhetoric*, Southern Illinois University Press
Garnero A., Marengo U. (2011) *La fabbrica divisa*, in *Il Mulino*, n. 3, 407-414
Giugni G. (1987), *Il Modello fantasma*, in *MicroMega*, n. 4, 60 ss.
Goffman E. (1974), *Frame Analysis. An Essay on the Organization of Experience*, Harper & Row
Grady J., Oakley T., Coulson S. (1999), *Blending and Metaphor*, in R.W. Gibbs Jr., G.J. Steen (a cura di), *Metaphor in Cognitive Linguistics. Selected papers from the fifth International Cognitive Linguistics Conference. Amsterdam, July 1997*, John Benjamins, 101-124
Harris R. (2013), *The Rhetoric of Science Meets the Science of Rhetoric*, in *Poroi*, vol. 9, n. 1
Hill K., Maranger Menk D., Cregger J., Schultz M. (2015), *Contribution of the Automotive Industry to the Economies of All Fifty States and the United States*, Center for Automotive Research
Jack J. (2010), *What are Neurorhetorics?*, in *Rhetoric Society Quarterly*, vol. 40, n. 5, 405-410
Kahneman D. (2003), *Maps of Bounded Rationality: A Perspective on Intuitive Judgment and Choice*, in T. Frängsmyr (a cura di), *Les Prix Nobel. The Nobel Prizes 2002*, Nobel Foundation, 449-489
Kahneman D., Tversky A. (1979), *Prospect Theory: An Analysis of Decision under Risk*, in *Econometrica*, vol. 47, n. 2, 263-291
Kahneman D., Tversky A. (1984), *Choices, Values, and Frames*, in *American Psychologist*, vol. 39, n. 4, 341-350
Lakoff G. (1972), *Structural Complexity in Fairy Tales*, in *The Study of Man*, vol. 1, 128-150
Lakoff G. (2004), *Don't Think of an Elephant! Know Your Values and Frame the Debate. The Essential Guide for Progressives*, Chelsea Green Publishing
Lakoff G. (2006), *Whose Freedom? The Battle Over America's Most Important Idea*, Farrar, Straus and Giroux
Lakoff G. (2008), *The Political Mind. Why You Can't Understand 21st Century American Politics with an 18th Century Brain*, Viking (ed. it.: *Pensiero politico e scienze della mente*, Bruno Mondadori, 2009)

Lakoff G., Johnson M. (1980), *Metaphors We Live By*, University of Chicago Press (ed. it.: *Metafora e vita quotidiana*, Bompiani, 1998)
Lakoff G., Wehling E. (2012), *The Little Blue Book. The Essential Guide to Thinking and Talking Democratic*, Free Press
Lassandari A. (2010), *La "strana" disdetta del contratto nazionale di categoria dei metalmeccanici*, in *LD*, n. 4, 517-523
Lindsay S.A. (2015), *Burke, Perelman, and the Transmission of Values: The Beatitudes as Epideictic Topoi*, in *KB Journal*, vol. 11, n. 1
Loffredo D. (2011), *Comunisti in fabbrica. La lotta e la costrizione del circolo Prc Fiat Auto-Avio*, in Aa.Vv. *Pomigliano non si piega. Storia di una lotta operaia raccontata dai lavoratori*, A.C. Editoriale Coop, 103-129
Luntz F. (2007), *Words That Work. It's Not What You Say, It's What People Hear*, Hyperion
Manghi B. (1988), *Fiat da interpretare*, in *Prospettiva Sindacale*, n. 70, 135-144
Manzo R. (2011), *22 giugno il referendum*, in Aa.Vv., *Pomigliano non si piega. Storia di una lotta operaia raccontata dai lavoratori*, A.C. Editoriale Coop, 97-102.
Martin C.R. (2004), *Framed! Labor and the Corporate Media*, Cornell University Press
Massagli E., Tiraboschi M. (a cura di) (2010), *Pomigliano d'Arco, un accordo che fa discutere. Farà anche scuola?*, Boll. Spec. ADAPT, 2010, n. 23
McCloskey D.N. (1983), *The Rhetoric of Economics*, in *Journal of Economic Literature*, vol. 21, n. 2, 481-517
McCombs M.E., Shaw D.L. (1972), *The agenda-setting function of mass media*, in *The Public Opinion Quarterly*, vol. 36, n. 2, 176-187
McQuail D. (1983), *McQuail's Mass Communication Theory*, Sage, 2005
Nespoli F. (2018), *Fondata sul lavoro. La comunicazione politica e sindacale del lavoro che cambia*, ADAPT University Press
Palczewski C.H., Ice R., Fritch J. (2012), *Rhetoric in Civic Life*, Strata Publishing
Pasadeos Y. (1990), *Sources in television coverage of automotive strikes*, in *Journal of Broadcasting & Electronic Media*, vol. 34, n. 1, 77-84
Perelman C., Olbrechts-Tyteca L. (1950), *Logique et rhétorique*, in *Revue Philosophique de la France et de l'Étranger*, vol. CXL, 1-35, poi in C. Perelman, L. Olbrechts-Tyteca *Rhétorique et philosophie. Pour une théorie de l'argumentation en philosophie*, Presses Universitaires de France, 1952, 1-43
Perelman C., Olbrechts-Tyteca L. (1958), *Traité de l'argumentation. La nouvelle rhétorique*, Presses Universitaires de France (ed. it.: *Trattato dell'argomentazione. La nuova retorica*, Einaudi, 2001; ed. ing.: *The New Rhetoric. A Treatise on Argumentation*, University of Notre Dame Press, 2008) Piazza F. (2008), *La Retorica di Aristotele. Introduzione alla lettura*, Carocci
Piazza F. (2008b), *Topica delle emozioni. Osservazioni su Rh., II, 2-11*, in E. De Bellis (a cura di), *Aristotle and the Aristotelian Tradition. Innovative Contexts for*

Cultural Tourism. Proceedings of the International Conference, Lecce, June 12, 13, 14, 2008, Rubbettino, 295-304
Pisanty V., Zijno A. (2009), *Semiotica*, McGraw Hill
Rebaudengo P. (2015), *Nuove regole in fabbrica. Dal contratto Fiat alle nuove relazioni industriali*, Il Mulino
Rueckert W.H., Bonadonna A. (a cura di) (2003), *On Human Nature. A Gathering While Everything Flows. 1967-1984*, University of California Press
Scheufele D.A. (2000), *Agenda-Setting, Priming, and Framing Revisited: Another Look at Cognitive Effects of Political Communication*, in *Mass Communication and Society*, vol. 3, n. 2-3, 297-316
Scheufele D.A., Tewksbury D. (2007), *Framing, Agenda Setting, and Priming: The Evolution of Three Media Effects Models*, in *Journal of Communication*, vol. 57, n. 1, 9-20
Sestito P., Viviano E. (2016), *Hiring incentives and/or firing cost reduction? Evaluating the impact of the 2015 policies on the Italian labour market*, Occasional Paper Banca d'Italia, *Questioni di Economia e Finanza*, n. 325
Simoni M. (2011), *La ristrutturazione della Fiat e il «caso Pomigliano»: verso una nuova politicizzazione delle relazioni industriali?*, in E. Gualmini, E. Pasotti (a cura di), *Politica in Italia. I fatti dell'anno e le interpretazioni. Edizione 2011*, Il Mulino, 217- ss.
Sivini G. (2013), *Compagni di rendite. Marchionne e gli Agnelli*, Stampa Alternativa
Tomassetti P. (2013), *The Shift towards Single-employer Bargaining in the Italian Car Sector: Determinants and Prospects at FIAT*, in *E-Journal of International and Comparative Labour Studies*, vol. 2, n. 1, 93-111
Venier F. (2013), *Retorica e teoria dell'argomentazione*, in G. Iannaccaro (a cura di), *La linguistica italiana all'alba del terzo millennio (1997-2010)*, Bulzoni, vol. II, 635-674
Vitali B. (2015), *Tremila Giorni. Fiat: la metamorfosi e il racconto*, Marsilio.

Conciliation and Arbitration: Dispute Resolution Mechanisms in Bangladesh's Industry

Sazeeda Johora Thakur [1]

Abstract

Purpose. This paper examines the different mechanisms used in Bangladesh to solve employment disputes, e.g. conciliation and arbitration, which are devised to maintain peaceful relationships between employer and employee.

Design/methodology/approach. Research draws on legislation – i.e. the 2006, 2013, and 2015 versions of the Bangladesh Labour Act – and other documentation – e.g. conference papers and reports on Bangladesh.

Findings. Overall, the paper points to the successful incorporation of different dispute resolution mechanisms, yet singling out those sectors where the use of conciliation and arbitration should be given careful consideration to prevent possible negative consequences.

Research limitations/implications. The paper looks at the effectiveness of solving labour disputes through alternative settlement procedures prior to the involvement of national employment tribunals.

Originality/value. The originality of the paper lies in its practical approach, as it looks at Bangladesh's both legislation and reports.

Paper type. Research paper.

Keywords: *Industrial dispute, Settlement Mechanisms, Conciliation, Arbitration*

[1] Barrister-at-Law and Advocate at the Bangladesh Bar Council; Lecturer, School of Law, BRAC University, Bangladesh. Email address: johora_thakur@yahoo.com.

1. Introduction

Industrial relations play a relevant role for actual economic development and might also have political and social consequences. Traditionally, industrial relations have been understood as bringing together the employer, employee representatives (e.g. trade unions and collective bargaining agents), workers and government representatives. Looking at statistics[2], every year a significant number of labour disputes take place in different industries, among which is Ready-Made Garments (RMG). Significantly, between 2008 and 2014 some 175 collective disputes involved this sector out of an average of 259 cases submitted before employment tribunals. Accordingly, seeking fair decisions is necessary to satisfy the parties. In Bangladesh, industrial disputes are governed by the Bangladesh Labour Act 2006 (hereafter: BLA 2006), which was subsequently amended by Bangladesh Labour Law 2013 (from here on: BLL 2013). This Act incorporated an elaborate framework regarding rules and procedures to settle disputes arising between different actors (e.g. employers, employers and employees and between employees) by resorting to different methods.

2. Industry, Industrial Dispute and Settlement: Some Definitional Aspects

According to BLA 2006[3], "industry" means any business, trade, manufacture, calling, occupation, service or employment. The concept scrutinised here was originally defined in *Bangalore Water Supply & Sewerage Board Vs. A. Rajappa*[4], a landmark case heard in India. Following the decision handed down by the courts, the "triple test" and "the dominant nature test" were established to define the notion of "industry". Specifically:

the Triple Test to decide the scope of the definition of "industry" considers the three criteria below:

(a) Systematic activity;
(b) Co-operation between employer and employee;
(c) Production and distribution of goods and services calculated to satisfy human wants and wishes.

---

[2] Jakir Hossain, Afroza Akter, *State of Bangladesh Garment Sector tripartism and the scope of Harmonious Industrial and Labour Relations*, (2nd Edition: Bangladesh Institute of Labour Studies-BILS, December 2016), chap. 2, p. 11.
[3] *Bangladesh Labour Act 2006* s. 2(60).
[4] Air [1978] Sc. 548.

As for the Dominant Nature Test, it is concerned with the following:

- Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' […] the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status. This also applies to departments discharging sovereign functions, if there are units which are industries and they are substantially severable.

In reference to "industrial dispute", it means "any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person"[5], which is "raised by an employer or by a collective bargaining agent in an establishment and/or industry" [6].

3. Settlement Procedures

Settling industrial disputes is decisive to maintain peaceful industrial relations between management and labour. Against this backdrop, both employer and employee realize their mutual obligations and resort to actions that promote harmony and understanding. Such an approach will smooth the relationship between those concerned, improve product quality and benefit employees in both economic and non-economic terms.
BLA 2006 provides the following definition of settlement: "'settlement' means a settlement arrived at in the course of a conciliation proceeding, and includes an agreement between an employer and his worker arrived at otherwise than in the course of any conciliation proceedings, where such agreement is in writing, has been signed by the parties thee to and a copy thereof has been sent to the Director of Labour and the Conciliator"[7].

There are different methods to settle industrial disputes in Bangladesh, namely:

[5] *Bangladesh Labour Act 2006*, s. 2(62).
[6] *Bangladesh Labour Act 2006*, s. 201.
[7] *Bangladesh Labour Act 2006*, s. 2(60).

- *Negotiation between the Parties*: whenever any dispute arises, a request to enter into negotiations needs to be produced in writing by the employee or collective bargaining agent and submitted to the management. Subsequently, representatives from the management and collective bargaining agents convene to deal with the issues[8]. If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be produced in writing and signed by both parties and a copy thereof shall be forwarded by the employer to the Government, the Director of Labour and the Conciliator[9].

- *Conciliation:* it is concerned with the involvement of a third party in the management of the industrial dispute in the attempt to solve the issues arising from those concerned. If the parties fail to arrange a meeting with other party or no settlement is reached within a period of one month from the date of the first meeting, then the dispute will be dealt with through conciliation. For this purpose, the government of the country appoints a conciliator[10] with expertise in the industry in question. On being approached by any of the parties in dispute, the conciliator will start the conciliation process within 10 days from the approach and arrange a meeting with the concerned parties. If both the parties find a solution, the concerned parties will sign a memorandum of settlement, informing the Ministry of Labour and Manpower about the outcome of conciliation.

- *Arbitration:* if no settlement has been reached or the parties do not agree under any conciliation proceedings, the dispute can be dealt with through arbitration. For this purpose, an arbitrator may be a person from the panel of arbitrators drawn up by the government or any other person agreed upon by the parties. The award issued by the arbitrator shall be final and shall be valid for a period not exceeding two years as may be fixed by the arbitrator[11].

- *Employee's right to strike:* BLA 2006 provides the worker with the right to strike, seen as a last resort for dispute settlement. One requisite for strikes to take place is that three-fourths[12] of collective bargaining agents consent to them through a secret ballot purposely held. The government can end industrial actions that last more than 30 days[13].

[8] *Bangladesh Labour Act 2006*, s. 210(2).
[9] *Bangladesh Labour Act 2006*, s. 210(3).
[10] *Bangladesh Labour Act 2006*, s. 210(4).
[11] *Bangladesh Labour Act 2006*, s. 210(17).
[12] *Bangladesh Labour Act 2013*, s. 211(1).
[13] *Bangladesh Labour Act 2006*, s. 211(3).

- Employers' Right to Lock-out: The employer can opt for a lockout[14] – namely "the closing of a place of work or a part of such place, or the suspension of work therein, wholly or partly, by an employer, in connection with any industrial dispute or is intended for the purpose of compelling workers to accept certain terms and conditions of employment"[15] for not more than 30 days[16] as a result of an emergency situation.

- Alternative Ways to Prevent a Dispute: the employer can establish a "Participation Committee"[17] consisting of employers' and employees' representatives. Such committees shall be set up taking the following into account: 1) only companies employing at least 50 workers can establish participation committees; they should comprise an equal number of representatives of management and staff. Participation committees endeavour "to promote mutual trust and faith, understanding and co-operation between the employers and the workers"[18]. They can also provide advice on specific topics, with the employer and trade unions that should take necessary steps to follow these recommendations.

4 Comparing and Contrasting Conciliation, Arbitration Procedures and their Implications

As will be seen, arbitration and conciliation are dispute resolution mechanisms seeking to prevent a more formal and often confrontational route. In addition, rather than attributing responsibility, they can be seen as tools to rebuild an employment relationship that lasts in the future.
According to national legislation, they were established with the intention of promoting 'best practices', halting the rising number of employment disputes[19] and, by increasing the recourse to dispute settlement systems, to reduce the burden on labour courts. Therefore, the attempt is to enhance tripartite dialogue between the government, employees and employers, all of whom are regarded as equal and independent actors. This system should ensure regular exchanges between the parties concerned, which can also include other

[14] A lock out is "an industrial action during which an employer withholds works, and denies employees access to the place of work. In effect, it is a strike by the management to compel a settlement to a labor dispute on terms favorable to the employer. http://www.businessdictionary.com/definition/lockout.html, last accessed 12 August 2018.
[15] *Bangladesh Labour Act 2006*, s. 2(57).
[16] *Ibid* 13.
[17] Bangladesh Labour Law 2006 and 2013, s. 205.
[18] 206 of the *Bangladesh Labour Law 2006 and 2013*.
[19] J. Griffith, '*After the Resolution*', 19th April 2007, www.peoplemanagement.co.uk.

stakeholders. Arbitration is a formal process used to resolve disputes during which both parties present their case to a neutral third party, who reaches a decision following the same procedures as court proceedings (witnesses can be called upon and evidence can be presented to argue the parties' respective cases). Arbitrators are not permitted to discuss the issues directly or to give any advice on the terms of settlement or on the negotiation with parties. The decision made by an arbitrator is then enforced and, legally speaking, has the same weights as a judgment handed down by a court. An arbitral award is final and binding and no appeal shall lie against it[20].

The Implications of Settlement Procedures in Bangladesh

Bipartite negotiation is followed by conciliation, which in Bangladesh is compulsory before resorting to industrial action. As a government-appointed person, the conciliator may put forward solutions that can help reach a deal between workers and management. Conciliators cannot impose their decision, as only the parties involved have the last say on the matter. In this sense, conciliation can be seen as an extension of direct bargaining and is effectively a process of assisted negotiation[21]. If conflicting parties want to have reasonable chance of settling industrial disputes by retaining the services of expert negotiators, an independent third party should be called in to reach a mutually acceptable agreement to resolve their dispute[22]. Yet sometimes conciliation has been an unsuccessful tool. In this sense, statistics considering the 1990-to-2004 period indicate that out of an average of 310 disputes taken up for conciliation annually, 22.48 percent were successful and 48.06 percent failed[23].
Looking at these figures, one may infer that conciliation is not effective as a dispute settlement tool, because the parties are prevented from reaching agreement. One reason for this state of affairs is that[24] the decision of the conciliator is not binding on the parties. Furthermore, employers benefit from connections with the government and the ruling party; the parties involved lack patience and mutual respect, because there exists little chance to hold conciliation officers accountable; employers are more willing to bypass conciliation procedures and to refer to labour courts directly. Again, statistics indicate that only a limited number of cases concerning industrial disputes have been taken up for conciliation, i.e. 403 cases/per year from 1990 to 2000; 74

[20] *Bangladesh Labour Act 2006* updated 2013, s. 210(16).
[21] ILO, *Conciliation in Industrial Dispute: A Practical Guide*, Geneva, 1973, pp. 3-4.
[22] *Labour Dispute Resolution Systems: Guideline for Improved Performance*, ILO, 2013.
[23] A. Al Faruque, *Current Status and Evolution of Industrial Relations System in Bangladesh*, Cornell University ILR School, International Labour Organization, 2009.
[24] Ibid, 23.

cases/per year from 2001 to 2010; 246 cases/per year from 1990 to 2010. Conversely, from 1990 to 2010 labour courts and labour appellate tribunals heard 4,995 and 274 cases/per year, respectively[25]. The figures above indicate that the labour institutions promoting compliance with labour laws that are in charge of resolving labour disputes lack the necessary authority to provide workers with amicable solutions to grievances. As a result of this state of affairs, industrial disputes are going to put undue pressure on the labour judiciary who is tasked with settling them. According to the Bangladesh Institute of Labour Studies (BILS), a total of 181 industrial disputes took place in 2017, 91 of which were in the garment sector[26]. Statistics also tell us that there were 105 cases that were solved through state involvement in the 2016-2017 financial year,[27] though no other information is available. Yet a comparison of these data with other statistics leads one to infer that the number of cases provided above is of no consequence. Other forms of industrial action include strike, road blockades, demonstrations, sit-in protests and marches. Considering the 2006-to-2010 period, the most common forms of industrial action reported were sit-in protests and protest marches (96 percent) followed by work stoppages or strikes (89 percent), blockades (78 percent), petitions (32 percent) and damage to factories and other properties (31 percent)[28]. In 2017, a total of 68 demonstrations, 21 human chains, 18 strikes, 15 roadblocks and 12 gatherings took place[29]. Though there is no accurate statistic regarding the functions of and the recommendations made by participation committees, BLA 2006 established these bodies for inculcating and developing a sense of belonging among workers and employers operating in the company. In this sense, committees can be used as an effective tool to prevent industrial disputes.

[25] J. Hossain, A. Akter; *State of Bangladesh Garment Sector tripartism and the scope of Harmonious Industrial and Labour Relations*, 2nd Edition: Bangladesh Institute of Labour Studies-BILS, December 2016, Ch. 2 p. 16.

[26] R. U. Mirdha, *Garment sector saw highest industrial disputes in 2017*, 02 May 2018, https://www.thedailystar.net/business/garment-sector-saw-highest-industrial-disputes-2017; [last accessed 10 July 2018].

[27] Annual Performance Agreement (APA), *Evolution Report, 2016-2017 for the financial division*, Ministry of Labour and Employment (Bangladesh), p.11.

[28] Ibid; *State of Bangladesh Garment Sector tripartism and the scope of Harmonious Industrial and Labour Relations*, p. 12.

[29] 26.

5. Implementation Challenges and Shortcomings

Negotiation, Conciliation and Arbitration

In consideration of the aim of the legislation referred to above, it is important that industrial relations actors adopt a positive attitude at the time of entering into negotiations, with both parties that should strive to make unbiased decisions and find peaceful solutions. In other words, the long-run interests of both workers and management should be sought. To this end, collective bargaining could be an effective tool to help workers – who frequently lack expertise or financial resources – to understand the most viable option in negotiations with their employers. Talks between representatives of management and workers take place to settle diverging views, yet a number of problems could arise. Firstly, a chief negotiator from the management side directs and presides over the process, with negotiations that can be affected by biased views. Sometimes, negotiations fail to produce fair outcomes when the parties in dispute lack equal bargaining power, for example, third party or conciliation intervention may be sought by the stronger party, i.e. the employer[30]. Secondly, when the chief negotiator or the conciliator asks the representative of both parties to present their views, the presumption is that the parties to the employment relationship are equal and capable of participating in the production of individual solutions[31]. Yet when representatives of each party present their case, they are focused on the arguments made by the opposing party and what reasons they should put forward to question the other party's claims. Rather, the aim should be to strike a balance between the interests of all those concerned. Thirdly, collective bargaining might be seen as a tool to harmonise the interests of groups who might mutually benefit from working together. It includes informal talks that take place on a regular basis. The feedback from third parties can also be used as a legal basis which might influence and be binding for the parties.

Strike

The reason of the worker's interest being latent is that workers keep their grievances suppressed since they understand that expression to them might lead to abuse by mid-management or even job-loss[32] (Hossain, 2012). In some

[30] Cheryl Dolder, The Contribution of Mediation to Workplace Justice, (2004), *Industrial Law Journal* 4, 33.
[31] This is the presumption laid down in the constitution of Bangladesh and BLA 2006.
[32] Ibid; *State of Bangladesh Garment Sector tripartism and the scope of Harmonious Industrial and Labour Relations*; p. 13.

research (Hossain, 2012), workers indicated the fear of losing their jobs as the main reason preventing them to engage in collective action.

6. Conclusion

According to Zack (1997:95), alternative dispute resolution (ADR) offers a means of bringing workplace justice to more people, at lower cost and with greater speed than conventional government channels. It also helps to clear the backlog of cases at statutory dispute resolution institutes and is thus assisting government agencies to meet their societal responsibilities more effectively. Therefore, conciliation or arbitration is seen as a fast, cheap and effective way to resolve disputes. Looking at Bangladesh's current legislation, it can be argued that BLA 2006 and BLL 2013 are fairly effective tools to manage and settle disputes. Nevertheless, as things stand now (see APA[33]) it will be difficult to distinguish between different dispute settlement mechanisms. In addition, workers are not aware of their rights, they do not know that they can appoint a collective bargaining agent whose duty is to make their voice heard in industrial disputes. Therefore, it is important that trade unions promote raise-awareness initiatives to make employees aware of their rights and to increase the recourse to conciliation. For the purpose of boosting conciliation, the ILO has put forward the Social Dialogue and Industrial Relations Project, which has been funded by Sweden and Denmark. Working with Bangladesh's Department of Labour, the aim is to boost conciliation capacity because conciliation services play an important role in helping resolve disputes in the workplace and creating harmonious industrial relations[34]. Some 30 labour officials have been trained and coached on the techniques and approaches of conciliation at the ILO International Training Centre (ITC). They will put these skills into practice to settle labour disputes and contribute to improved industrial relations. According to APA[35], Bangladesh's Ministry of Labour and Employment has trained a total of 12,939 persons so far, yet this report does not refer to the number of those receiving specific training on conciliation. Preparing more people to settle labour disputes and contribute to improving labour relations is thus fundamental. As no reference is made whatsoever to the arbitrator and settlement procedures, it is suggested that the Arbitration Act 2010 is taken as

[33] Annual Performance Agreement (APA), *Evolution Report, 2016-2017 for the financial division*, Ministry of Labour and Employment (Bangladesh).

[34] *Tripartism and social dialogue in Bangladesh; Building better industrial relations through conciliation*; Feature | Dhaka | 16 May 2018; http://www.ilo.org/dhaka/Informationresources/Publicinformation/features/WCMS_629551/lang--en/index.htm [Last accessed 1 August 2018]

[35] *Ibid.* 33, p. 7.

a starting point, which is being used successfully in Bangladesh. One should also remember that industrial disputes can cause irreparable loss to the country's economy, significantly affecting growth and having negative effects on both workers and employers.

To conclude, alternative dispute resolution mechanisms have been using in Bangladesh since 2006 and represent an effective tool to deal with industrial conflict. Besides proper legislation, it is important that all those concerned are willing to solve disputes peacefully, saving time and financial resources. In this sense, one thing that could be done to ensure compliance with settlement agreements is to increase the amount of the fines – which is currently at 10,000[36] TK – to be awarded should arrangements be infringed. Most stakeholders in Bangladesh are in favour of these alternative dispute settlement mechanisms, so their involvement should benefit the dissemination of these tools.

[36] *Bangladesh Labour Act 2006*, s. 292 and 293.

The Menace of Traffic Jams and Quality of Work-Life in Lagos State, Nigeria

Christopher Odogwu Chidi and Dumebi Anthony Ideh[1]

Abstract purpose - The Lagos State government has given considerable attention to the issue of traffic jams through the establishment of the Lagos State Traffic Management Authority (LASTMA) and the introduction of the Bus Rapid Transit (BRT) for mass transportation. However, despite the visibility of the LASTMA and the BRT on the main roads across Lagos State, not much has been achieved in addressing the issue of traffic jams in Lagos State. This study investigated the menace of traffic jams and quality of work-life as well as the strategies for mitigating traffic jams on Lagos roads to enhance the quality of work-life of workers and Lagos residents in general.
Design/methodology/approach - The authors adopted the survey research design. Data obtained from the respondents were analysed using descriptive statistics and Relative Importance Index (RII).
Findings - The findings of the study revealed that constant exposure of workers and other road users to the menace of traffic jams could reduce the life expectancy of Lagos residents and workers who reside or work in Lagos State.
Research limitations/implications - The chaotic traffic situation calls for an urgent need for drastic measures to be taken to mitigate the menace of traffic jams in Lagos State. This can be achieved through the adoption of flexible working hours across all organisations in Lagos State. A sustainable solution to the problem of traffic jams can be achieved through the modernisation and extension of the rail, road and water transportation systems in littoral or coastal areas in Lagos State.
Originality/value - The role of human movement or mobility is essential to the growth and development of cities globally as it affects socio-economic activities.
Paper type - Quantitative/analytical paper.

Keywords: *traffic management, quality of work-life, workers, Lagos State.*

[1] Department of Employment Relations & Human Resource Management, Faculty of Management Sciences, University of Lagos. Corresponding author: Christopher Odogwu Chidi (e-*mail: ochidi@unilag.edu.ng*).

1. Introduction

The role of human movement or mobility is essential to the growth and development of cities globally as it affects socio-economic activities. According to Kuye, Sulaimon and Azeez (2017), the economic development of a country is closely linked to its transport system. However, one of the impedances or hindrances to effective human mobility is traffic jams. Traffic jam remains a global phenomenon that bedevils the cities of the world; especially developing countries, resulting in massive delay, unpredicted travel times, increased fuel consumption, as well as man-hour and monetary loss (Olagunju, 2015). According to Sanders (2015), the cost of traffic congestion in the United States of America included 87,606 crashes in work zones, 1,200 deaths, 37,476 injuries, 482 million hours lost in driver delays and $6.5billion lost time.

Lagos as a megacity with about 20 million people is associated with heavy traffic jams. Thus, the phenomenon has arisen from poorly planned road networks and traffic management, resulting in elongated and unbearable traffic jams on Lagos roads. Traffic jams adversely affect the quality of life of workers as well as organisations in physical/health, social and economic terms. Owing to the challenges posed by traffic jams, extensive research efforts have been undertaken by scholars to proffer solutions to this lingering problem which confronts cities globally.

Rapid urbanisation coupled with increase in the rate of vehicular ownership and use is growing faster than the population in many cities, with vehicular ownership growth rates rising between 15 and 20 per cent per year (Olagunju, 2015). Human and economic activities and the resultant heavy dependence on road transportation have led to the increase in the number of vehicles on Lagos roads with its attendant effect on heavy and incessant vehicular traffic. Thus, traffic jam has become a common or regular feature on Lagos roads and it seems to have defiled all remedies. The Lagos state government has given considerable attention to the issue of traffic jams through the establishment of the Lagos State Traffic Management Authority (LASTMA) and the introduction of the Bus Rapid Transit (BRT) in 2008 for mass transportation which is first in Africa with its dedicated-lane. However, despite the visibility of the LASTMA and the BRT on the main roads across Lagos State, not much has been achieved in addressing the issue of traffic jams in Lagos state. According to Lumumba (2016), over the years, Lagos residents seem to have lost hope in the BRT system. The road network, which is insufficiently extensive, considering the population of Lagos, cripples the functionality of the BRT system. In the same vein, the use of policemen and traffic wardens, as well as the odd and even vehicle registration numbers restraint to control traffic jams have not solved the problem of traffic on Lagos roads. The

objective of this study is to investigate the menace of traffic jams and quality of work-life and the strategies for mitigating traffic jams on Lagos roads to enhance the quality of life of workers and Lagos residents in general.

2. Literature Review

2.1 Conceptual Clarifications

Traffic jam/ congestion refers to the impedance vehicles impose on one another, owing to the speed-flow relationship, in conditions where the use of a transport system approaches its capacity (Goodwin, 1997; Popoola, Abiola & Adeniji, 2013). Banjo (1984), views traffic jam/congestion as the saturation of road network capacity owing to regular and irregular reductions in service quality as exemplified by increased travel times, variation in travel times and interrupted travel. Olagunju (2015) describes traffic jam/ congestion as a disproportion between the inflow and the outflow of vehicles into and out of a particular space. Congestion/traffic jam is a situation in which demand for road space exceeds supply (Popoola, Abiola & Adeniji, 2013). According to the authors of this paper, traffic jams/ congestions are blockages created by vehicular movements which impedes or disrupts the free flow of traffic on major high ways.

2.2 Causes of Traffic Jams

Traffic jams are caused by a number of factors. Many writers have investigated the causal factors of traffic jams. According to Olagunju (2015), a lot of Nigerian motorists, especially in cities like Lagos violate traffic rules and regulations. Non-compliance with traffic lights at major road intersections or junctions by impatient drivers and road users instigate traffic jams on Lagos roads. Worse still, the erratic or epileptic power supply hardly allows traffic lights to work optimally resulting in confusion on major roads/ highways leading to traffic jams on Lagos roads especially those powered by public power supply. Many motorists drive against traffic, park in wrong places and repair their broken down vehicles right there on the road without giving any consideration to the effects of their actions on the traffic. A lot of road users are impatient as they form multiple lanes or move to the other lanes for oncoming traffic whenever there is an obstruction on the road. These actions, of course create traffic problems (Olagunju, 2015).
Olagunju (2015) argues that the main causes of traffic congestion include; lane indiscipline, high traffic density, low road network carrying capacity, poor traffic management, low response to removal of broken down and crashed vehicles. According to Adebiyi (2011), traffic congestion in Lagos is caused

partly by road users as they are known to be very impatient and lawless at obeying traffic rules. Very often, huge traffic jams develop simply because a driver refuses to give way to another motorist. Additionally, most drivers do not acknowledge road signs because many do not know the meaning of different road signs like "u-turn," "one way," "zebra crossing," to name a few (Economic Intelligence Unit Ministry of Economic Planning and Budget, 2013).

Olagunju (2015) further posits that high vehicular density on Lagos roads is a cause of traffic jam. Closely related to vehicular density is urbanisation which leads to increased motorisation without corresponding increase in infrastructure and transport services. More so, work zones slow traffic down. Hawkers also sell their wares in the traffic and this action slows down vehicular movements. Some traders display their wares on the road reducing the lanes from two to one in major areas of Lagos. These are common sights in Okokomaiko, Agege, Ojodu, Berger, Pen Cinema, Iyana Ipaja, Ikeja areas, among others in Lagos state (Olagunju, 2015).

Other causes of traffic jams on Lagos roads include: construction activities on major high ways, VIP movements, low road network capacity, poor infrastructure and road condition, bad and narrow roads, frequent vehicular breakdown and crashes (road accidents), inappropriate location of markets and business organisations without parking space, hence vehicles parking on the roads. The notorious Apapa gridlock is a sorry sight. Apapa is a well-known area in Lagos state where tankers and trailers park indiscriminately on the bridges and major roads leading to heavy traffic jams (Olagunju, 2015). Also, weak transportation planning and lack of integrated urban planning have undermined urban mobility and contributed to perpetual traffic, a source of frustration that chokes the city's major highways and roads (Lumumba, 2016). Popoola, Abiola and Adeniji (2013) argue that traffic jams are caused by poor driving culture/habit exhibited by motorists and other road users, increase in vehicular ownership, inadequate road capacity, and poor traffic control management by LASTMA and the Police. Others are the presence of heavy duty vehicles such as trailers and trucks on Lagos roads, poor road network, road accidents or crashes, inadequate overhead bridges / fly-overs, on-going road construction activities as can be found along Mile 2 and Badagry corridor. Lack of parking spaces/facilities in residential buildings and offices, double-parking on major highways, hawking and illegal roadside trading on major highways, poor weather conditions especially on a rainy day cause flooding in areas where there are no drainages or where the drainage has been blocked as well as bad condition of the roads (Popoola, Abiola & Adeniji, 2013).

Fig. 1 *Traffic Jams with illustrative Photos in Lagos*

Source: Olagunju, K. (2015).

Fig. 2 *Traffic Congestion with illustrative Photos in Lagos*

Source: Olagunju, K. (2015).

2.3. Effects of Traffic Jams

Traffic congestions/jams have some costs or effects on relevant stakeholders, such as motorists or road users, commuters, employers/ business organisations including governmental and non-governmental organisations as well as the society as a whole. According to Olagunju (2015), the effects of traffic jams are visible on the economy, infrastructures, environment and human health. The consequences of traffic congestion include productivity loss, change in accident frequency and characteristics, increase in air pollutants and emissions, increased vehicle operating costs and increased noise nuisance (Olagunju, 2015). The man/hour loss as a result of delay in traffic congestion/jam is enormous. This has adverse implications for commuters and organisations who must meet appointments as well as supply goods and services on time to clients who must meet set time and targets. Besides, traffic jams could lead to air pollution, high blood pressure and tension owing to road rage. Research has revealed that lead poisoning occurs more frequently owing to traffic. Al-Morgrin (2005), noted that the symptoms of lead poisoning include: vomiting, constipation or bloody diarrhea with central-nervous system effects such as insomnia, irritability, convulsion and even death. Other symptoms include headache, weakness and constipation (Al-Morgrin, 2005).

Pressure on road infrastructure is yet another effect of traffic jams on Lagos roads. Road infrastructure such as bridges is weakened owing to incessant traffic jams. Bridges carry various weights of vehicles that have to queue on them. The weights of these vehicles take a toll on the bridges and with time, dilapidation set in earlier than expected. The roads too, develop pot holes and failed portions owing to the weights of over loaded heavy duty vehicles on Lagos roads.

2.3.1 Traffic Jams and Quality of Work-life

Employee well-being, also called quality of work- life (QWL), refers to the degree of satisfaction and contentedness an employee experiences with respect to his or her job and the overall work situation. Studies on QWL have linked specific organisational characteristics and programmes to concepts such as employee life satisfaction, happiness, and the absence of ill-being. The traffic situation in Lagos affects the quality of work-life as work environment studies have shown that physical and social work environment affect employees' emotional well-being (Huang, Lawler, & Lei, 2007; Simmons & Mares, 1985). In the same vein, Bagtasos (2011) opines that QWL encompasses the characteristics of the work and that work environment influences employees' well-being. Quality of work-life can be enhanced through condensed work-

week or shorter or compressed work-week. Under the condensed work week, the number of hours worked per day is increased by having employees work 10 hours per day for four days per week (4/40). The concern here is on the four-day, forty-hour programme or what is often called 4-40. This was conceived to allow workers more leisure time. Flexible working hours or flex-time allows employees some discretion over when they arrive at work and close. Employees have to work a specific number of hours a week but are free to vary the hours of work within certain limits. Teleworking or telecommuting is the practice of working at home or while travelling and being able to interact with the office using the internet or cellular phones.

2.3.2. Traffic Jams and Stress/ Stressful Conditions affecting Workers' Physical and Mental Well-being

Stress can be positive (eustress) or negative (distress). While eustress can be pleasant and stimulating, thus enhancing employees' work performance and positively encouraging workers to put in more efforts to achieve set goals, distress is dysfunctional and results in negative effects on workers' health and performance (Okeke, Ojan, & Oboreh, 2016). Traffic congestion is a distress with adverse effect on the physical and mental well-being of workers and other road users which can significantly affect employees' work performance and their physical and mental well-being. To mitigate the stressful effect of traffic jams on workers' well-being, some writers have advocated the flexible resumption and closing times. In Nigeria, workers in the formal sector are expected to work from 8 a.m. to 5 p.m. with an hour lunch break in-between. However, flexible working hours will afford workers some flexibility around their resumption and closing hours/times because of the heavy traffic on Lagos roads.

2.3.3 Traffic Jams and Life Expectancy

Life expectancy is the extent of an individual's survival or how long an individual is expected to live (Adedeji, 2015). According to Sede and Ohemeng (2015), life expectancy is the measure of the length of life expected to be lived by an individual at birth. Life expectancy varies across nations, continents and regions and is affected by economic, social and environmental factors such as the daily stress caused by traffic jams. Adedeji (2015) in the study on the determinants of average longevity of Nigerians using secondary data spanning from 1995 to 2012 found that life expectancy is reduced by carbon dioxide emission. In Brazil, it is noted that road traffic deaths reduced the at-birth life expectancy by 0.8 years and 0.2 years for male and females respectively.

In a similar study in China, Li, Ma, Bishai and Hyder (2016) argue that road traffic injuries (RTI) could lead to heavy health burden and that eliminating (RTI) could lead to gain in life expectancy and that an average Chinese could live a half year more than they would if there were no incidence of RTI. Therefore, urbanisation and traffic jam in Lagos may be considered as a major contributing factor that could reduce the life expectancy of workers in Lagos owing to carbon emission and other environmental pollutants associated with traffic menace. Besides, many workers in Lagos have to wake up as early as 4 a.m. to go to work so as to avoid traffic and close late to ensure that the road is traffic-free. A cursory examination of traffic on the third mainland bridge linking Lagos Mainland and Lagos Island is a case in point.

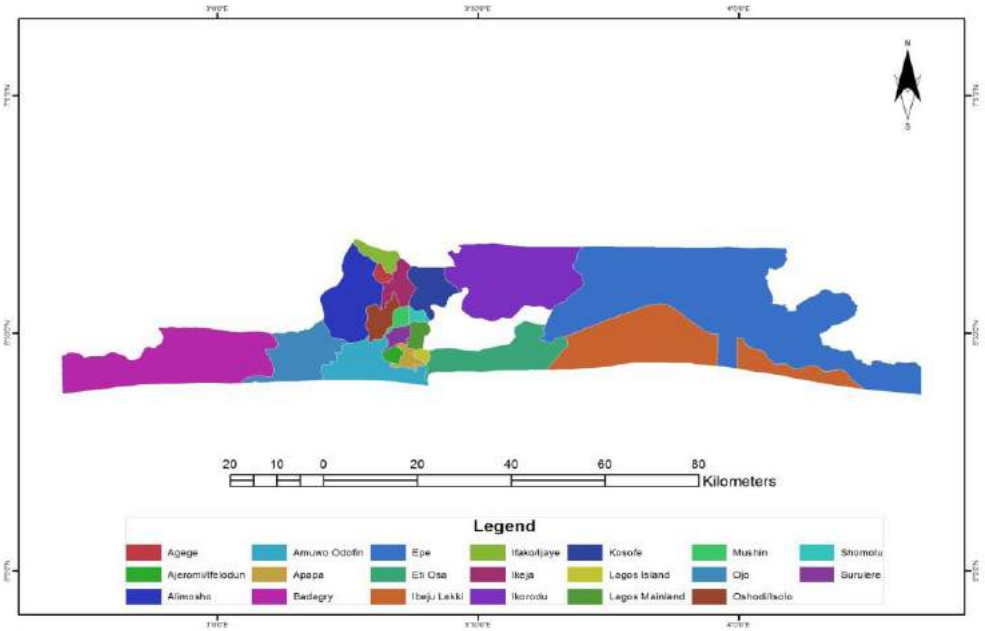
3. Research Methods

- Location of the Study

Lagos State is chosen as the unit of analysis, in view of its urbanised and mega-city status as well as the prevalence of traffic jams and being the fastest growing city in Nigeria. Lagos is a mega city located in the South-Western part of the country. Lagos State with population of 9,013,534 people according to the National Population Census of 2006 is about 6.4 per cent of the country's population. It should be noted that the Lagos State Government citing the United Nations' estimates among others disputed the official population figure for Lagos as it is believed that the population should be close to 20 millon people (Olagunju, 2015). Lagos was projected to be the third-largest city in the world by 2015, with an estimated population of 24.6 million (UN-Habitat 2006). Lagos State is the smallest state in terms of land area in Nigeria with an area of 3,577 square kilometres. However, the Federal Road Safety Corps records on vehicles and drivers revealed that Lagos State accommodates about 25 per cent of total vehicles and drivers in Nigeria (Olagunju, 2015).

In terms of relating the road network capacity with the vehicular population, while the national vehicle per kilometre is about 16, Lagos has about 200. In Lagos State, the road mode of transportation accounts for more than 80 per cent of all movements (Olagunju, 2015). Lagos has a total of 117 Federal roads of 509.97km; 3,028 of State Government roads totaling 5,816.71km and 6,451 Local Government roads of 3,573.7 km (Olagunju, 2015). Lagos State has 20 Local Government Areas as depicted in Figure 3.

Fig. 3 *Map of Lagos State*



Source: Cartography Laboratory, Department of Geography, University of Lagos, (2018).

- Research Design and Participants

The research design used was the survey method which is amenable to the quantitative research method. Participants for the study consist of motorists and road users in Lagos State. Also, graduate students on the MILR and M.Sc. programmes of the University of Lagos completed the survey. A total of 238 participants were randomly drawn from the 20 local government areas of Lagos State using the simple random sampling. However, 207 copies of questionnaire were properly completed and used for data analyses. This represents 87 per cent response rate.

- Instrumentation and Validation

The instrument was designed using opinion and factual questions or categorical questions. The Likert 4-point scale ranging from strongly agree (4) to strongly disagree (1) was adopted for opinion questions to elicit information from respondents. The research instrument was subjected to validity and reliability testing. The domain of validity also called intrinsic validity was used for the validity estimate. The domain of validity is obtained by calculating the

square root of reliability (Guilford, 1954; Uwaoma, Udeagha & Madukwe, 2011). Validity estimate is 0.87 while the Cronbach's Alpha is 0.75 being the reliability coefficient of the instrument. An alpha level of 0.70 and above is generally considered satisfactory internal consistency (Nunnally, 1978; Cronbach, 1951).

- *Methods of Data Analysis*

Descriptive data analyses were done with the aid of the Statistical Product and Service Solutions (Ho, 2006); formerly Statistical Package for the Social Sciences (SPSS) software version 20. Frequency distribution showing absolute frequencies and relative frequencies or percentages was adopted. The Relative Importance Index (RII) was used to further analyse the data. The 4-point Likert scale was converted to Relative Importance Index for each variable, in order to rank and compare the relative importance of each of the variables as perceived by the respondents. The Relative Importance Index (RII) was formulated using the following statistical equation:

$$RII = \Sigma W/AxN = \frac{4n_4 + 3n_3 + 2n_2 + 1n_1}{4N}$$

Where $0 \leq (RII) \leq 1$. The W= Weights as assigned on the Likert scale. A= highest weight. N= total number in the sample/ total respondents to the survey.

4. Results and Interpretation

Table 1: Demographic and Social Profiles of Respondents

S /N	Variables	Frequency	Percentage
	Gender of Respondents		
1.	Male	114	55.1
	Female	93	44.9
	Total	207	100.0
2.	Age of Respondents		
	Less than 20 years	1	.5
	20-29	97	46.9
	30-39	95	45.9
	40-49	9	4.3
	50 and above	5	2.4
	Total	207	100.0
3.	Marital Status		
	Married	83	40.1

	Single	121	58.5
	Separated	3	1.4
	Total	207	100.0
4.	Qualifications		
	HND	3	1.4
	First degree	148	71.5
	Master's degree	54	26.1
	Ph.D.	2	1.0
	Total	207	100.0
5.	Length of Service in your Organisation		
	Less than 1 year	24	11.6
	1-5 years	128	61.8
	6-10 years	38	18.4
	11-15 years	9	4.3
	16-20 years	4	1.9
	Not Applicable	4	1.9
	Total	207	100.0
6.	Cadre in your Organisation		
	Junior Staff	25	12.1
	Senior Staff	153	73.9
	Management Staff	18	8.7
	Not Applicable	8	3.9
	Total	204	98.6
7.	Sector of Respondents		
	Private sector	138	66.7
	Public sector	48	23.2
	Informal sector	6	2.9
	Unemployed	15	7.2
	Total	207	100.0

Source: Field Survey, 2018

Table 2: Location of Respondents Abode

	Location of Abode	Frequency	Percent
Valid	Lagos Mainland/ Yaba/Ebute=Meta Area	12	5.8
	Lagos Island/ Victoria Island/ Marina Area	5	2.4
	Epe Area/ Ajah Area	11	5.3
	Apapa Area	1	.5
	Amuwo-Odofin/ Festac Area	16	7.7
	Badagry Area	5	2.4
	Ojo/Okoko-maiko Area	2	1.0
	Agege Area	9	4.3
	Oshodi /IsoloArea	24	11.6
	Ikorodu Area	8	3.9
	Kosofe/Ojota/ Ketu/ Ojodu/ Berger/ Mile 12 Area	15	7.2
	Shomolu/ Gbagada/ Oworoshoki Area	24	11.6
	Ifako/Ijaiye/ Iyana Ipaja Area	10	4.8
	Ikeja Area	22	10.6
	Eti-osa/ Ikoyi Area	6	2.9
	Alimosho/ Ikotun-Egbe Area	7	3.4
	Mushin Area	1	.5
	Surulere Area	20	9.7
	Ibeju- Lekki Area	9	4.3
	Total	**207**	**100.0**

Source: Field Survey, 2018

Table 3: Workplace Location of Respondents

	Workplace Location of Respondents	Frequency	Percent
Valid	Lagos Mainland/ Yaba/Ebute=Meta Area	18	8.7
	Lagos Island/ Victoria Island/ Marina Area	64	30.9
	Epe Area/ Ajah Area	2	1.0
	Apapa Area	13	6.3
	Amuwo-Odofin/ Festac Area	3	1.4
	Ojo/Okoko-maiko Area	6	2.9
	Oshodi /IsoloArea	6	2.9
	Ikorodu Area	1	.5
	Kosofe/Ojota/ Ketu/ Ojodu/ Berger/ Mile 12 Area	6	2.9
	Ajeromi/Ifelodun/Orile-Iganmu Area	1	.5
	Shomolu/ Gbagada/ Oworoshoki Area	12	5.8
	Ifako/Ijaiye/ Iyana Ipaja Area	2	1.0
	Ikeja Area	41	19.8
	Eti-osa/ Ikoyi Area	8	3.9
	Mushin Area	2	1.0
	Surulere Area	7	3.4
	Ibeju- Lekki Area	14	6.8
	Total	206	99.5
Missing	System	1	.5
Total		**207**	**100.0**

Source: Field Survey, 2018

Table 4: Nature and Causes of Traffic Jams in Lagos State

S/N	Statements	N	SA 4	A 3	D 2	SD 1	RII	RANK
1	Traffic jams are common features on Lagos roads.	207	182 (87.9)	24 (11.6)	-	1 (0.5)	0.967	1
2	Poor driving culture/habit.	207	66 (31.9)	88 (42.5)	39 (18.8)	14 (6.8)	0.749	12
3	Increase in vehicular ownership	207	66 (31.9)	92 (44.4)	34 (16.4)	15 (7.2)	0.752	10
4	Inadequate road capacity	207	92 (44.4)	81 (39.1)	24 (11.6)	10 (4.8)	0.808	4
5	Poor traffic control management by LASTMA and the Police	206	46 (22.2)	70 (33.8)	85 (41.1)	5 (2.4)	0.691	15
6	Heavy duty vehicles and trucks	207	96 (46.4)	82 (39.6)	28 (13.5)	1 (0.5)	0.830	3
7	Poor road network	207	75 (36.2)	94 (45.4)	32 (15.5)	6 (2.9)	0.787	6
8	Incessant road accidents	207	40 (19.3)	97 (46.9)	61 (29.5)	9 (4.3)	0.703	14
9	Inadequate overhead bridges / fly-overs	207	50 (24.2)	91 (44)	55 (26.6)	11 (5.3)	0.717	13
10	Road constructions	207	72 (34.8)	73 (35.3)	52 (25.1)	10 (4.8)	0.750	11
11	Lack of parking spaces/facilities in residential buildings and offices	207	71 (34.3)	102 (49.3)	34 (16.4)	-	0.795	5
12	Double-parking on major highways	207	73 (35.3)	87 (42)	43 (20.8)	4 (1.9)	0.777	7
13	Non-compliance	207	71	81	49	6	0.762	8

	with traffic lights at major road junctions		(34.3)	(39.1)	(23.7)	(2.9)		
14	Hawking and roadside trading on major highways	207	36 (17.4)	59 (28.5)	83 (40.1)	29 (14)	0.623	16
15	Poor weather condition especially on a rainy day	207	68 (32.9)	85 (41.1)	47 (22.7)	7 (3.4)	0.758	9
16	Bad condition of the roads	207	127 (61.4)	70 (33.8)	6 (2.9)	4 (1.9)	0.886	2

Source: Field Survey, 2018

Table 5: Effects of Traffic Jams on Workers and the Environment

S/N	Statements	N	SA 4	A 3	D 2	SD 1	RII	RANK
1	Commuting to and fro work is a stressful and frustrating experience for workers and other road user	207	114 (68.1)	59 (28.5)	3 (1.4)	4 (1.9)	0.777	10
2	Traffic jams are stressful conditions that affect both the physical and mental well-being of workers in Lagos State.	207	160 (77.3)	38 (18.4)	8 (3.9)	1 (0.5)	0.931	1
3	Traffic jams adversely affect the quality of work-life in Lagos State.	207	132 (63.8)	57 (27.5)	8 (3.9)	10 (4.8)	0.876	5

4	Traffic jams can reduce life expectancy of workers in Lagos State.	207	131 (63.3)	68 (32.9)	2 (1.0)	6 (2.9)	0.891	3
5	Traffic jams impact negatively on workers' performance at work.	207	97 (46.7)	86 (41.5)	16 (7.7)	8 (3.9)	0.829	7.5
6	Waste of time on traffic is a common feature on Lagos roads.	207	126 (60.9)	70 (33.8)	9 (4.3)	2 (1.0)	0.886	4
7	Increase in fuel consumption is an outcome of traffic jams.	207	116 (56)	55 (26.6)	21 (10.1)	15 (7.2)	0.829	7.5
8	Incessant traffic jams lead to increase in fuelling expenses.	207	126 (60.9)	53 (25.6)	12 (5.8)	16 (7.7)	0.849	6
9	Traffic jams lead to late arrival at important events or occasions.	207	146 (70.5)	48 (23.2)	7 (3.4)	6 (2.9)	0.903	2
10	Lateness to work or arrival time at work is an outcome of traffic jams.	207	93 (44.9)	86 (41.5)	27 (13)	1 (0.5)	0.827	9
11	Noise and air pollution are results of traffic	203	56 (27.1)	67 (32.4)	56 (27.1)	24 (11.6)	0.691	12

	jam.							
12	Traffic jams can lead to death by instalment.	207	65 (31.4)	74 (35.7)	51 (24.6)	17 (8.2)	0.726	11

Source: Field Survey, 2018

Table 6: Strategies for Mitigating Traffic Jams in Lagos State

S/N	Statements	N	SA 4	A 3	D 2	SD 1	RII	RANK
1	The introduction of flexible working hours will mitigate traffic jams in Lagos State.	207	75 (36.2)	94 (45.4)	32 (15.5)	6 (2.9)	0.787	10
2	Improved public transportation will lead to enhanced quality of work-life in Lagos State.	207	106 (51.2)	77 (37.2)	24 (11.6)	-	0.849	4
3	The introduction of more BRT in major routes is capable of mitigating traffic jams on Lagos roads.	207	88 (42.5)	95 (45.9)	19 (9.2)	5 (2.4)	0.821	8
4	Telecommuting or teleworking will ease stressful and frustrating experiences of workers in Lagos State.	207	83 (40.1)	91 (44)	28 (13.5)	5 (2.4)	0.804	9
5	Expanding existing roads will mitigate traffic jams on	207	110 (53.1)	75 (36.2)	13 (6.3)	9 (4.3)	0.845	5

	Lagos roads.							
6	Revamping the rail transport will ease traffic jams in Lagos State.	207	139 (67.1)	61 (29.5)	5 (2.4)	2 (1.0)	0.907	1
7	Introduction of water transportation mode (ferry services) will ease traffic jams in Lagos State.	207	99 (47.8)	77 (37.2)	30 (14.5)	1 (0.5)	0.831	6
8	Urgent rehabilitation of roads that have dilapidated or gone bad will ease traffic jams in Lagos State.	207	134 (64.7)	67 (32.4)	2 (1.0)	4 (1.9)	0.890	2
9	Redesigning major highways to have pedestrian facilities will ease traffic jams in Lagos State.	207	83 (40.1)	105 (50.7)	19 (9.2)	-	0.827	7
10	Ban on motorcyclists from major highways in Lagos State will ease traffic jams.	207	58 (28)	74 (35.7)	63 (30.4)	12 (5.8)	0.715	11
11	Ban on all forms of hawking activities and roadside trading will ease traffic jams in Lagos State.	207	56 (27.1)	77 (37.2)	56 (27.1)	18 (8.7)	0.707	12

12	Restricting and limiting the movement of heavy duty trucks to specific areas with a predetermined time frame will ease traffic jams in Lagos State.	207	122 (58.9)	73 (35.3)	8 (3.9)	4 (1.9)	0.878	3

Source: Field Survey, 2018

Table 7: Responses to Miscellaneous Questions

S/N	Questions		Frequency	Percentage
1	What is your means of movement to and from your workplace?	Personal Car Public - Transport/Bus BRT Staff Bus Train Ferry **Total**	79 91 35 2 - - **207**	38.2 44 16.9 1.0 - - **100**
2	How often are you delayed or stuck in traffic on Lagos roads?	A few times a month A few times a week Everyday	3 68 136	1.4 32.9 65.7
3	How would you rate traffic jams in Lagos State?	High Moderate Low	201 6 -	97.1 2.9 -
4	How satisfied are you with respect to the quality of work-life in Lagos State as a result of traffic jam?	Very satisfied Satisfied Unsatisfied Very unsatisfied	- 3 166 38	- 1.4 80.2 18.4

5	What time in the morning is traffic jam more visible on Lagos roads?	11:00 a.m.-11:59a.m. 10: 00 a.m.-11:00 a.m. 9:00a.m. - 10:00a.m. 8:00 a.m. - 9:00 a.m. 7:00 a.m. - 8:00 a.m. 6:00 a.m. - 7:00 a.m.	- 18 11 62 98 17	- 8.7 5.3 30 47.3 8.2
6	What time in the afternoon is traffic jam more visible on Lagos roads?	3:00 p.m. - 4:00 p.m. 2:00 p.m.-3:00 p.m. 1:00 p.m. -2:00 p.m 12: 00 noon-1:00 p.m.	144 30 28 5	69.6 14.5 13.5 2.4
7	What time in the evening is traffic jam more visible on Lagos roads?	9:00 p.m - 10:00p.m 8:00 p.m. - 9:00 p.m. 7:00 p.m -8:00 p.m 6:00 p.m. - 7:00 p.m. 5:00 p.m. - 6:00 p.m. 4:00 p.m. - 5:00 p.m.	2 19 62 62 43 18	1.0 9.2 30 30 20.8 8.7

Source: Field Survey, 2018

From Table 1; of the 207 respondents to the survey, 114 were male while 93 were female; 92.8 per cent of the respondents were between the age bracket of 20-39 while 71.5 per cent have First degree; 73.9 per cent of the respondents were in the senior cadre in their organisations. The percentage of respondents who worked in the private sector is 66.7 while those in the public sector constitute 23.2 per cent, 2.9 per cent worked in the informal sector while 7.2

per cent of the respondents were unemployed. From Table 4; the Relative Importance Index (RII) was used to rank the causes of traffic jams on Lagos roads. From the findings, respondents ranked traffic jams are common features on Lagos roads as first (1st). Bad conditions of the roads were ranked 2nd; while the presence of heavy duty vehicles and trucks such as trailers and tankers on Lagos roads was ranked 3rd. From Table 5; the Relative Importance Index (RII) was used to rank the effects of traffic jams on workers and other road users. It was found that traffic jams are stressful conditions that affect both the physical and mental well-being of workers in Lagos State which was ranked 1st by the respondents. Traffic jams lead to late arrival at important events or occasions was ranked 2nd by respondents. Traffic jams can reduce life expectancy of workers in Lagos State was ranked 3rd.

From Table 6; the Relative Importance Index (RII) was used to rank the strategies for mitigating traffic jams on Lagos roads. It was found that revamping the rail transport system would mitigate traffic jams on Lagos roads. This was ranked first 1st by Respondents. Also, it was found that urgent rehabilitation of roads that have been dilapidated can ease traffic jams. This was ranked 2nd by Respondents. Restricting and limiting the movement of heavy duty trucks to specific areas with a predetermined time frame will ease traffic jams in Lagos State was ranked 3rd. From Table 7; it was revealed that respondents to the survey used road transportation mainly to and from their workplaces. Both rail and water transportation modes were not used. With respect to the quality of work-life in Lagos State as a result of traffic jam, 98.6 per cent of the respondents indicated that they were unsatisfied as a result of traffic jams. In the same vein, 97 per cent of the respondents were of the view that traffic jams in Lagos State is high. It was found that traffic jams are more visible on Lagos roads from 7a.m. to 9a.m. in the morning; 3p.m. to 4 p.m in the afternoon; and 5p.m. to 8p.m. in the evening.

5. Conclusions and Recommendations

Traffic jam or congestion is one of the features of urbanisation and city life which has far reaching repercussions on various stakeholders. In view of the huge costs associated with traffic jams, it is imperative to mitigate traffic jams and to reduce it to the barest minimum in order foster the quality of work-life of workers and residents in Lagos State. To this effect, we recommend the following options based on our findings:

- The introduction of flexible working hours across all organisations in Lagos State; as this will mitigate traffic jams on Lagos roads and reduce stressful conditions that affect both the physical and mental well-being of workers owing to traffic jams.

- The introduction of more BRT buses and routes to improve public transportation and to enhance the quality of work-life in Lagos State.
- Revamping the rail transportation mode to ease traffic jams on Lagos roads.
- The introduction of water transportation mode (ferry services) in littoral or coastal areas to mitigate traffic jams in Lagos State.
- Urgent rehabilitation of roads that have dilapidated and the expansion of existing roads to reduce traffic jams in Lagos State.
- Total ban on motorcyclists from major highways in Lagos State will ease traffic jams on Lagos roads.
- Restricting and limiting the movement of heavy duty trucks such as trailers and tankers to specific areas with a predetermined time frame to ease traffic congestions on Lagos roads.

References

Adebiyi, A. (2011). On the motivation and challenges faced by commuters using bus rapid transit in Lagos, Nigeria. *The Social Sciences*, *10*(6), 696-701.

Adedeji, A. O. (2015). Longevity in Nigeria: What and what really matters? *Journal of Economics and Sustainable Development, 6*(4), 142-156.

Al-Morgin, S. (2005). The impact of adverse effects and environmental effects of mobility on the sustainability of transportation: Sustainable transport in developing countries. *Proceedings Environment 2005 international Conference.* Abu Dhabi, UAE: Environmental Agency (ERWDA).

Bagtasos, R. M. (2011). Quality of work-life: A review of literature. *Business and Economic Review*, 1-8.

Banjo, G. A. (1984). Towards a new framework for urban transport planning in third world cities. Proceedings of Australian Road Research Board Conference.

Cronbach, L. J. (1951). Coefficient alpha and the internal structure of tests. *Psychometrika*, *16,* 297-334.

Economic Intelligence Unit Ministry of Economic Planning and Budget (EIUMEPB) (2013). The socio-economic costs of traffic congestion in Lagos: Working Paper Series. http://www.sparcnigeria.com/RC/files/1.1.16_Socioeconomic_Traffic_Lagos.pdf.

Goodwin, P. B. (1997). Solving congestion. Inaugural lecture for the Professorship of Transport. London: London University College. http://cts.ucl.ac.uk/tsu/pbginau.htm, pp 1-11.

Guilford, J. P. (1954). *Psychometric methods.* New York: McGraw- Hill.

Ho, R. (2006). *Handbook of univariate and multivariate data analysis and interpretation with SPSS*. New York: Taylor and Francis Group

Huang, T.C., Lawler, J., Lei, C.Y. (2007). The effects of quality of work-life on commitment and turnover intention. *Social Behavior and Personality*, *35*(6), 735-750.

Kuye, O. L. Sulaimon, A. A., & Azeez, O. O. (2017). Bus rapid transit and socioeconomic condition of bus commuters in Lagos State. *CECONOMICA*, *13* (5), 5-24.

Li, Q., Ma, S., Bishai, D., & Hyder, A. A. (2016). Potential gains of life expectancy by improving road safety in China. *Public Health,* 144, 57-61

Lumumba, J. (2016). Impossible possibilities: The fragility and resilience of Lagos. In F. Mancini & A. Ó. Súilleabháin (Eds.). *Building Resilience in Cities under Stress* (pp. 38-49). New York: International Peace Institute.

Nunnally, J. C. (1978). *Psychometric theory* (2nd ed.). New York: McGraw- Hill.

Okeke, M. N., Ojan, E., & Oboreh, J. C. (2016). Effects of stress on employee productivity. *International Journal of Accounting Research, 2*(11), 38-49

Olagunju, K. (2015). Evaluating traffic congestion in developing countries: A case study of Nigeria. A paper presented at the 2015 Chartered Institute of Logistics and Transport (CILT) Africa forum held at Mount Meru Hotel Arusha Tanzania.

Popoola, M. O., Abiola, S. O., & Adeniji, W. A. (2013). Traffic congestion on highways in Nigeria: Causes, effects and remedies. *International Journal of Civil and Environmental Engineering, 7* (11), 858-863; doi: scholar.waset.org/1307-6892/17391

Sanders, S. (2015). IRF congestion in work zones. *Webinar.* Barriersystemsmic.com.

Sede, P. I., & Ohemeng, W. (2015). Socio-economic determinants of life expectancy in Nigeria (1980-2011). *Health Economics Review, 5*(2), 2-11.

Simmons, J., & Mares, W. (1985). *Working together: Employee participation in action.* New York University Press, New York.

UN-Habitat (United Nations Human Settlements Programme). (2006). *Lagos: Bridging the urban divide*. Nairobi: United Nations.

University of Lagos (2018). *Map of Lagos State.* Cartography laboratory. Department of Geography.

Uwaoma, C.N., Udeagha, C.F., & Madukwe, A.U. (2011). Development and factorial validation of spouse rape inventory. *European Journal of Social Sciences*, *19* (2), 261-267.

The Labor Constitution: The Enduring Idea of Labor Law, by Ruth Dukes. A Review

Ram Tallapragada [1]

In an attempt to understand the enduring quality of labor law, Ruth Dukes, Professor at University of Glasgow, has written a valuable book, *The Labor Constitution* (Oxford University Press, 2014), which was recently been issued in paperback. The book begins with defining and comparing the three main approaches to the labor law that has divided several prolific writers, scholars, thinkers, and politicians of early 20th century. The first half of the book is devoted to these three approaches – the labor constitution, collective-laissez faire, and the law of the labor market (p.7) – each of which has been adopted in Germany, the United Kingdom (UK), and the European Union (EU), respectively, and are introduced in the book in a systematic process with each chapter introducing an agent of change. The agents' ideology, the political environment they were working in, and an exploration into their personal experiences, lead to a detailed analysis of these ideas in the conclusion section of each chapter.

The novice may find themselves frequently turning to Google to research the numerous commissions mentioned, and research cited. Dukes' writing is captivating. Each chapter starts with an event and carries characters and stories through time in a compelling way. The intricate connections between personal biography, historical events, and employment relations theory make the book a very interesting read.

The labor constitution is the idea of defined laws for employment relations and the involvement of government in labor negotiations as a third party. The collective-laissez faire is the idea of government setting laws in the interest of the workers but staying out of labor negotiations over the terms of employment. The free labor market approach introduces the readers to the adverse impacts of laws of employment – especially the reduced competition in labor markets which could also hinder economic growth. The second half of

[1] Loyola University Chicago. Email address: rtallapragada@luc.edu

the book gives an abridged version of recent works published in the field of labor law pertaining to these ideas, and an analysis of these scholarly articles.

As the title suggests, the idea of labor law and constitution that safeguards the interests of workers is a resilient one that endured through two world wars and subsequent political uprisings and movements. The story begins with Hugo Sinzheimer, a Jewish scholar in the newly formed Weimar Republic, who was later stripped of his title from University of Frankfurt and spent remainder of his years in hiding, surviving Nazi Germany barely, only to die of exhaustion some weeks after the end of the war. His work begins with aligning himself with Marx's definition of 'labor as human activity' (p.15), but Sinzheimer's works do not distinguish between social law and labor law even though the Weimar Republic's constitution has various expressions to define these laws. Sinzheimer developed the 'economic constitution' after the revolution in 1918 that referred to various laws that allowed for the participation of labor, together with other economic actors, not only in terms and conditions of employment, but also production – what should be produced and how (p.13).

The book continues with the ideologies of Otto Kahn-Freund - who studied law under Sinzheimer at the University of Frankfurt (p.72). However, for Kahn-Freund, the principal flaw in the Weimar system of labor law was too much state involvement (p.26). The belief that the state's undermining of collective institutions contributed to the rise of Nazism was something that stayed with Kahn-Freund throughout his life (p.73). "The past is too strong and emotional" acknowledges Kahn-Freund, in his autobiography which he never completed (p.73). In a series of papers, he developed the idea of collective-laissez faire where "the government policy in industrial relations was directed at promoting free play to the collective forces of the society… the forces of organized labor and of organized management" (p.69). Kahn-Freund, who was also a Jew, fled Germany for the UK, and served as a member of Royal Commission of the Reform of Trade Unions and Employers' Association (the Donovan Commission), which changed his perception on industrial relations quite radically (p.79).

Kahn-Freund opined that the integration of trade unions into the economic or labor constitution was highly problematic, because it was necessarily compromising of the unions' autonomy. His research, and other scholars, recognized that centralized union leadership, and employers' associations acting at an industry level, were not always responsible when formulating terms and conditions of employment; rather, less centralized bargaining units held greater responsibility, a development in the UK that Kahn-Freund wrote positively about while serving the Royal Commission. It was noted that the bargaining units were negotiating separately with their respective managements at a micro-level and not a macro-level for the industry in which they are

operating. Kahn-Freund strongly disapproved the idea of compulsory arbitration to impose terms and conditions on collective parties which had been set externally by a third-party body (p.80). The author compares the labor constitution with collective-laissez faire and makes a compelling argument in favor of collective-laissez faire.

The readers are then introduced to the later works in the field of employment relations with works such as Simon Deakin and other scholars who were looking at employment relations from a third perspective. It was proposed that the scope of the subject should be extended beyond the core institutions of the employment contract and collective bargaining to include aspects of social security law, tax law, family law and other types of law relevant in understanding work relations (p.104). Globalization was also identified as one of the prominent factors which rendered 'old' social democracy ineffective, and in need of updating. These developments implied the need for a different kind of relationship between states and markets – states should direct their resources at promoting competitive and well-functioning markets (p.111). The labor institutions – statutory rights, trade unions, collective bargaining practices – constitute barriers to the optimal functioning of labor markets; unless responding to defined set of failures, labor market institutions produce a series of labor market inefficiencies such as has higher unemployment and depressed rates of economic growth (p.119). The idea of social dialogue is then introduced – which is a structure of negotiations between the 'social partners', i.e. the representation of management and labor – in supranational, national, subnational, cross-cultural, and sectoral levels. This social dialogue has been an important negotiating aspect in the formation of the EU and the dimensions of this is the free labor market in the EU which is discussed in detail.

As a whole, this is an excellent book that captures and analyzes the existence, and risks, of three approaches to labor laws that are relevant in Germany, the UK and the EU. The three approaches are analyzed from various perspectives along with details of scholarly work and political movements surrounding the approaches. The ideologies are also analyzed in terms of their relevance to the current scenario, along with the trajectory these ideologies have paved for other scholarly work. It might be a herculean task to imagine labor constitution at a global level. But it provides ready answers to the challenges posed to the protection of workers (p.221). This very framework of labor constitution that acknowledges and integrates the other factors beyond the collective agreements in an employment scenario ensures enquiry in important fields of study that have consequences for workers - especially the role of markets, economic growth, and social issues like unemployment.

The broad view that Dukes presents and the historical perspective makes this book an excellent introduction for any novice student of employment

relations, and a very rewarding perspective for any experienced student who wishes to learn more about Germany, the UK and the EU.

Adapt International Network

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at *www.adapt.it*.

For more information about the E-journal and to submit a paper, please send a mail to *LS@adapt.it*.

DEAL Centre for International and Comparative Studies Law Economics Environment Work
THE MARCO BIAGI DEPARTMENT OF ECONOMICS
UNIVERSITY OF MODENA AND REGGIO EMILIA

ADAPT International.it
Building the Future of Work