

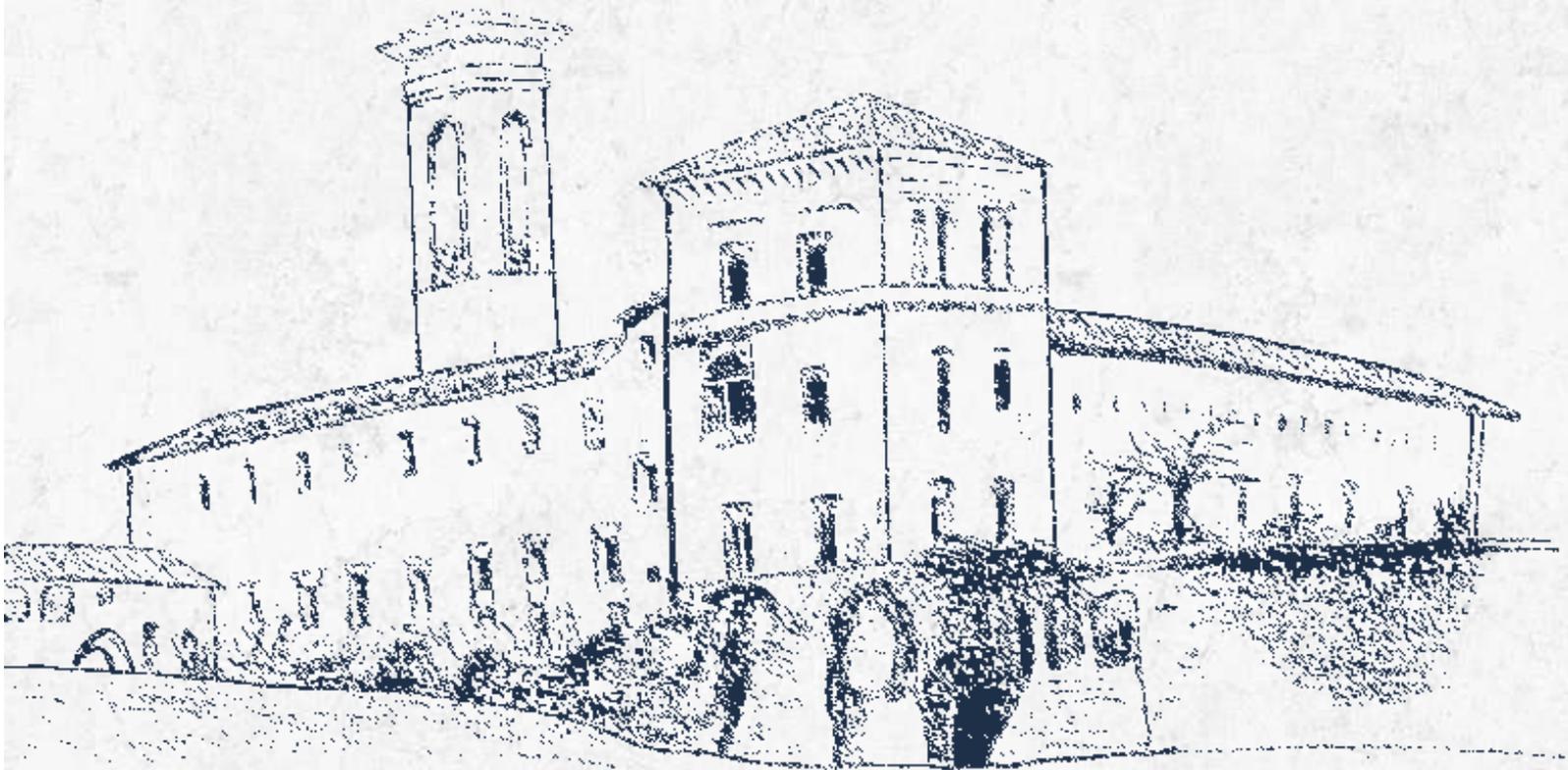
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# Industrial Relations in Australia And The Concept of Fairness

Chris Leggett<sup>1</sup>

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## **Abstract**

**Purpose** – The purpose of this paper is to reflect on some unique terminology in Australia’s industrial relations.

**Design/methodology/approach** – It reports the limited and historical sources of the expression ‘fair dinkum’

**Findings** – The article finds the origins of ‘fair dinkum’ in both the English Midlands and from Cantonese goldminers in Australia in the 19<sup>th</sup> century

**Research limitations/implications** – Future commentaries might examine these sources further to determine which one is ‘fair dinkum’.

**Originality/value** – The value of the paper is that it adds to the study of the particularity of meanings in the language of industrial relations discourse.

**Paper type** – Research Paper

**Keywords** – *Australia, Industrial Relations, Fairness, Language*

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## 1. Industrial Relations in Australia and the Concept of Fairness

English speakers everywhere share a meaning for ‘fair’ and an understanding of ‘fairness’, but ‘fair’ has some Australian applications that, except perhaps for New Zealanders, are unique, although they may be used by other English speakers to caricature Australians, often to comic effect. One of the expressions used to caricature is ‘fair dinkum’. By Australians, ‘fair dinkum’, is used to emphasize the gaminess of something, as in ‘that’s a fair dinkum Rolex’ or that it complies with accepted standards as in ‘the coffee here is fair dinkum’. It may be used as a proclamation of a fact or truth, for example, ‘I tell you, the rumour about the closure of the plant is ‘fair dinkum’.

For an Australian to use ‘fair dinkum’ outside its social milieu can devalue the expression and discredit its user. For example, the current leader of the Australian Liberal Party, and thereby Coalition prime minister, now refers to coal-fired energy as ‘fair dinkum’ (as opposed to renewable energy sources). His over reliance on the term on a hustings tour bus, instead of endearing him to the electorate, according to the press proved ‘a viral recipe for ridicule’ (*The Guardian*, 5 November 2018).

The origins of ‘fair dinkum’ are disputed but a plausible explanation is that it came from the goldfields of Victoria in the nineteenth century where Chinese workers used the term *ding kum* to confirm a deal that is honest and true. A related explanation is that ‘dinkum’ is a mispronunciation of the Cantonese *din gum* for true gold.

Others cautiously speculate on it being from English dialect, when it referred to the quality of work.

... it seems very possible that it comes from an old English dialect term, which is recorded principally in Joseph Wright’s *English Dialect Dictionary* of 1896-1905. He found several examples of dinkum in various parts of England in the sense of a fair or due share of work. He also encountered fair dinkum in Lincolnshire, used in the same way that people might exclaim fair dos! as a request for fair dealing. But there’s no clue where this word comes from, and dictionaries are cautious because it is not well recorded.

It turns up first in Australian writing in 1888 in *Robbery Under Arms* by Rolf Boldrewood, in which it had the sense of work or exertion: ‘It took us an hour’s hard dinkum to get near the peak’. Early on it could also mean something honest, reliable or genuine, though this is actually first recorded in New Zealand, in 1905. Fair dinkum is recorded from 1890 in the sense of fair play, and soon after in the way that Australians and New Zealanders still use it — of something reliable or genuine. There have been lots of related phrases since, like dinkum oil for an accurate report. (*World Wide Words*, 2018).

While another source unequivocally states that ‘dinkum’ ‘comes from the English Midlands and meant work’ (Bragg, 2003).

The Commonwealth of Australia was founded in 1901 and in response to the industrial conflict that had characterized industrial relations in the former states the federal government in 1904 passed the Commonwealth Conciliation and Arbitration Act.

The legal regulation of Australia’s industrial relations is now by the Fair Work Act, passed by a Labor government (2007-2013) in 2009 to replace the Work Choices legislation of the previous Liberal-National Coalition government. The Labor government had promoted its bill as ‘fair and balanced’, and as moving ‘forward with fairness’ (Wright and Lansbury, 2016: 103).

# When Labour Goes Populist: How Italian Populist Leaders Framed the Labour Market and Industrial Relations on Social Media

Francesco Nespoli <sup>1</sup>

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## Abstract

**Purpose** – this article aims to describe how leaders identified as populist frame the specific issue of the labour market and industrial relations on social media in Italy.

**Design/methodology/approach** – two datasets of Instagram posts and tweets from Luigi Di Maio and Matteo Salvini are provided. The field of labour and industrial relations include income support policies, welfare, and taxation. Data are interpreted from a rhetorical-framing perspective.

**Findings** – Labour and industrial relations issues appear to be fully functional to pit “people” or “citizens” against political or economic elites. Representation of work issues by Italian populism falls short of novelty in terms of framing, even when regarding gig-workers and the platform economy.

**Research limitations/implications** – The datasets of Instagram posts and tweets from Luigi Di Maio and Matteo Salvini are limited to data from January the 1st to November the 13<sup>th</sup>. A rhetorical-framing analysis is conducted only on Instagram data.

**Originality/value** – the paper argues that work should be taken into account as a fundamental dimension of citizenship, thus connecting political discourse and the representative democracy that builds on it. A specific theoretical framework is formulated integrating framing theory and new rhetoric. The framing theory recalled by George Lakoff is interpreted as a modern version of Aristotelian topics integrating emotional connotations.

**Paper type** – Research paper

**Keywords** – *Social media, communication, populism*

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## 1. Introduction

### 1.1. Why Populism and Labour Issues?

Populism has drawn unprecedented attention following the appointment of Donald Trump as the US President in November 2016<sup>2</sup>. Despite this increasing interest, the notion of “populism” still lacks uniformity in the academic community. Furthermore, “Definition of populism” is the most searched, populism-related query by lay users, according to Google Trends<sup>3</sup>. Anti-elitism (Albertazzi and McDonnell 2008: 3, Kaltwasser and Taggart 2016: 204, Voss 2018) and the exploitation of electoral frustration (Voss 2018) have so far been regarded as peculiarities of populism. However, by looking at the meaning of “populism” as a steady and semantic form of negotiation, this research starts from the assumption that the main characteristic of “populism” is anti-pluralism, as proposed by the political theorist Jan-Werner Muller in his book *What is Populism?* (2016: 3). Looking for determinants triggering the emergence of populism, a series of studies published before the election of Donald Trump had linked economic crisis with populists’ electoral success (Dornbusch and Edwards 1990; Acemoglu et al. 2011, Pappas T. & Kriesi H. 2015). In particular, Pappas Takis and Hannspeter Kriesi (2015) found that populism had grown in those countries most significantly affected by crisis, where crises were measured in terms of growth rate, unemployment rate and public debt on the economic side, and trust in institutions, satisfaction with democracy, and electoral volatility on the political side (Kriesi H. Pappas T., 2015).

Yet there is significant research disproving or revising this correlation, concluding that the crisis explanation for the growth of populist support does not have the same bearing across countries and concurs with cultural variables (Inglehart and Norris 2016). Moreover, Kübler and Kriesi (2017) have argued that migrant flows and growing income inequalities are eventually driven by globalization. This point has been recently corroborated by Mols F. and Jetten J. (2018) who considered that populism thrived also during times of economic prosperity, thus supporting the existence of a “wealth paradox”. It is not inequalities *per se* that drive consensus towards populism, but the rising discontent of “globalization’s losers”.

Notwithstanding the disputed idea of a correlation between economic crises and populism, scholars on both sides frequently share the following

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<sup>2</sup> See Interest over time on Google Trends for populism - Worldwide, 2004 - present - <https://g.co/trends/5jrzY>

<sup>3</sup> See Related queries on Google Trends for populism - Worldwide, 2004 - present - <https://g.co/trends/DBBpT>

consideration: whether decisive or not, growing income and wealth inequality push voting members, especially those from depressed areas, to choose populist parties. One can find research specifically focused on the relations between the labour market and populism considering different countries. Carl Benedikt Frey, Chinchih Chen and Thor Berger (2018), concluded that support for the Republicans between 2012 and 2016 increased more in areas where automation threatened to destroy jobs. In Europe, Sirius Håfström Dehdari (2018) affirmed that layoff notifications among low-skilled, native-born workers were responsible of the 31-percent increase in the vote share for the Swedish far-right. Finally, Dustin Voss (2018) compared Germany and Spain, arguing that the roots of populism sink into perceived labour market inequalities, also because of labour market reforms.

Assuming this perspective, populism challenges not only social-democratic parties but trade unions as well. This is a phenomenon that has become clearer after the last US elections, when several exit-polls revealed that many teachers, steelworkers and autoworkers affiliated to trade unions voted for Donald Trump. The same dynamic was also observed by unreleased polls<sup>4</sup> in Italy, after the last general elections that led to the formation of a left-wing and right wing populist coalition. Data revealed that 33% of voters affiliated to the largest unions (CGIL) voted for the Five Star Movement (left-wing populists), only 2% less than the consensus gained by the social democratic party (*Partito Democratico*). The penetration of right-wing populism into factories had been documented many years before in Europe. In 2005, for example, a study from the *Freie Universität* of Berlin conducted between 2003 and 2004 concluded that 34% of low-skilled members had a far-right orientation, compared to 18% of non-members.

The decrease of trade union influence in the voting preference is a further contested phenomenon. In their recent article *The Radical Right, the Labour Movement and the Competition for the Workers' Vote* Mosimann, N., Rennwald, L. and Zimmermann (2018) argued that unionized voters still refrain from voting for the radical right better more than non-unionized voters. But they also concluded that unionization no longer prevents working-class voters from supporting the radical right in certain contexts. The difference between contexts is also addressed by Arndt C. and Rennwald, L (2016) who affirm that the effect of union membership on voting choice is conditioned by the structure of the trade union movement.

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<sup>4</sup> <https://www.dirittiglobali.it/2018/04/98330/>

## 1.2. Populist, Communication and Labour

It should therefore be clear that the way populist leaders frame the labour market and labour relations in general may deserve special attention. Many early studies focus on populism as an expression of political communication. In particular, De Vreese, Esser, Aalberg, Reinemann, and Stanyer (2017, 2018) explicitly regard “populism as an expression of political communication”. Salgado and Stavrakakis (2018) held a symposium on *Populist Discourses and Political Communication in Southern Europe* and Engesser, S., Fawzi, N., & Larsson, A. (2017) edited a special issue about “Populist online communication” noting that “there has been relatively little research on populism on the Internet” (p. 1280). Engesse, Fawzi and Larsson identify the concept of “online opportunity structure, which refers to factors inherent to the online media system” (p. 1280) which was particularly relevant for the present study.

Yet little research has been conducted in order to compare populists’ agenda on the specific topics of work and labour. Even if not adopting political communication categories, an important contribution comes from the authors of *The EEAG Report on the European Economy* who took stock of the populists’ economic agenda across countries, thus identifying many common features. According to the EEAG, labour mainly plays a role in immigration, claiming that immigrants compete with natives in the labour market and lower wages while benefiting from the welfare state. Moreover, job losses are conceived as an outcome of international economic integration, then accusing foreign companies of unfair competition (Andersen, T. M., Bertola, G., Driffill, J., Fuest, C., James, H., Sturm, J. E., & UroÅ, B. (2017). *Economic Policy and the Rise of Populism– It’s Not So Simple*. EEAG Report on the European Economy, 50-66. EEAG, 2017).

However, at this stage populists’ rhetoric on work and labour relations is still being framed by scholars just as one component of the parties’ communication strategy and one of the reasons for populism success. Based on the view expressed by Alan Bogg and Mark Freedland (2018), who have examined recent examples of what they call “populism in labour law” (Bogg and Freedland 2018: 1), I argue that work should be taken into account as a fundamental dimension of citizenship, thus connecting political discourse and the representative democracy that builds on it. Indeed, Bogg and Friedman claim that “sustainable democratic institutions in the polity are dependent upon sustainable democratic institutions in the sphere of work and work relations” (Bogg and Freedland 2018: 1). I also proposed this paradigm in my first book on communication of the Italian Jobs Act (Nespoli 2018 a) noting that the first article of the Italian Constitution explicitly defines Italy as a “democratic republic founded on labour”. Moreover, Bogg and Mike Friedland

welcome the essential description given by Jan-Werner Muller of populism as “anti-pluralism” (Bogg and Friedland 2018: 17).

Taking into account all of the above, this article aims to describe how leaders identified as populist frame the specific issue of the labour market on social media in Italy. I analyzed how the Deputy Prime Minister and Minister of Labour and Economic Development, Luigi Di Maio (Five Star Movement) and the Deputy Prime Minister and Minister of the Interior Affairs, Matteo Salvini (Northern League) used Twitter and Instagram for communicating labour market and industrial relations issues from the beginning of the electoral campaign to the most recent days. I took the day following the speech given by the President of the Republic Sergio Mattarella on the evening of 31 December 2017, as the date of the beginning of the last electoral campaign. On that occasion, Mattarella turned to the parties that would have been involved in the electoral campaign, asking them to “make the upcoming season more just and sustainable”. In so doing, this article wants to give a contribution in answering the same question posed by Acemoglu when looking at populists’ economic policies in general (2011) yet reformulating it from a rhetorical point of view. In other words, the question is not *why* politicians who adopt populist labour market and industrial relations policies receive electoral support – even if these policies fall short of documentable positive results – but *how* they manage to receive that consensus.

## 2. Theoretical Framework

### 2.1. Framework as Rhetoric, Framework as Loci

This research needs a specific theoretical framework in order to pursue its objective. In this sense, I will repeatedly make reference to the notion of a ‘frame’, a word widely employed in a number of social science disciplines<sup>5</sup>. In his famous 1993 article *Framing: Toward Clarification of a Fractured Paradigm* Robert Entman argued 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 used loosely in English as a metaphor to denote a vague concept, which can

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<sup>5</sup> This is the case when framing theory is adopted for media representation analysis, in that it is argued that the way the news is reported 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]).

be summarised as follows: the definition of a situation considering a number of relevant aspects.

Framing theory was mainly construed in the field of sociology starting from the 1974 book, *Frame Analysis. An Essay on the Organization of Experience*, by Erving Goffman that suggested that individuals would be able to constantly understand the world only thanks to interpretation schemes, which the author defines as ‘primary frameworks’ (Goffman 1974: 24). The notion soon developed so as to gain a cognitive dimension and it has been employed in behavioral economics, and finally defined as an elementary pre-linguistic tool, a ‘conceptual metaphor’, by George Lakoff, who invented cognitive linguistics (1980).

When integrated into embodied, cognition-related theories, the framing theory sees cognition as consisting of a limited number of universal faculties and experiences. Human memory records perception and motorial experiences along with their emotional effects, to make it possible to compare them with similar experiences, establishing commonality and identifying chronological dimensions. In terms of cognition, narration, framing as a metaphor, and blending theory are all the result of analogical activities combining recorded experiences and feelings across space and time<sup>6</sup>.

One might already have noticed that “metaphor”, “metonymy”, “narration”, “emotions” – which are now employed to denote realities in textual and cognitive terms – are part of rhetoric terminology. Yet, as Jim Kuypers wrote in his article about *Framing Analysis from a Rhetorical Perspective* (2010), the literature rarely associates “framing theory” with rhetoric. According to him, “since the mid-1990s the majority of framing research has derived from a social scientific orientation” (2010: 286).

Rhetoric was given fresh momentum in social and political settings following World War II. As for Europe<sup>7</sup>, new rhetoric drew on Chaim Perelman’s and Lucie Olbrechts-Tyteca’s research, which aimed to develop argumentation theory, describing how human beings apply reasoning to all those knowledge domains where judgments involve values rather than algebra (Perelman, Olbrechts-Tyteca 1958 [2001]). In their essay entitled *Act and Person in Argument* (1951) the authors already argued that the link between man and action is the most important relation of coexistence that drives the interpretation of discourse in domains where values are at stake, such as politics and law. The

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<sup>6</sup> For a more detailed examination of the authors who contributed to defining the notion of a “frame”, see Nespoli 2018, 4-21.

<sup>7</sup> 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.

orator thus becomes the vehicle for a “logic of preference”. Values commonly attributed to an act transfer to the orator, while values already associated with the orator’s *ethos* can conversely be applied to an act. Of course, reputation is defined by the tension between the orator’s character and his/her acts.

Even if criticized for the postulation of the ideal concept of a universal audience, Perelman and Olbrechts-Tyteca did not neglect the connection between personal preferences and emotions. That is the link stressed almost 30 years later by cognitive linguistics studies inaugurated by George Lakoff, who began to integrate the concept of a rationality of argumentation with the principle of an inseparable emotional experience, which found the perception of what is preferable and what is not (2004, 2008).

As I argued in my book (Nespoli 2018a), and as I summarised in a recent article (2018b), the framing theory recalled by Lakoff can then be interpreted as a modern version of Aristotelian topics integrating emotional connotations. Prospects, analogy and psychological conditions are all elements forming part of framing. If considered through a rhetoric perspective, framing has a meaning similar to that of “topic” in rhetoric. 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])<sup>8</sup>.

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. Therefore, in Kuypers’ words, “framing is the process whereby communicators act to construct a particular point of view that encourages the facts of a given situation to be viewed in a particular manner, with some facts made more noticeable than others” (2010: 300). Frames can then be discussed even after the limitations of investigation on mental reality are taken into account. As Hank Johnston pointed out in 1995 “while we cannot see the brain synapses firing, we can approximate an organization of concepts and experience that indicates how a situation is to be interpreted” (234). Then we must be aware that “there are no shared criteria about how to do this, nor are there rules to ascertain whether a frame has been correctly interpreted” (235).

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<sup>8</sup> Although without acknowledging a degree of continuity with new rhetoric, this is the trend that is being currently reported and that is nurturing a research field attempting to bring together rhetoric and cognitive sciences (cfr. Jack J. (2010), What are Neurorhetorics?, in *Rhetoric Society Quarterly*, vol. 40, n. 5, 405-410; Calabrese S. (2013), *Retorica e scienze neurocognitive*, Carocci). As summarised by Venier, place-related discourse is important in that it “suggests how to 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 so doing, Johnston reminds us of another feature of cognitive models that, from a rhetorical point of view, brings together frames and rhetoric. Indeed, they are both part of reasoning and argumentation: “all models of cognitive processes share some form of hierarchical organization.” (235). One can then describe what I call “basic” or “fundamental” frames as commonly shared premises and values on which more specific scenarios progressively build on. The concept of a “frame” therefore gains its heuristic potential both by its synthetic power and its descriptive quality.

It should now be clear that, although there is no direct scientific relationship between Perelman and Lakoff, the integration of their theories becomes useful when applied to the analysis of contemporary political communication. The question about how we apply reasoning to values, adjusted by the cognitive perspective of an “emotional rationality” is suitable to deal with the observed ineffectiveness of plain argumentation that gained the attention of the scientific community after the affirmation of “post-truth”, closely linked to Donald Trump’s win and the so-called Brexit vote<sup>9</sup>. The *ethos* of the strong leader against elites and the decadence of the authority card can be interpreted as rhetorical features reflecting the characteristics of populism mentioned above (anti-elitism, anti-pluralism, and recurrent simplification).

This framework, when applied to the study of populist communication, has much in common with the perspective adopted by De Vreese, C. H., Esser, F., Aalberg, T., Reinemann, C., & Staney, J. (2018). First of all, by considering populism from the communication perspective, populism is a matter of degrees rather than a matter of ideological families (see also Bogg and Friedland 2018: 17). Moreover, one cannot “look at the effects of populist communication in isolation, but consideration should be given to the individual and contextual conditions that render some individuals more susceptible to populist messages than others” (De Vreese, Esser, Aalberg, Reinemann, Staney 2018: 11). That is a fundamental assumption of rhetoric. I also agree that populism is not only focused on the underlying “set of basic assumptions about the world” but in particular on “the language that unwittingly expresses them” (Hawkins, Riding, and Mudde 2012: 3 quoted in De Vreese, Esser, Aalberg, Reinemann, Staney 2018: 3). Yet focusing on frames as rhetorical loci, I always link expressions with the basic assumption about what is preferable and what is not. Indeed, from a new rhetorical perspective, it is hard to separate concepts and linguistic expressions. Following Perelman, I also argue that it is complicated to distinguish between leader characteristics and discourse itself, as De Vreese et al. and Engesser, S.,

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<sup>9</sup> See Interest over time on Google Trends for populism, post truth - Worldwide, 2004 - present - <https://g.co/trends/tuH3T>

Fawzi, N., & Larsson, A. do. (1280). The emotions spurred by language are incorporated into concepts and what the orator says and does directly transfer values to the orator or, vice versa, to his acts.

## **2.2 Why Social Media?**

In this study I have chosen to focus on social media communication. The main reason for this is that social media allow one to quantitatively analyse frame usage and ways of self-reference on a large set of texts. Indeed, social media enable one to keep the integrity of a text while analysing it (see also Hank Johnston 1995: 200). Moreover, I underlined aspects of populist communication that are made evident by social media communication. These aspects stand at the crossroads between three aspects of the “online opportunity structure” described by Engesser, Fawzi and Larsson. The first aspect is disintermediation: the “circumvention of traditional opinion leaders” that the online environment frequently allows for (one-step flow of communication, Bennett & Manheim, 2006; Vaccari & Valeriani, 2015, quoted in Engesser, Fawzi and Larsson 2017). The second aspect is the homophily Internet is supposed to enhance, according to Colleoni, Rozza, & Arvidsson, 2014, p. 318, quoted in Engesser, Fawzi and Larsson 2017: 1284). The last and most important aspect regards the populist actors and their charismatic character. According to Engesser, Fawzi and Larsson, Internet “provides the populist actor with opportunities for personalized communication” (1285) and, in particular, as Lee and Jang (2013, quoted in Engesser, Fawzi and Larsson 2017: 1285) demonstrated, people perceive stronger interpersonal contact on social media rather than on news websites.

## **3. Methodology**

### **3.1. Overview**

After having collected social media data, I have defined a set of keywords and topics suitable for circumscribing the topic of labour and industrial relations. I deliberately set the labour and industrial relations issues perimeter as a broad field, including aspects regarding income, income support policies, welfare, taxation on enterprises and workers and regulation. As a preliminary frame analysis, I read all the posts collected and manually tagged those concerning labour issues. The following step consisted of data analysis aimed to lay the foundations for the following rhetorical-framing analysis, providing the general context for the use of the two social media tools by the two leaders. I elaborated the data in order to draw various visualizations for number of posts, engagement and timeline trends. In consideration of the results of this first

analysis I chose to focus on Instagram when conducting my rhetorical-framing analysis.

### 3.2. Data Collection and Processing

Thanks to the collaboration with the Italian start-up Catchy Big Data, I was provided with two datasets of Instagram posts and tweets from Luigi Di Maio and Matteo Salvini, from January the 1st to November the 13th. Data were collected using Instagram and Twitter API. The collection process resulted in two separate datasets for the two social media. Retweets made by the leaders were excluded in order to focus on messages directly attributable to them. I found 311 RTs made by Di Maio and 100 RTs made by Salvini. The two datasets are composed as follows:

Table 1. Overview of collected data by dataset: number of leader's posts by social media.

	Twitter		Instagram	
	User	Posts	User	Posts
Di Maio	@luigidimaio	229	@luigi.di.maio	644
Salvini	@matteosavlinimi	3947	@matteosavliniofficial	1123

Table 2. Sample from Twitter dataset

created_at	user.screen_name	Text	retweet_count
1/1/2018	Matteosalvinimi	Sala strapiena con la Lega stasera a Bormio. Dai che è la volta buona, ho incontrato una marea di gente che non votava più e il #4marzovotaLega. Anche #Gino!	135
2/1/2018	Luigidimaio	Grande tristezza per la scomparsa di Ferdinando Imposimato, magistrato simbolo della lotta alle mafie e alla corruzione, uomo che ha sempre combattuto per la	815

		giustizia. Ci mancherà tanto. Alla sua famiglia va tutta la mia vicinanza. <a href="https://t.co/sfrAqIpG6Z">https://t.co/sfrAqIpG6Z</a>	
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Table 3. Sample from Instagram dataset.

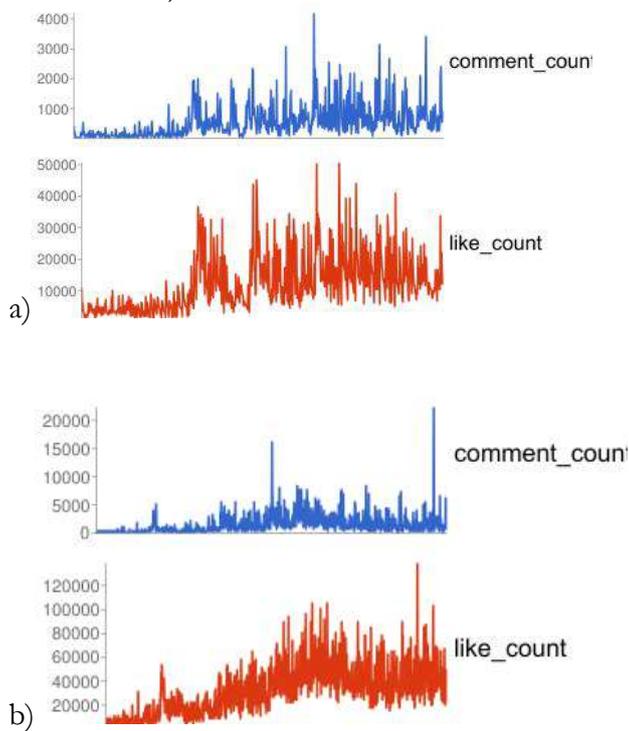
take_n_at	Time	user_username	caption_text	tags	comment_count	like_count
1/1/2018	19:31:14	matteosalviniofficial	Sala strapiena stasera a #Bormio! Dai che è la volta buona, ho incontrato una marea di gente che non votava più ma il #4marzovotaLega Anche #Gino	['Bormio','4marzovotaLega','Gino']	375	6544
1/1/2018	4:03:55	luigi.di.maiorino	Al #circomassimo con un vigile d'eccezione e 😊👏 #BuonAnno #giancarlomagalli #Roma	['circomassimo','BuonAnno','giancarlomagalli','Roma']	129	3627

In consideration of the more similar quantitative use of Instagram by the two leaders, and taking into account the fact that the texts in Instagram posts are

longer than those on Twitter, I opted for the rhetorical-framing analysis of Instagram posts.

With regards to reactions obtained by social media posts, during a preliminary data analysis I noticed that the positive relationship between the number of likes and the number of comments on Instagram was not always verified. This observation suggested treating the two kinds of reactions separately.

Figure 3. Comments and reactions to Instagram posts published by Di Maio a) and Salvini b)



### 3.3 Preliminary Frame Analysis

According to the definition of a “frame” I provided in the theoretical framework, every time the presence of a frame is assumed, we must therefore be able to describe it as a set of entities placed in an ideal space and linked by interaction, even if those entities, spaces and relationships are not explicitly mentioned. In my analysis I focused only on fundamental frames, trying to identify those commonplaces and values explicitly mentioned or implied by the text. Obviously, the first step of my analysis had to deal with the identification of text related to work and labour issues, which meant conducting a qualitative

analysis to detect texts relevant to the research question. I thus went through all the Instagram and Twitter posts I collected, selecting those making reference to the world of work and labour. As mentioned above, I deliberately set the labour and industrial relations issues perimeter as a broad field, including aspects regarding income, income support policies, welfare, taxation and regulation for enterprises and workers. As Johnston affirmed in his 1995 work: “An understanding of the texts as a whole is necessary to place the micro-analysis into context” (221). The texts concerned various types of political actions and policies. Moreover, I took into account texts where a single word or a sentence referred to labour and industrial issues. In so doing, I identified the following macro-frames:

- visits to workers or entrepreneurs in plants or workplaces;
- measures for expenditure cuts;
- expressions of the mission or vision of the party;
- forms of income support;
- retirement-age-adjusting policies;
- prohibitions concerning technical aspects in the employment contract or specific working time;
- repeal of previous deregulation measures regarding employment contracts;
- conditioning of incentives granted to employers/companies;
- provisions for less red tape;
- tax cuts;
- the budget package;
- restoration or implementation of public employment services;
- industrial relations for crisis management;
- institutional forums involving stakeholders from certain productive sectors;
- international summits/visits where Italian firms or industries are involved;
- measures for contrasting counterfeiting;
- measures for tackling corruption;
- trade agreements;
- public investments;
- hires in public employment;
- public funding for local services;
- politician and technician teaming;
- social welfare measures;
- education reforms concerning school-work alternance;
- labour inspection provisions;

- establishment of new institutions;
- international cooperation for foreign local development;

In those texts, labour and production issues are not necessarily addressed by specific policies: in many cases, the author frames an area of intervention and a political purpose. I then tagged selected texts where specific policies or missions were named, identifying the following:

- “Dignity Decree”: this is the name given to the labour market reform conditioning entrepreneurs’ incentives and setting advertising prohibition for the gambling industry.
- Moving beyond the “Fornero law” (more recently “Quota 100”): it identifies the intention of amending the pension reform on the part of the former Minister of Labour Elsa Fornero in 2012. The Fornero Law raised the retirement age and repealed old-age pensions. People’s age and years of contributions should total 100, allowing them to retire earlier.
- Repeal of annuities: the proposed repeal of the annuity for members of parliament.
- “Gold-plated pension” cut: a reduction of the so-called 'gold-plated pensions' (over €5,000 per month).
- Basic income: a proposed scheme for a universal basic income including a reform of public job centers (funding included in the 2019 Budget Law).
- “Basic pension”: a proposed scheme for raising minimum pensions (funding included in the 2019 Budget Law).
- “People's budget package”: this expression is included in the 2019 Budget Law and refers to the basic income and so-called Quota 100 as pillars.
- “Expense meter” and “income meter”: the proposed repeal of the so-called “spesometro” (literally “expense meter”) and so-called “redditometro” (literally “income meter”) considered to be oppressive tools for monitoring enterprises and the self-employed.
- “#Italiansfirst”: the hashtag used during Salvini’s electoral campaign and repeatedly over the first months of the populist government in order to stress the need to give priority to Italian workers and firms.
- Flat tax: a proposed system applying a single tax rate for all the income levels (more recently a dual tax with rates ranging from 15% to 20%).
- Self-employed flat-tax: 15% single tax rate for the self-employed, included in the 2019 Budget Law.

- Bolkstein directive revision: the intention of defending seaside businesses from the effect of the so-called Bolkstein directive, which regulates services within the EU internal market.
- “Sunday closing”: a proposed ban on Sunday shopping in major commercial centers.
- Blockchain Partnership Initiative: Italy taking part in a 27 States cooperation for the establishment of a European Blockchain Services Infrastructure.
- Bekaert negotiations: consultation round at the Ministry of Economic Development aimed to solve the Bekaert industrial crisis.
- Alitalia consultation round: a meeting at the Ministry of Economic Development aimed to solve Alitalia’s industrial crisis.
- Whirlpool consultation round: a meeting at the Ministry of Economic Development aimed to solve Whirlpool’s industrial crisis.
- Consultation on Riders: consultation at the Ministry of Economic Development to promote the dialogue between on-demand economy workers and food delivery companies.
- Talks on Ilva: regular meetings at the Ministry of Economic Development aimed to solve Ilva’s industrial crisis.
- Wage Guarantee Fund: restoration of the Extraordinary Wage Guarantee Fund (“Cassa integrazione guadagni straordinaria”) in case of a business shutdown (a case abolished by the previous labour market reform, the so-called jobs Act).
- “5G Italy” table: consultation round to liberalize the fifth-generation mobile spectrum.
- Ethical code for school-work alternance: a proposed revision of the school-work alternance scheme included in the previous reform of education, the so-called “Buona Scuola” (literally “the Good School”) by defining an ethical code for enterprises involved in this scheme.
- Observatory on disability: establishment of a public observatory on disability, in order to integrate people with disability into the labour market.
- Public banks: proposed establishment of a public funding institute aimed to fund business and start-ups in strategic industries.
- “Contract for families”: a package of measures to support families by social welfare.
- “Corruption wipe out”: draft law, also translated as “bribe destroyer”<sup>10</sup> into English, aimed to ban people convicted for corruption from

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<sup>10</sup> Italy moves against corruption with 'bribe destroyer' bill, [www.reuters.com](http://www.reuters.com), September 6th 2018.

holding public office. It was used to point out corruption as one of the main factors preventing foreign investments.

I then associated macro frames with policy names, as indicated below, in order to assess how many texts were linked to the various policies. Afterwards, I matched quantitative data about policy/actions macro-frames with quantitative data for texts explicitly mentioning a specific policy.

Policy/ action type	Policy names
Visit	
Expenditure cut	Abolition of annuities and reduction of gold-plated pensions
Mission/vision	#italiansfirst
Income support	basic income, basic pension, wage Guarantee Fund
Retirement age adjusting	overcoming the Fornero law, #italiansfirst
Prohibition	dignity decree, Sunday closing
Deregulation repeal	dignity decree
Incentives conditioning	dignity decree
Less red tape	“Expense meter” and “income meter” abolishment, Bolkstein directive revision
industrial relations	Alitalia table, Bekaert table, riders table, Whirlpool table, Ilva table
Tax cut	flat tax, self-employed flat tax
Budget package	people's budget package
Public employment services	basic income
International summit/visit	
Investments	Blockchain Partnership Initiative
Social welfare	people's budget package, contract for families
Funding	public bank

Education reform	ethical code for school-work alternance scheme
Institutional forum	Blockchain Partnership Initiative, 5G Italy
Trade agreement	
Public employment	
Contrasting corruption	corrupted wipe out
Labour inspection	
Contrasting counterfeiting	
New institutions	observatory on disability
International cooperation	

During the last stage of the analysis I read all the tagged Instagram posts once again, focusing on the fundamental frames underpinning the rhetoric of the text and interpreting the preferred nature of proposed policies/action. I finally grouped the rhetorical frames as follows:

**People’s interest vs privileges, waste of resources, or the powers that be:**

in this frame “people” or “citizens” are pitted against political or financial elites, also depicted as the powers that be. Elites are privileged and responsible for wasting financial resources. This frame applies to: expenditure cuts, mission/vision, income support, retirement age adjusting.

Example: “Now the State doesn’t care about protecting those who have privileges and thinks about protecting the weakest. You can cry and rattle as much as you want, but we will not go back. We repeal your annuities” (Luigi Di Maio, 6/29/2018).

**Job stability/employment:** in this frame people live in uncertainty because of unemployment and precariousness. Unemployment and precariousness undermine opportunities to foresee the future. Hence, unemployment and precariousness also account as the main causes for low fertility rates among Italian people. This frame applies to: prohibition, deregulation repeal, incentives conditioning, industrial relations, tax cuts, the budget package, public employment services, public employment.

Example: “The Decree Dignity tackles precariousness to allow Italians, especially the younger ones, to start planning a future. That is, it allows you to

create those conditions that are the basis for doing business, to boost consumption and to create a virtuous circle” (Luigi Di Maio, 7/18/2018).

**Made in Italy/entrepreneurship:** in this frame Italian workers, the self-employed, entrepreneurs and firms as a whole produce goods of higher quality. Italian entrepreneurs are courageous and their activity must be protected on international trade, by bureaucracy and taxation. This frame applies to: less red tape, tax cuts, international summits/visits, investments, trade agreements, contrasting counterfeit.

Example: “Our entrepreneurs, artisans and farmers must be defended to the bitter end. I leave to others Cambodian rice and South American meat. I want to eat and drink ITALIAN!” (Matteo Salvini, 8/13/2018).

**Simplicity:** in this frame, the everyday life of Italian firms is hampered by European or national regulations and high taxation. Less red tape and tax rate cuts are good. This frame applies to: less red tape, tax cuts, the budget package.

Example: “Here at #ConfCommercio2018, with those who produce and resist! Traders, the self-employed, and businesses need fiscal peace, a flat tax, the elimination of the expense meter, the income meter, less bureaucracy. This will be our commitment” (Matteo Salvini, 6/7/2018).

**Dignity vs poverty:** in this frame the dignity of the human being and quality of life is a matter of income. Income has to be supported by the State regardless of one’s working conditions. This frame applies to: prohibition, incentives conditioning, industrial relations, tax cuts, the budget package, social welfare, income support.

Example: “The goal of the future 5 Star Movement government is to give a "basic pension" to those who are below the poverty line. Restoring dignity among the weak in our society is a top priority” (Luigi Di Maio, 1/19/2018).

**Exploitation/profit:** in this frame companies, in particular non-national ones, exploit Italian workers by delocalizing their plant and enforcing collective dismissals or pursuing profits. Companies also generate negative externalities that impoverish people. This frame applies to: visits, income support, prohibitions, deregulation repeal, incentives conditioning, industrial relations, labour inspections.

Example: “It’s time to say ‘enough’ to those ‘grabber’ that exploit our young people. We will no longer be overwhelmed by those companies that take incentives in Italy and then relocate their headquarters to other nations by firing their workers” (Luigi Di Maio, 7/17/2018).

**Right to pension:** in this frame people who have worked a certain number of years or have reached a certain age have the right to retire. The right to retire is a matter of social justice and generational equity and is linked to the right to work of younger people. People have social roles: old-age people have the right to live as grandparents, young people have the right to work building their future securely. This frame applies to: retirement age adjusting.

Example: “We promised you a State where young people can find work and grandparents act as grandparents. The Fornero law is passé: with the #Peoplesbudgetpackage at the age of 62, after decades of work, one can finally retire” (Luigi Di Maio, 10/31/218).

**Generational turnover:** in this frame there is a strong correlation between retirements and job openings for young people. Turnover in jobs is a matter of age. This frame is then frequently linked to the ‘right to pension’ frame and to the ‘job stability/employment’ frame. This frame applies to: retirement age adjusting.

Example: “#STOPFORNERO. With Quota 100, we will give back the right to retirement and life to 400 thousand people, freeing up those jobs for young people. We do not have a magic wand but, as promised, we will dismount the injustices committed against Italians by those who preceded us” (Matteo Salvini, 19/15/2018).

**Innovation:** in this frame scientific and technological development is in itself good and is related to future prosperity. This frame applies to: visits, investments.

Example: “These #Rallies across Italy are making me discover the extraordinary excellence of this country. Small companies that deal with artificial intelligence, which have very high standards of technological innovation, hand-drawing the future of this country” (Luigi Di Maio, 1/3/2018).

**Nationality:** in this frame Italians always have priority in benefiting from politics and economics. Rights are linked to citizenship. Immigration and Europe hampered Italians’ interests. This frame applies to: less red tape.

Example: “The Europe of bankers, the one based on mass immigration and precariousness, continues to threaten and insult the Italians and their government? Don’t worry, in six months they will be fired by 500 million voters! We go ahead. #Italiansfirst” (Matteo Salvini, 10/6/2018).

**Activity:** in this frame being active and looking for a job is good. People must work or look for a job. The State is the only mentioned subject entitled to

nudge and guide people on the labour market. This frame applies to: income support, public employment services.

Example: “Basic income is aimed first and foremost to reorganize employment centers. [...] Because when one of these young (or less young) people looking for a job enters an employment center, he must be able to find an employee who shakes his hand and tells him: "together we will find a way to re-enter the labour market so you can smile and be happy again"” (Luigi Di Maio, 9/12/2018).

**Welfare state:** in this frame the State must support families financially. The State is the main actor when granting people’s welfare. This frame applies to: expenditure cuts, income support, social welfare, public employment, new institutions.

Example: “We need to go back to over 6.5% of GDP in public health spending, increase investment in prevention and digitization, increase the fund for those who are not self-sufficient and invest in staff (just think about nurses: the ratio is 6.1 per one thousand inhabitants, against the EU average of 8.4). It's time to say enough, the state must take care of people.” (Luigi Di Maio 2/15/2018)

**Common interest:** in this frame workers and entrepreneurs work side by side pursuing a common goal that is quality of production. The agreement between workers and entrepreneurs increases Italy’s local production, which is then regarded as an excellence in the world. This frames applies to: visit, prohibition, industrial relations.

Example: “I certainly wanted to do something by merging the Ministry of Economic Development and the Ministry of Labour. I wanted to put companies and those who work for them together [...] because they do not have to stand against each other, but today they team up and brought the #madeinItaly into the world.” (Luigi Di Maio, 6/21/2018)

**Meritocracy:** in this frame people who succeed in achieving best results deserve more opportunities. This frame applies to: social welfare, funding.

Example: “the female employment rate is still too low compared to that of men (in Southern Italy 21.9% of women do not work) and there are still profound differences in terms of pay and career opportunities compared to male colleagues. The road to a true equality at work is still a long one and depends on one aspect: meritocracy” (Luigi Di Maio, 3/8/2018).

**Sustainability:** in this frame, production and jobs creations must be carried out taking into account the consequences on the environment. Production can

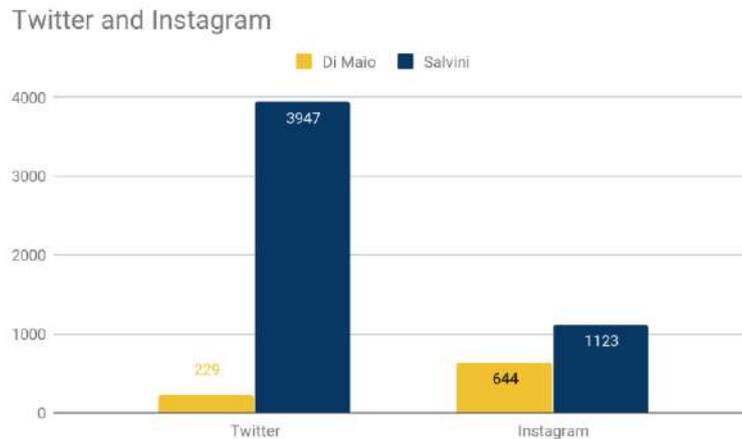
and must preserve the environment. The State can invest in the green economy in order to create green jobs. This frames applies to: visits, investments, public employment.

Example: “The governments that in recent years have encouraged overbuilding, that have not moved a finger against hydrogeological instability, or have not started a serious renovation program, are not only responsible for the environmental destruction, but also for the enormous economic loss. [...] We will show them that we can create hundreds of thousands of jobs by focusing on renewable sources, energy redevelopment, waste recycling, as well as on tackling against hydrogeological instability and land reclamation”. (Luigi Di Maio, 2/21/2018)

## 4. Data Analysis

### 4.1. Volumes and Trends

Figure 1. Overview of collected data by dataset: number of leader’s posts by social media



Different strategies in the use of the two social media emerged when comparing the volumes of the posts published by the two leaders. For 17 times, Salvini published more tweets than Di Maio and twice as many Instagram posts as the Five Star Movement leader (fig.1). The situation is even clearer when social media posts are looked at over time, resulting in Di Maio sometimes overcoming Salvini only by the number of posts published daily on Instagram (fig. 2, fig. 3). One may also note the increasing use of Instagram by Salvini over time.

As mentioned above, in consideration of the more similar quantitative use of Instagram by the two leaders and taking into account that the texts on Instagram posts are longer than those on Twitter, I have chosen to proceed with a rhetorical-framing analysis only on Instagram data.

Figure 2. Leaders' number of tweets by date

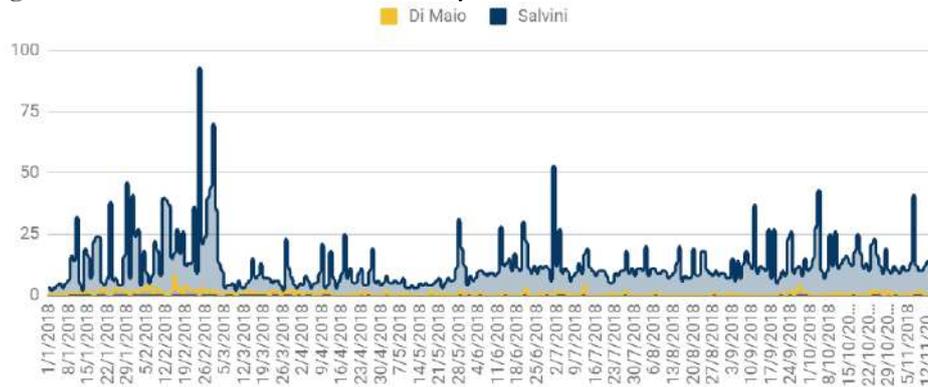
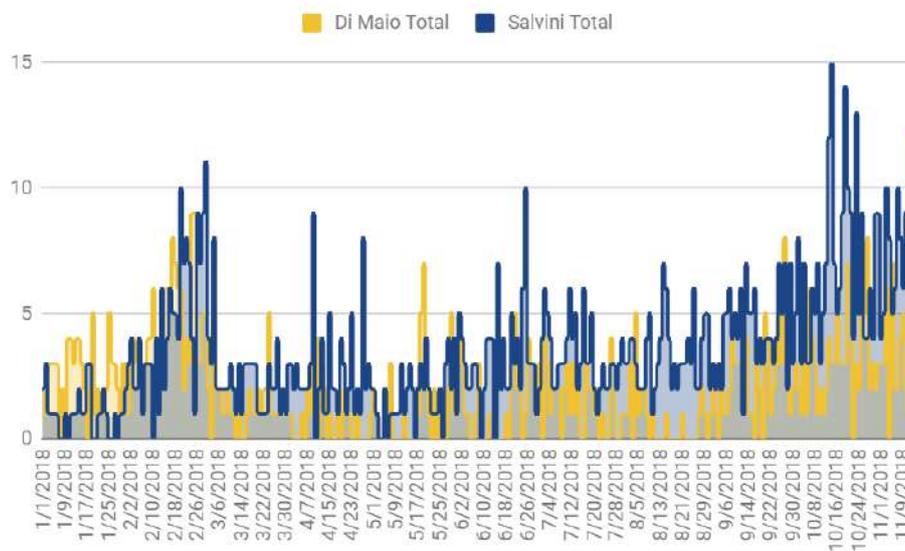


Figure 3. Leaders' number of posts on Instagram by date



Taking into account only the posts related to labour and industrial issues, Salvini tweeted 354 times, while Di Maio made only 36 tweets. The reverse is true on Instagram, where Di Maio posted 185 messages and Salvini just 60. However, in percentage terms, Di Maio still shows a higher percentage of

tweets and posts compared to Salvini. This trend might confirm one's expectation, as Di Maio officially acts as the Minister of Labour and Industry, while Salvini is the Interior Minister.

Figure 5. Total number of posts on Twitter a) and Instagram b) by leader.

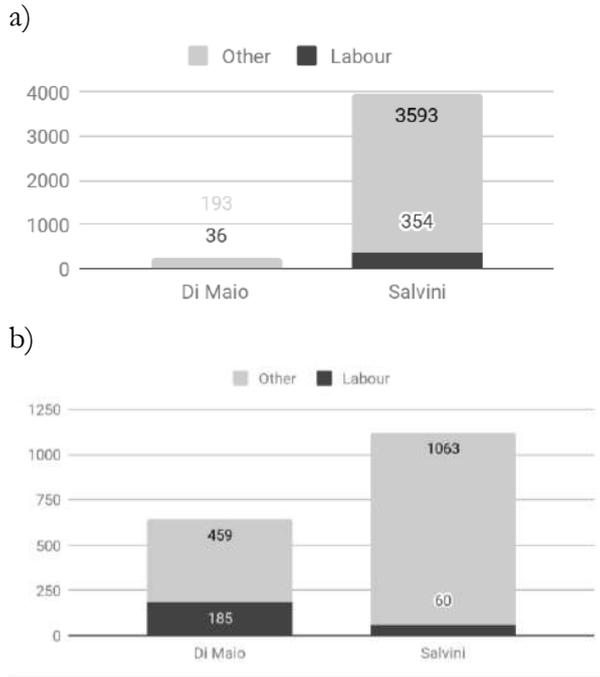


Figure 6. Percentage of tweets by Di Maio (a) and Salvini (b)



Figure 7. Percentage of posts on Instagram by Di Maio (a) and Salvini (b)



As regards the distribution of labour and industrial topic over time, the visits show that Salvini tweeted more intensively during the first two months of the electoral campaign and in autumn 2018 (fig.8). This trend follows that of non-labour-related posts by Salvini (fig. 9). As for Di Maio, this correlation is not as clear as in Salvini's case, due to a low number of tweets (fig.10).

Figure 8. Daily number of labour-related tweets by leader

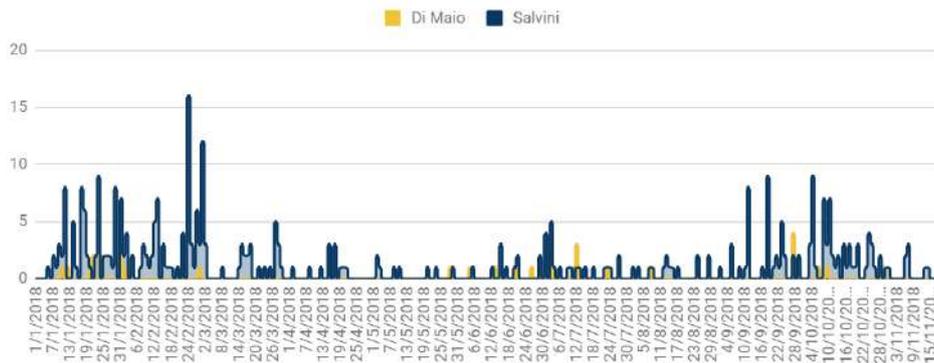
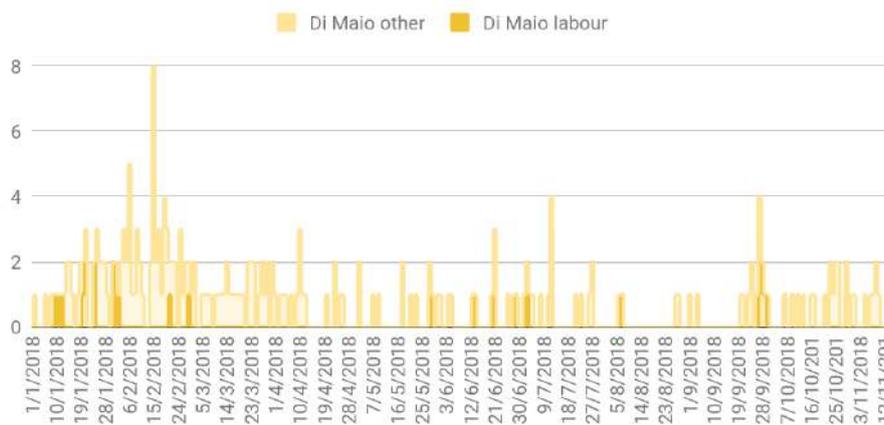


Figure 9. Daily number of Salvini's tweets by topic.



Figure 10. Daily number of Di Maio's tweets by topic.



On Instagram, the opposite trend takes place. Di Maio posted more on labour and industrial issues not only during the first two months of the electoral campaign and in autumn 2018, but also following the approval of the so-called “Dignity Decree” (June and July 2018, fig.11). This trend does not clearly overlap with that of non-labour related posts from Di Maio (fig. 12), an aspect which is clearer in the case of Salvini (fig.13).

Figure 11. Daily number of labour-related Instagram posts by leader.

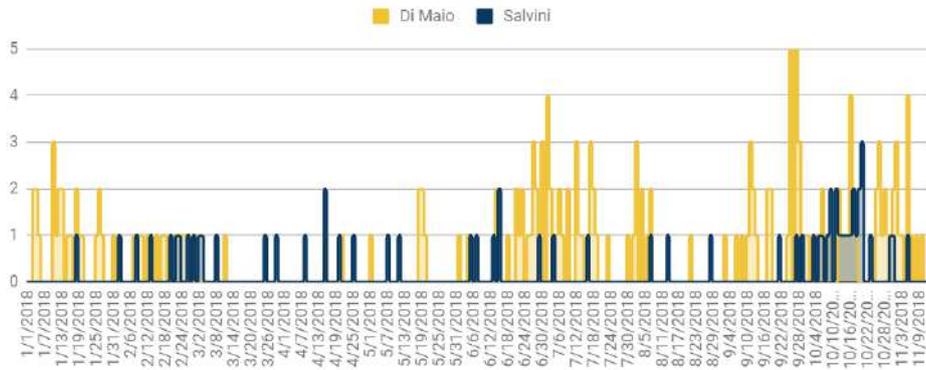


Figure 12. Daily number of Di Maio's Instagram posts by topic

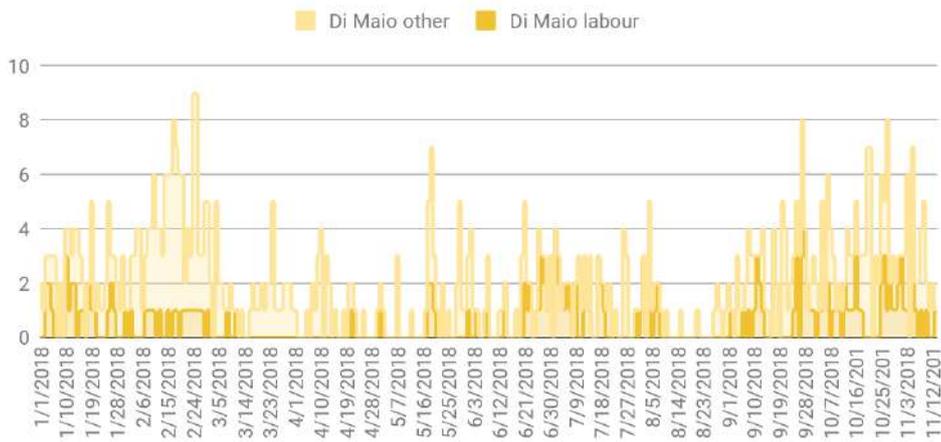
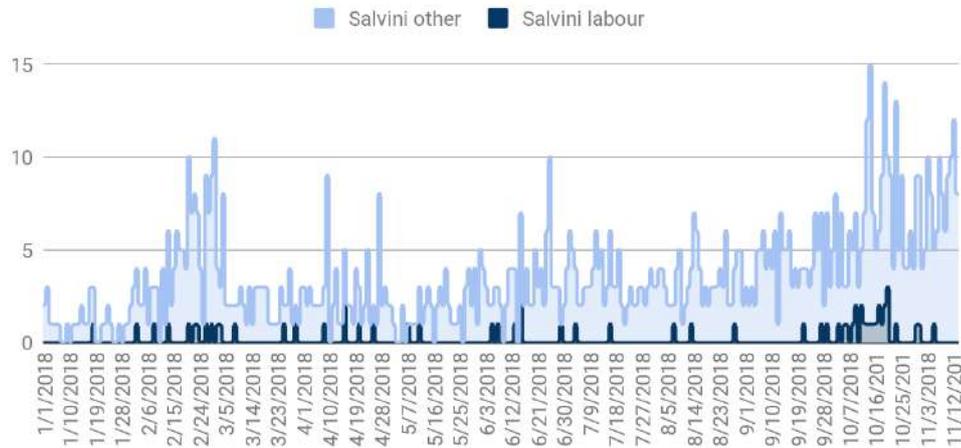


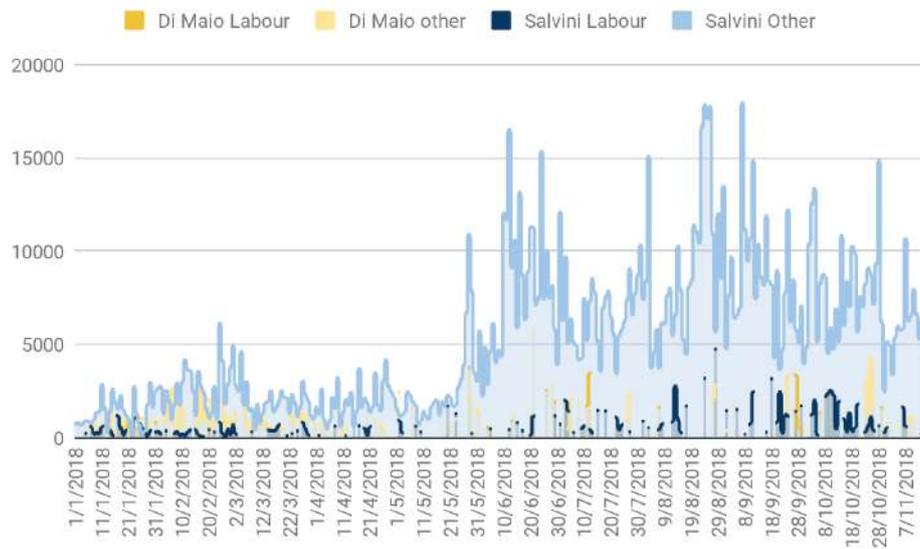
Figure 13. Daily number of Salvini's Instagram posts by topic.



#### 4.2. Engagement and Reactions

As for Twitter, the number of visits over time reveals that, due to the higher number of daily tweets, Salvini received far more retweets (RT) than Di Maio for tweets not related to labour and industrial issues (fig. 15).

Figure 14. Daily RT by leader and topic



Despite the fact that reactions for labour related tweets seem to be quite the same for the two leaders (fig. 16), the average number of retweets (RT) per

tweet shows an opposite trend for the two leaders. Even if he had tweeted less, Di Maio would have collected on average a higher number of RT per tweet. In particular, his tweets related to labour and industrial issues show on average a slightly higher number of RT than those dedicated to other themes (+27%). Conversely, Salvini tweeted far more frequently, but his tweets show a lower number of RTs. In particular, his tweets related to labour and industrial issues indicate a 49% decrease in the number of RT as compared to tweets on other themes (fig. 16).

Figure 15. Daily RT by leader and topic

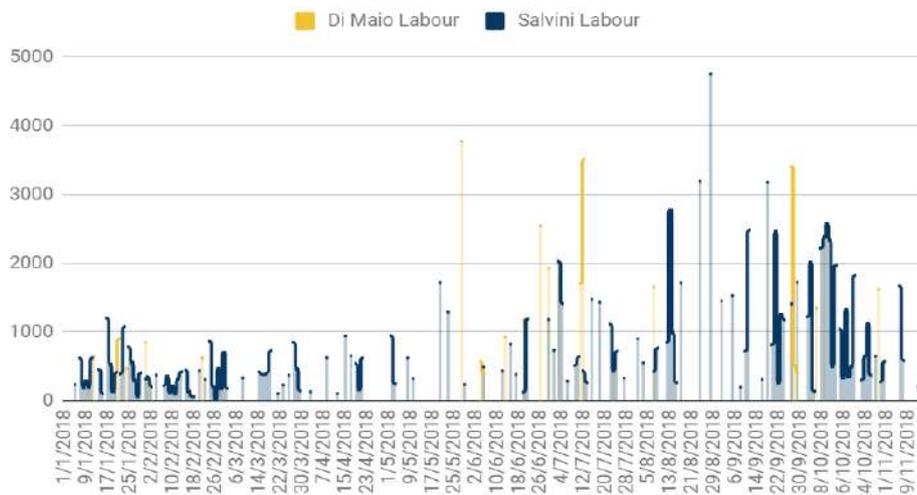
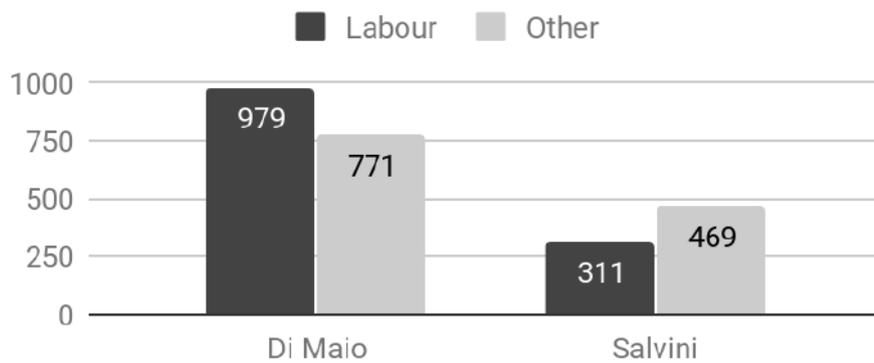


Figure 16. Average RT per tweet by leader and topic.



This state of affairs becomes clearer when comparing the reactions organised by topic over time. While Salvini receives many reactions for posts unrelated to labour and industrial issues (fig. 17), Di Maio sometimes is given more attention for tweets related to labour issues (fig. 18).

Figure 17. Daily RT by leader and topic.

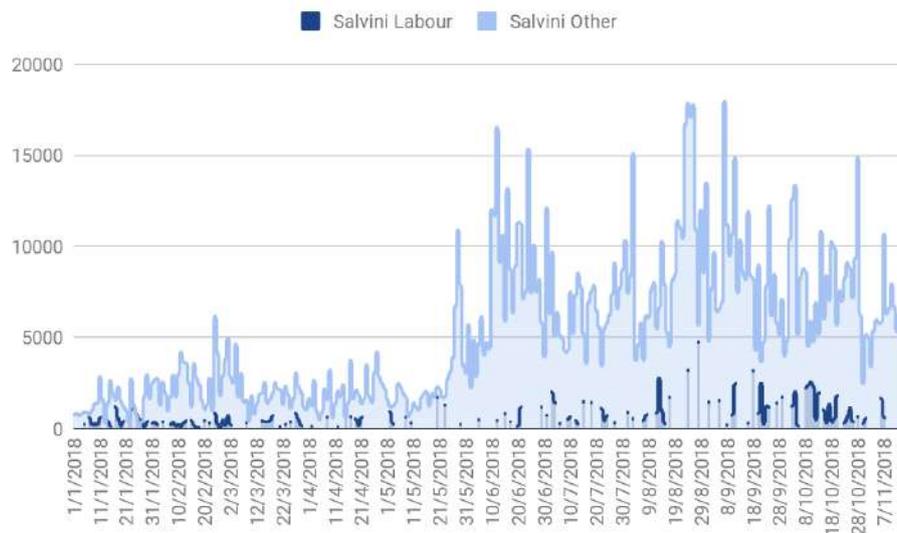
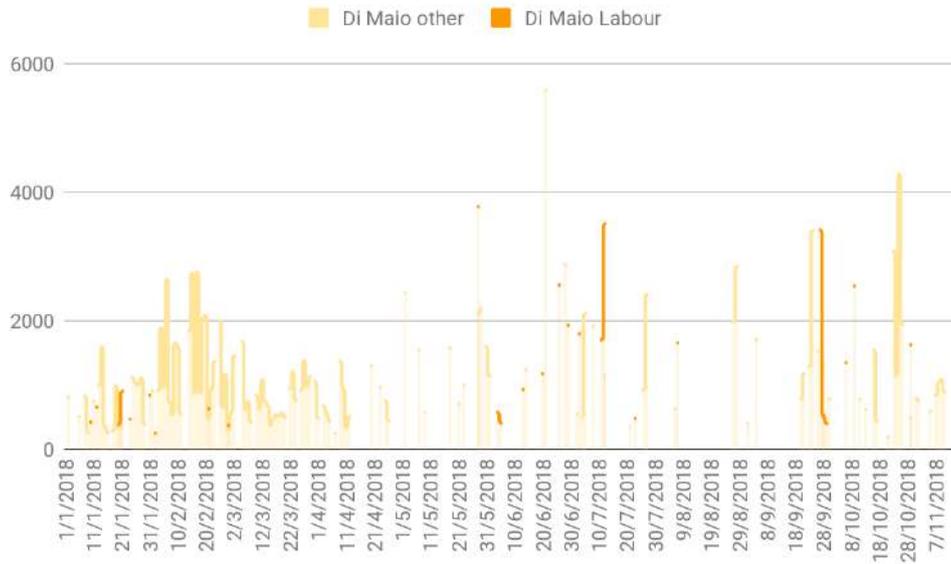
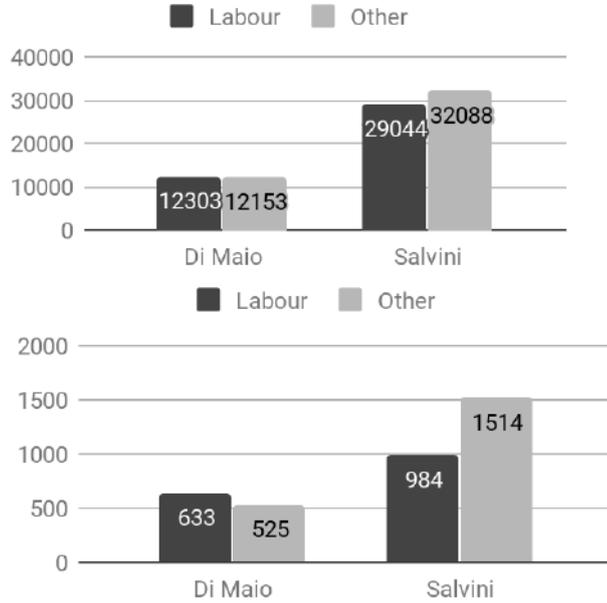


Figure 18. Daily RT by leader and topic



As mentioned in the methodology section, I treated Instagram reactions (comments and likes) separately. Instagram posts are much more liked than commented on. Salvini dominates in terms of average reactions on posts, whether or not related to labour and industrial issues (fig. 19). Conversely, Di Maio receives more comments and likes for posts on labour and industrial issues. Salvini receives fewer likes, reporting a 46% decrease in the number of comments on labour issues.

Figure 19. Average reactions per Instagram post: likes (sx) and comments (dx)



The views over time reveal that Salvini always receives more daily reactions than Di Maio for posts not related to labour and industrial issues, both in terms of likes (fig. 20) and comments (fig. 21). However, reactions for labour related posts report similar values both in terms of likes (fig. 20) and comments (fig. 21) for Di Maio and Salvini. Conversely, Di Maio reports the same number of reactions, both for posts related to labour issues and others and in relation to likes (fig.22) and comments (fig.23).

Figure 20. Daily likes on Instagram posts by leader and topic.

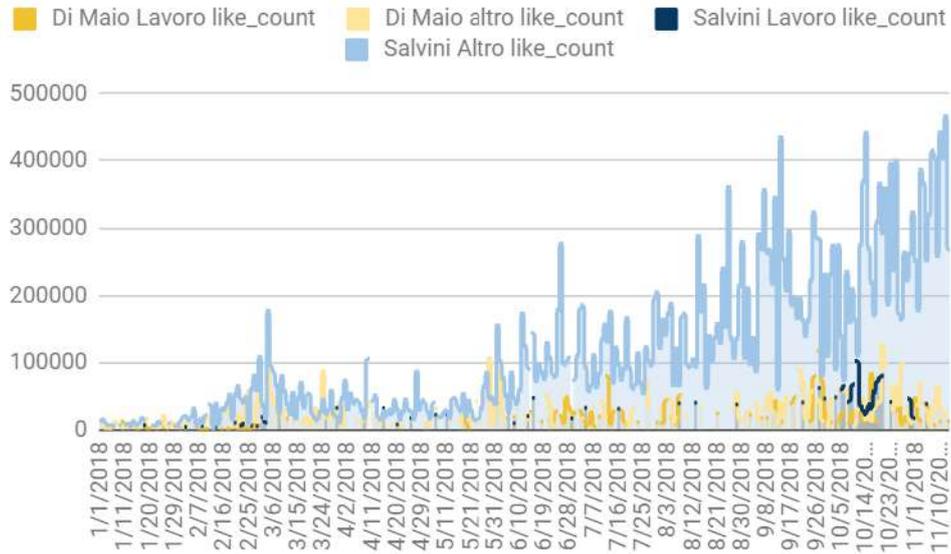


Figure 21. Daily comments on Instagram posts by leader and topic.

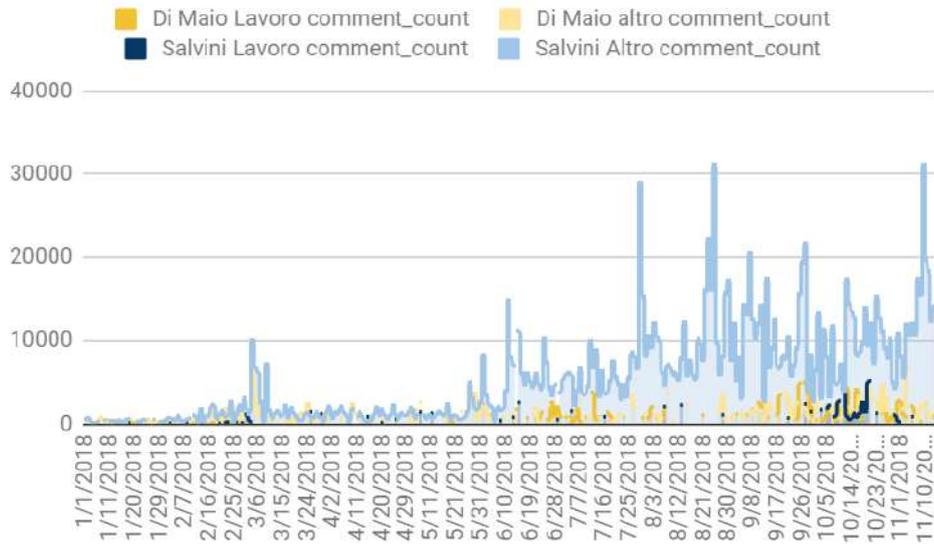


Figure 22. Daily likes on Di Maio's Instagram posts by topic.

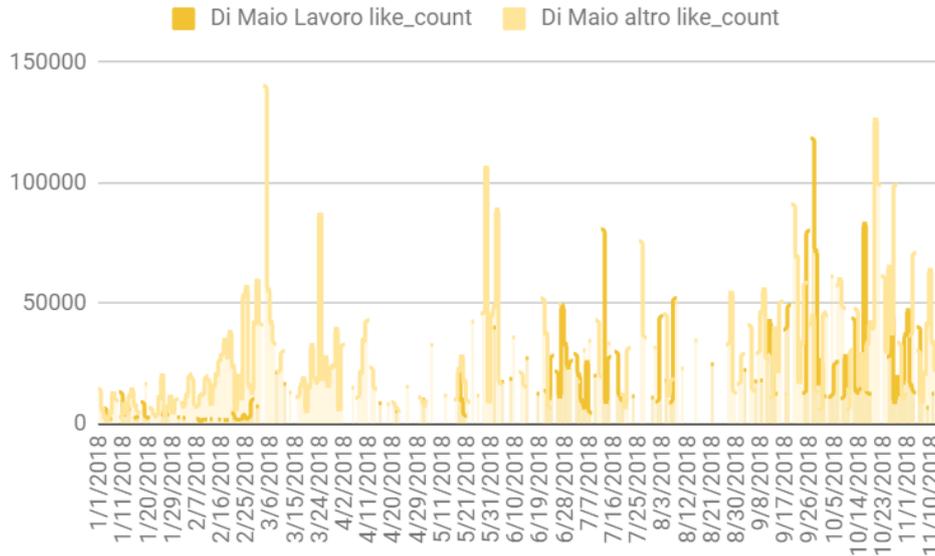
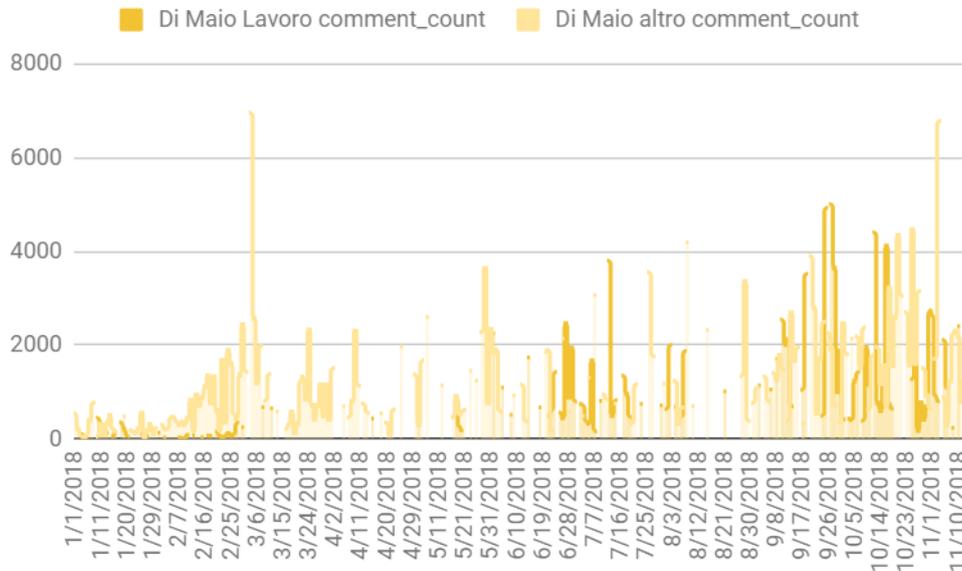


Figure 23. Daily comments on Di Maio's Instagram posts by topic

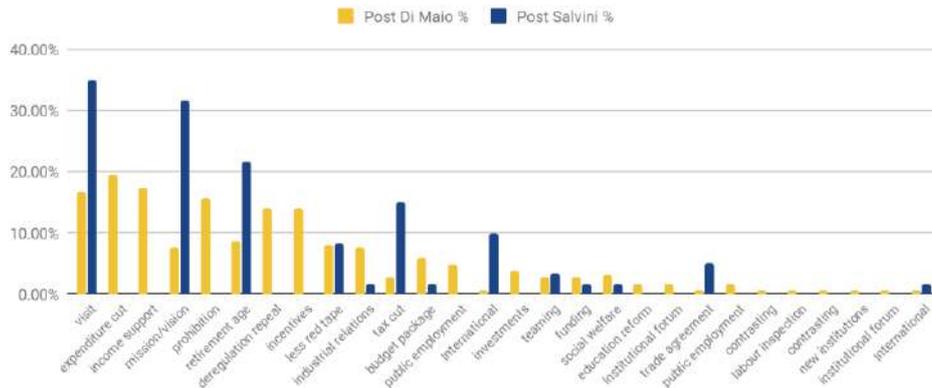


### 4.3. Rhetorical Framing Analysis

The analysis of macro frames for the texts selected from Instagram posts allowed me to assess the distribution of macro-frames organised by leader, as

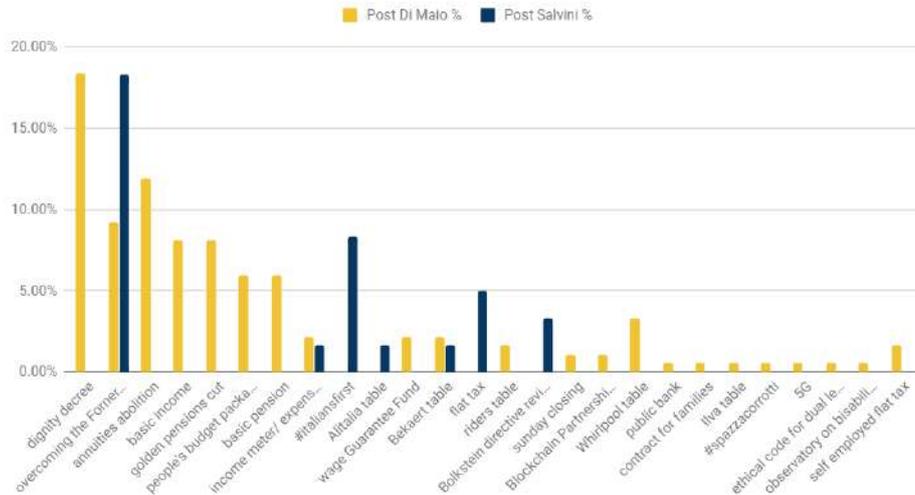
shown in Figure 24. The most frequent macro-frames for policies and political actions used by Salvini on Instagram was “visit”, “mission or vision”, “retirement age”, “tax cut” and “less red tape”. “Visit” and “retirement age” are the most shared macro-frames by the two leaders. However, Di Maio used them almost 50% less than Salvini. In general, and as one might expect, Di Maio used more macro-frames due to his institutional role as Minister of Labour and Industry. Di Maio’s most used macro frames were “expenditure cut” referring to “golden–plate pensions” and “annuities”. In particular, the following macro-frames are used only by Di Maio: “expenditure cut”, “income support”, “prohibition”, “deregulation”, “incentives conditioning”, “public employment services”, “public employment hirings”, “Investments”, “education reform”, “institutional forum”, “contrasting corruption”, “labour inspection”, “contrasting counterfeit”, “new institutions”.

Figure 24. Percentage of Instagram posts using macro-frames for political actions and policies by leader.



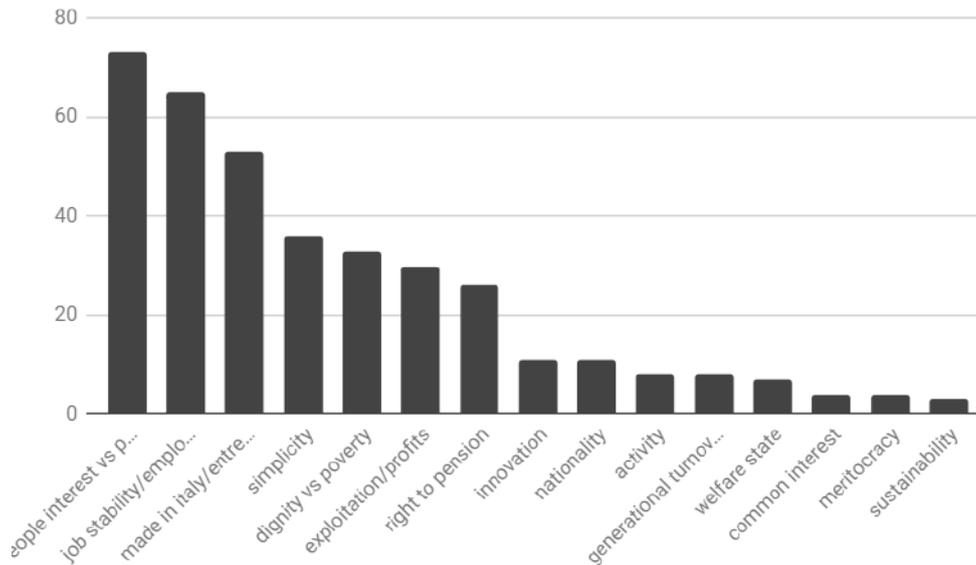
As mentioned in the methodology section, labour and industrial relations issues were not always addressed by policies explicitly mentioned in selected texts. Texts where specific policies or actions are named are distributed by leader, as shown in Figure 25. As one can note, the Dignity Decree and the move away from the Fornero Law account for the same percentage for the two leaders. Di Maio mentioned the repeal of the Fornero Law half the number of times Salvini did, who only referred to “income meter/ expense meter abolishment”, “#italianfirst”, “Bekaert table”, “flat tax” and “Bolkstein directive revision”.

Figure 25. Percentage of Instagram posts naming specific policies or actions by leader.



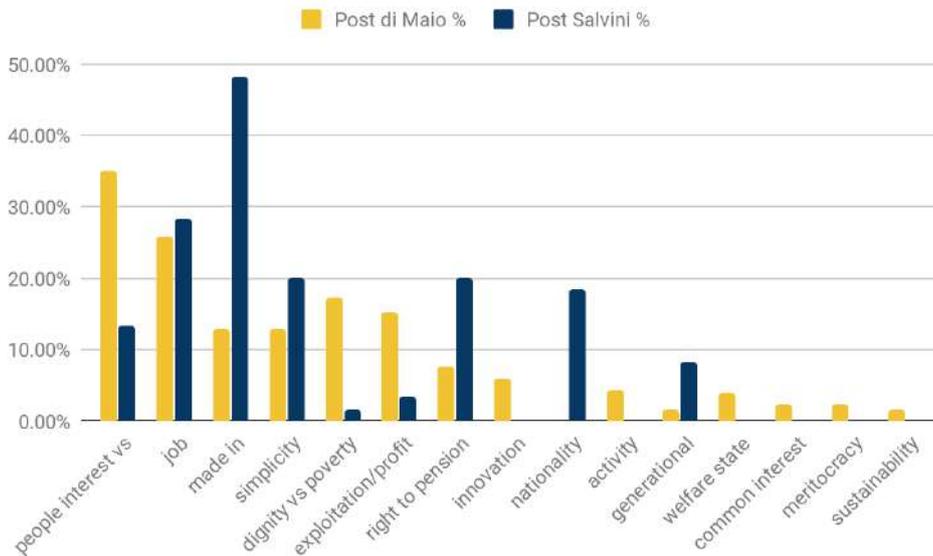
Finally, in the last stage of analysis I found that fundamental frames underpinning the rhetoric of the post and implying the preferability of the proposed policy/action were employed, as shown in Figure 25. This aspect can be regarded as a picture of the rhetorical composition of the populist discourse on labour and industrial relations in Italy. The most employed frame is the “people vs elites” frame, then comes the “job stability and employment” frame. The Made in Italy/entrepreneurship frame comes third, while “innovation”, “activity”, “welfare state”, “common interest”, “meritocracy” and “sustainability” are used less. The low number of occurrences for “nationality” and “generational turnover” may be surprising, but it has to be taken into account that in the dataset made up of posts on labour and industry, the former always combines with the “people vs elites” frame, while the latter is always used along with the “right to pension” frame.

Figure 26. Instagram posts employing fundamental frames.



The examination of the frame distribution by leader allows one to note that rhetorical frames are more frequently shared than references to macro-frames and policies/actions. In particular, only “innovation”, “activity”, “welfare State”, “common interest”, “meritocracy” and “sustainability” were used by Di Maio on an exclusive basis. Yet the share of texts employing fundamental frames reveals significant differences in their rhetoric. In particular, Salvini used the “people” frame in 13% of his posts, while Di Maio did so in 35% of cases. Conversely, 48% of Salvini’s posts employ the “Made in Italy/entrepreneurship” frame, while Di Maio just employed the latter in 13% of cases.

Figure 27. Instagram posts employing fundamental frames by leader.



## 5. Conclusions

This study has started from two assumptions. The first one is that many recent studies have investigated the relations between labour market and populism, concluding that growing income and wealth inequalities prompted voters – especially those from depressed areas – to vote for populist parties. Secondly, little research has been conducted in order to compare populists’ agenda on the specific topics of work and labour. This article then aimed to describe how leaders identified as populists frame the issue of the labour market on social media in Italy. In order to carry out this analysis, an *ad hoc* theoretical framework was set. Through it, I interpreted the framing analysis from the perspective of the new rhetoric, concluding that fundamental frames – which I also call rhetorical frames – can be assimilated to rhetorical loci (“commonplaces, premises, fundamental values and their hierarchies”. Perelman, Olbrechts-Tyteca 1958 [2001, 90]).

The social media data collected thanks to Catchy Big Data were subsequently analysed in terms of volumes, trends, reactions, then combined with rhetorical-frame analysis. Different strategies in the use of these two social media emerged at first, as well as different results in terms of engagement regarding labour-related posts. On 17 occasions, Salvini published more tweets than Di Maio and twice as many Instagram posts as the Five Star Movement leader (fig.1). Salvini also used Instagram more frequently over time. Due to the

higher number of tweets and Instagram posts, Salvini always receives more daily reactions than Di Maio for tweets not related to labour and industrial issues. However, the average number of retweets (RTs) per tweet shows an opposite trend for the two leaders. For tweets on labour and industrial issues, Di Maio reports a slightly higher number of RTs than for tweets on other themes (27% more). Conversely, Salvini's tweets related to labour and industrial issues report a 49% decrease in the average number of RTs, when compared to tweets on other themes (fig. 17). On Instagram we observe the same dynamic, even if the gap is different. Di Maio receives more comments and likes for labour and industrial related posts. Conversely, Salvini receives a lower number of likes and reports a 46% decrease in comments to labour related posts. My analysis suggests that labour can be regarded as a core issue, engaging people more than other topics only when leaders have chosen labour as their main field of discussion (Di Maio's case).

Rhetorical-framing analysis revealed more evident differences in the rhetoric expressed by the two leaders. In terms of rhetorical frames, Salvini used the "people" frame in 13% of his posts, while Di Maio did so in 35% of his comments. Conversely, 48% of Salvini's posts employed the "Made in Italy/entrepreneurship" frame, while Di Maio employed it in 13% of cases. I then argue that, taking into account the purpose of this research, it is difficult to operate within a framework that wants to treat actors and language separately as De Vreese, Esser, Aalberg, Reinemann and Stanyer suggested (2018).

Nevertheless, it is worth underlining some evidence that applies to both leaders, enabling one to draw a picture of labour and industrial relations issues as framed by Italian populism. First of all, both leaders use Instagram intensively for promoting themselves through posts about their visits to workers, entrepreneurs and social bodies. "Visit" is the most communicated action by Salvini and it almost ranks first among Di Maio's most used macro-frames. "Made in Italy", "simplicity" and "right to pension" are the most commonly used frames. Moreover, "job stability" is employed by the two leaders. Finally, the "people vs. elites" is the most employed frame of all. Labour and industrial relations issues then appear to be fully functional to feed the traditional populist rhetoric that pit "people" or "citizens" against political or economic elites. I argue that this conclusion supports the need to take into account labour as a fundamental dimension of citizenship, thus connecting political discourse and the representative democracy that builds on it. Representation of work issues by Italian populism falls short of novelty in terms of framing, even when Di Maio communicates the issue of gig-workers and the platform economy. Limited effort is made by Di Maio and Salvini to draw an alternative vision of the relation between work and capital. Only on

another occasion did Di Maio try to reassert unity and common interest between workers and entrepreneurs. Steady jobs as a value is promoted by Di Maio much more than the need to reform and implement active policies for the labour market. Limited attention was given to the communication of policies regarding public investments and incentives to scientific and technological innovation.

Based upon these findings, further research could be conducted both on these two datasets and on others, comparing the former with new data. With regard to the two current datasets, there are several hypotheses to verify. Firstly, by reading the posts, one can observe the recurring contradiction in Di Maio's framing praising Italian producers on the one hand, and blaming big enterprises for pursuing profits at any cost, on the other hand. Sometimes this happens within the same text, where Di Maio tries to distinguish between proper entrepreneurship and profit exploitation. These posts could be counted and analysed in more detail.

Moreover, in Di Maio's posts the monopoly of the State appears to be frequently implied. No private action allowed for active policies and welfare at all. Texts containing this message could be measured and analysed deeply in their rhetoric.

Furthermore, Salvini focused on national interest and made mention of employment and immigration issues in the same text. Even if the two issues are not logically linked, a correlation may be inferred by the readers. Moreover, in Salvini's texts, labour is linked to Made in Italy, with no reference to profits and exploitation. The elite addressed by Salvini is not an economic but a political or a financial one, especially with regards to European institutions and banks. The measurement of the recurrence of these frames in Di Maio's and Salvini's posts can be used to assess what Abts & Rummens argued in 2007 (418), namely that while right-wing populism tends to define people as a nation, left-wing populism rather conceive them as a class.

In relation to the possible comparisons to be carried out between the two datasets and others, Di Maio appears to be less emphatic than his speeches do, as far as media messages are concerned. Statements where Di Maio compares banks to Mafia, private work agencies to gangmasters or where he links precariousness with the consumption of antidepressant drugs do not find corresponding posts on Instagram. Speeches on labour by Di Maio could then be analysed from this perspective.

Moreover, many aspects of the rhetoric of Di Maio on labour and industrial relations can signal a continuity with the discourse from the former premier Matteo Renzi about the so-called Jobs Act. "Scraping" and "the Government of change", the choice of employment as a field to approve their first reform, the value of Job stability, weak promotion of active policies, polarization with

enemies are all features that could be compared with data from Renzi's addresses.

Looking for an opposite trend, in the Italian case one could also find signs of what Kriesi and Pappas argued in 2015: the effect of government experience on populist parties leads to "a moderation of their discourse, leading these parties to behave in a more similar way to mainstream political parties" (Kriesi H. 2015 p.). Another important aspect concerns trade unions, directly challenged by Renzi during his government, but almost ignored by Di Maio and Salvini (only 4 mentions in the two datasets examined). The simplified representation of "The people" prompted by populist parties threatened especially those unions aiming at representing labour as a general issue, a matter of class (namely CGIL) rather than as sectors or trades. Indeed, as the political theorist Jan-Werner Muller pointed out (2016: 27), populism conceives 'The people' as a "mystical 'substance' or 'spirit', rather than as a genuinely plural or aggregative concept". Besides those published on social media, the Italian, "bi-populist" government also launched contradictory messages towards trade unions, by praising them on the one hand, and by attacking CGIL on the other hand. More generally, the Italian case raises the question as to whether the Italian pluralist movement can push trade unions to act in unity in order to defend pluralism itself from populist simplifications and disintermediation.

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# The Right not to Join a Trade Union in the Case Law of the ECtHR

Stefan Stanev <sup>1</sup>

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## **Abstract**

**Purpose** – The purpose of this paper is to show the link between trade union activity and the ECtHR practice.

**Design/methodology/approach** – An analysis has been carried out of some decisions of the ECtHR

**Findings** – The relationship between trade union activity and the functions of the ECtHR has been examined.

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

**Originality/value** – The paper explores the link between labour law and the European Convention on Human Rights

**Paper type** – Conceptual Paper

**Keywords** – *Labour Law, The European Convention on Human Right, Trade Unions*

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Article 11 of the European Convention on Human Rights (“ECHR”) protects the human right to freedom to form trade unions, as a type or as a special aspect of the right to freedom of assembly and association.

The expression “for the protection of his interests”, included in Article 11, shows that “the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible”.

The State has a positive obligation to safeguard the rights of individuals and the trade unions against employers and to protect individuals from abuse of power by the trade unions.

The negative obligation of States not to interfere with the individual freedom of association of trade unions is enshrined in paragraph 2 of Article 11, the first sentence of which permits restrictions on certain grounds, whereas the second sentence permits restrictions on the exercise of Article 11 rights by members of the armed forces, of the police or of the administration of the State.

It is important to note that the right to freedom of association under Article 11 is supplemented by similar provisions in the respective Conventions of the International Labour Organization and the European Social Charter. The Court in Strasbourg takes into consideration the safeguards laid down in these instruments in accordance with their interpretation by the respective law enforcement bodies, and generally interprets the Convention in accordance with them.

Therefore, it should be observed that according to Article 11 everyone has the right to form and to join a trade union, regardless of whether they are employed under a contract of employment or self-employed. Moreover, individuals must be free to form and to join a trade union of their choice. The State is prohibited from forming and favouring only one trade union, membership of which is compulsory for the respective individuals.

The concept of freedom of association also includes the freedom NOT to join a trade union (a negative aspect of the freedom of association). Precisely this issue will be discussed in this article.

Compulsory membership of (or being compelled to join) a trade union is not explicitly governed by the Convention on Human Rights. But this should not imply that this negative aspect of the freedom of an individual to refuse to join a trade union remains completely outside the scope of Article 11 and that any coercion would be compatible with the purposes of this provision. Such an interpretation would undoubtedly be contrary to the very substance of the right to freedom of association, safeguarded by the Convention on Human Rights.

Thus, for instance, according to the practice of the Committee on Freedom of Association in the Governing Body of the International Labour Organization, compulsory membership of trade unions is incompatible with Conventions C087 and C098 (the former concerning freedom of association and protection of the right to organise, and the latter concerning the application of the principles of the right to organise and to bargain collectively).

Furthermore, compulsory membership of a trade union also does not exist according to the laws of most States-parties to the Convention. On the contrary, a large number of domestic legal systems set out safeguards that secure the negative aspect of the right to freedom of association in one way or another, *i.e.* the freedom of every individual not to join a trade union, or to leave a trade union.

Moreover, on 24 September 1991 the Parliamentary Assembly of the Council of Europe unanimously adopted a recommendation to include one sentence with the same meaning in Article 5 of the European Social Charter on 1961. Even in the absence of an explicit provision, the Committee of independent experts, formed to control the application of the Charter, considers the negative right to be included in this act.

Regardless, the Court in Strasbourg has had the opportunity to consider several cases regarding the right not to join a trade union. These cases concerned “closed shop” agreements, applicable to several European states. In the United Kingdom, the institution of the “closed shop” is of very long standing. In essence, this is an undertaking or workplace in which, as a result of an agreement between one or more trade unions and one or more employers or employers’ associations, employees of a certain class are in practice required to be or become members of a specified union. The employer is not under any legal obligation to consult or obtain the consent of individual employees directly before such an agreement is put into effect.

These agreements vary considerably in their form and content. One distinction that is often drawn is that between the pre-employment contract, under which the worker must join the trade union in order to be employed (“pre-entry” shop), and the contract after employment commences, under which he must join within a reasonable time after being engaged (“post-entry” shop).

The “closed shop” hypothesis was first considered in the case of *Young, James and Webster v UK*. The three applicants applied to the Commission on Human Rights with identical complaints, relying on Articles 9, 10 and 11 of the Convention. They submitted that the enforcement of the Trade Union and Labour Relations Act 1974 and the Trade Union and Labour Relations (Amendment) Act 1976, allowed their dismissal from employment despite the reasonable grounds of their objections to joining a trade union, which constituted an interference with their freedom of conscience, expression and

association with others against which they had no effective safeguard (Article 13 of the ECHR).

The Court emphasised that, in proceedings originating in an individual application, it had, without losing sight of the general context, to confine its attention as far as possible to the issues raised by the concrete case before it. Accordingly, the Court limited its review to the consequences which the “closed shop” agreement had had for the applicants, without examining its substance, including the alleged by the government positive effects for the workers.

As a consequence of the agreement concluded in 1975, the applicants had been faced with the dilemma either of joining one of the specified trade unions, or of losing jobs for which union membership had not been a requirement when they were first engaged and which two of them had held for several years. The applicants regarded the membership condition as an interference with the exercise of their right to freedom of association, and they did not approve of the policies of the respective trade unions.

In the Court’s opinion, such a form of compulsion, in the circumstances of the case, struck at the very substance of the freedom guaranteed by Article 11. For this reason alone, there had been an interference with that freedom as regards each of the three applicants.

An individual does not enjoy the right to freedom of association if in reality the freedom of action or choice, which remains available to him, is either non-existent or so reduced as to be of no practical value.

Having regard to all the circumstances of the case, the ECtHR held that the detriment suffered by the applicants went further than was required to achieve a proper balance between the conflicting interests and could not be regarded as proportionate to the aims being pursued.

The Court attached great significance to the fact that the consequences for the applicants had been so grave as to strike at the very substance of the negative right to freedom to join a trade union.

In the *Sorensen and Rasmussen v Denmark* case the two applicants accepted employment in the knowledge that their employers, who had entered into “closed shop” agreements, required them to have the compulsory membership in a specific trade union. The applicants objected to the membership in it because they did not support the political views of the union.

The first applicant was dismissed when he stated that he did not wish to pay the membership fees of the trade union, whereas the second applicant joined the trade union in order to get the job, but disputed the compulsion to become a member.

The Court reiterated its conclusion from the *Young, James and Webster* case that even though the right not to join a trade union is not absolute, the

compulsion to join a trade union, which “struck at the very substance” of the right, was an interference with the right to freedom of association under Article 11 of the Convention. “The very substance” of the right could be infringed both in cases of pre-employment “closed shop” agreements, and in cases of agreements concluded after commencement of employment.

It can be concluded from the judgments of the ECtHR that the Court would find there to be a violation of Article 11 if there exists an overpowering duty on the employees. This would be the case when a specific interested party’s significant interests are affected, for example, by dismissal or another disciplinary action.

# Employer Association Fragmentation and Decentralization of the Collective Bargaining Structure in Italy

Francesca Bergamante, Manuel Marocco<sup>1</sup>

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## Abstract

**Purpose** – The purpose of this paper is to provide an analysis of the collective bargaining trends in Italy, using data from the INAPP-RIL survey conducted on a sample of approximately 22.000 Italian firms.

**Design/methodology/approach** – In the first part, the analyses data from 2005 to 2015, focusing on multi-employer and single-employer bargaining, with particular regard to employer association membership. In the second part, single-employer bargaining in 2015 is investigated, examining data by firm size, economic sector and geographical area.

**Findings** – The share of firms with at least one employee applying a multi-employer collective agreement grew from 2010 to 2015, while in the same period employer association membership decreased. In those years, the share of firms applying firm-level agreements did not increase, and second-level bargaining mainly depended on business dimension and economic sector.

**Research limitations/implications** – This research proposes an empirical framework and calls for an in-depth analysis concerning the possible effects of employer association fragmentation on Italian collective bargaining.

**Originality/value** – Compared to other analyses, the empirical evidence collected provides additional information: multi-employer bargaining has continued to be applied outside of an association membership logic.

**Paper type** – Research paper

**Keywords** – *Italy; Collective Bargaining; Employer's Associations; Collective Agreement; Decentralization.*

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## 1. New European Economic Governance, Wage setting and the Collective Bargaining System in Italy

The Italian collective bargaining system has been, for a long time, at the centre of attempts aimed to promote its greater decentralization, since the adverse effects on national macroeconomic performances are ascribed to its excessive centralization<sup>2</sup> or any way to its two-tier bargaining structure.<sup>3</sup>

Over the years, the main actors of the industrial relations system have pursued, in different moments and often with contrasting objectives, such greater decentralization.<sup>4</sup> Starting from 2009, social partners began entering into a series of autonomous cross-sectoral agreements regulating the relations between the different collective bargaining levels. Progressively widening the competences of the second level,<sup>5</sup> at the same time, also the public actor

<sup>2</sup> Recently, with regard to the Italian case, see the International Monetary Fund (A. Kangur, *Competitiveness and Wage Bargaining Reform in Italy*, IMF Working Paper, 2018, WP/18/61, <https://goo.gl/wNR5SR>). Also OECD (see Oecd, *OECD Employment Outlook 2017*, OECD Publishing, Paris, 2017, [http://dx.doi.org/10.1787/empl\\_outlook-2017-en](http://dx.doi.org/10.1787/empl_outlook-2017-en)) continues to place Italy (along with Slovenia and Portugal) among the Countries whose structure remains centralised, as firm bargaining is substantially restricted and regulated in a precise manner by higher level agreements.

<sup>3</sup> See P. Tomassetti, *From fixed to flexible? Wage coordination and the collective bargaining system in Italy*, in *International Journal of Comparative Labour Law and Industrial Relations*, 2017, Volume 33, number 4, pp. 527–552. According to the tripartite agreement of 23 July 1993, the Italian collective bargaining system has been two-level and articulated hierarchically, with priority given to national industry-level collective labour agreements, followed by company-level agreements, or, alternatively, territorial agreements, where firms are too small and there are no workers' representatives. For considerations on this structure, T. Boeri, *Two-Tier Bargaining*, IZA DP No. 8358, in IZA Discussion Paper No. 8358, July 2014, <https://goo.gl/846G2J> and T. Boeri, *Perverse effects of two-tier wage bargaining structures*, in *IZA World of Labor*, 2015: 101, doi: 10.15185/izawol.101 <https://goo.gl/6ZiRaq>

<sup>4</sup> According to G.A. Recchia, *The future of collective bargaining in Italy between legislative reforms and social partners' responses*, Paper for 11th ILERA European Congress, Milan, Italy, 8 September 2016-10 September 2016, <https://goo.gl/KJLGfE>, legislation and social partners «move in parallel and potentially divergent lanes of disorganized for the former and coordinated decentralization for the latter» (p. 14).

<sup>5</sup> The latest signed on 9 March 2018 (<https://goo.gl/WTLwwt>), for a first comment see F. Liso, *Qualche erratica considerazione sul recente accordo interconfederale Confindustria, Cgil, Cisl e Uil del 9 marzo 2018*, in *Bollettino Adapt*, 23 aprile 2018, <https://goo.gl/WEcDHm>. For a reconstruction of the content of the agreements entered into between 2011 and 2014 see S. Leonardi, M.C. Ambra, A. Ciarini A, *Italian collective bargaining at a turning point*, in WP CSDLE “Massimo D’Antona”.INT – 139/2017, <https://goo.gl/8FLx5B> and M. Pallini, *Italian Industrial Relations: Toward a Strongly Decentralized Collective Bargaining*, in *Comparative Labor Law and Policy Journal*, 2016, Volume 38, Number 1, 2016, pp. 1-22. The social parties were driven to reach this sequence of agreements also due to the Fiat case in 2010, that is due to the radical attempt of the most important Italian engineering company to develop an alternative system of

started to introduce both hard legislative interventions on the hierarchy of collective bargaining levels and soft policies providing economic incentives for second-level bargaining (see *infra* §. 3.3).<sup>6</sup>

Indeed, decentralization is a consolidated and global trend began in the 1980s, that intensified in the 1990s, to then find stabilization in the ten years before the great recession, and which now has been once again stirred up by the crisis.<sup>7</sup> In fact, according to the OECD (OECD, 2017), the global panorama is characterized by the predominance of single-employer bargaining in two-thirds of the Member Countries; whereas, multi-employer bargaining continues to play a significant role only in Continental Europe.<sup>8</sup>

Recently, an “exogenous” factor added to this consolidated process: the New European Economic Governance (NEEG).<sup>9</sup> According to the NEEG, sectoral and multi-employer bargaining cause “labour market rigidity”<sup>10</sup> as they slacken the process aimed at aligning wages to productivity.<sup>11</sup> Consequently, since the Euro Plus Pact of 2011, the European institutions have been suggesting «(...) to review the wage setting arrangements, and, where necessary, the degree of centralization in the bargaining process (...)».

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collective bargaining, by exiting the system of the Employers’ Association. To such regard, see M. Biasi, *Statutory Employee Representation in Italian and US Workplaces: A Comparative Analysis of the Fiat/Chrysler Case*, in *Labor Law Journal*, 2015, 4, 233-255.

<sup>6</sup> See T. Treu, *La contrattazione collettiva in Europa*, in *Diritto delle Relazioni industriali*, 2018, n. 2/XXVIII, pp. 372-411. Reference is made, on the one hand, to Art. 8 of Law No. 148/2011, that ascribes to the second-level agreement (“proximity contracts”) broad powers of derogation to the national collective labour agreement or to the law (see M.D. Ferrara, R. Nunin, *European Economic Governance And Its Impact On The Collective Bargaining System: The Italian Case*, in *Revista Iberoamericana De Relaciones Laborales*, 34, pp. 25-34), and on the other hand, to Art. 51, Lgs.D. No. 81/2015, which gives the collective agreement of any level the power to integrate the legal rules with regard to atypical agreements (see M. Pallini, *op.cit.*). According to T. Treu, *op. cit.*, 390, also in this second case the traditional hierarchy of the sources is altered, due to the indistinct reference to the various levels of collective bargaining.

<sup>7</sup> See J. Visser, *What happened to collective bargaining during the great re-cession?*, in *IZA Journal of Labor Policy*, 2016, 5:9, <https://goo.gl/XGqv6p>

<sup>8</sup> See Oecd, *op.cit.*

<sup>9</sup> See E. Menegatti, *Challenging the EU Downward Pressure on National Wage Policy*, in *International Journal of Comparative Labour Law and Industrial Relations*, 2017, volume 33, number 2 , p. 195–220, for an analysis of the interferences with the national wage setting systems.

<sup>10</sup> See P. Marginson, *Coordinated bargaining in Europe: From incremental corrosion to frontal assault?*, in *European Journal of Industrial Relations*, 2015, Vol. 21(2) 97– 114.

<sup>11</sup> In the same sense, also Ecb, *Economic Bulletin*, 8, 2015, <https://goo.gl/0qf6e9>, according to which: «To enhance the resilience of the economy to shocks, wages must appropriately reflect labour market conditions and productivity developments, which underlines the importance of reforms conducive to greater wage flexibility and differentiation across workers, firms and sectors».

The crisis accelerated the subdued tendencies that scholars, even Italian, had been highlighting for a long time.<sup>12</sup> The increasingly rigorous European restrictions on flexible budgeting and fiscal policies have increased the relevance of labour market flexibility (the so-called “internal devaluation”) with the aim to guarantee competitiveness among economic systems.<sup>13</sup> In other words, within the context of the crisis, such restrictions have progressively led wage dynamics, and therefore collective bargaining, to fall within the scope of action of the EU’s macroeconomic surveillance as a factor of cost competitiveness<sup>14</sup>. Thus, the new macro-economic surveillance procedures have been continually inviting the Member States, since 2011, to promote wage mechanisms more sensitive to corporate market conditions by decentralizing the bargaining structures.<sup>15</sup>

Symptomatic in this respect are Country Specific Recommendations (CSRs), adopted within the framework of the so-called European Semester, providing a procedure for macroeconomic coordination and preventive control of the national budgeting policies introduced in 2011.<sup>16</sup>

Indeed, the analysis of the CSRs for the period 2011-2017 (Table 1) highlights the systematic invitation for the Member States to intervene on wage setting mechanisms, in particular, to align the latter’s trend with productivity; in particular, Italy (along with Belgium and France) has always received such Recommendations.<sup>17</sup> Besides, over the years, the number of Countries invited to review their wage setting has almost doubled (passing from 8 in 2001, to 14 in 2018).

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<sup>12</sup> See M. Biagi, *Il ruolo delle parti sociali: dal dialogo alla partnership*, in *Diritto delle relazioni industriali*, 1999, 1, IX, pp. 25-31.

<sup>13</sup> See L. Bordogna, R. Pedersini, *Economic crisis, new EU economic governance and the regulation of labour*, Paper for ILERA, CAPE TOWN, September 2015, <https://goo.gl/BdQiTa>.

<sup>14</sup> As highlighted by the European Commission, see European Commission, *Industrial Relations in Europe 2014*, Luxembourg: Publications Office of the European Union, 2015, <http://goo.gl/kyRILE>.

<sup>15</sup> See Eurofound, *Changes to wage-setting mechanism in the context of the crisis and the EU’s new economic governance regime*, Dublin, 2014, <https://goo.gl/auGa2O>.

<sup>16</sup> See Bongelli K., *The impact of the European Semester on collective bargaining and wages over the recent years*, in WP CSDLE “Massimo D’Antona”.INT – 138/2017, <https://goo.gl/oizwve>, also for the interesting reconstruction of the trade unions’ attitude and answers toward the CSRs’ interferences on themes of social interest.

<sup>17</sup> See 2016/C 299/01, which anyway highlighted that: «Second-level bargaining is not sufficiently developed in Italy (...). Action in this area needs to be taken in consultation with social partners and in accordance with national practices. (...) A reform is expected by the end of 2016, according to the National Reform Programme».

Table 1. Frequency of the CSRs “Reviewing wage-setting system -align with productivity developments”

Country	2011-12*	2012-13**	2013-14***	2014-15****	2015-16****	2016-2017*** **	2017-2018*** **	Tot
AT						•	•	2
BE	•	•	•	•	•	•	•	7
BG	•				•	•	•	4
CY	•					•	•	3
CZ								0
DE		•	•	•			•	4
DK								0
EE						•	•	2
ES	•			•	•			3
FI		•	•		•	•	•	5
FR	•	•	•	•	•	•	•	7
HR				•	•	•	•	4
HU								0
IE								0
IT	•	•	•	•	•		•	6
LT								0
LU	•		•	•	•	•		4
LV						•	•	2
MT	•	•						2
NL				•			•	1
PL								0
PT				•	•	•	•	4
RO				•	•	•	•	4
SE		•						1
SI		•	•	•	•			4
SK								0
UK								0
Tot	8	8	7	11	10	12	14	70

Source: Authors’ calculations based on Clauwaert S. (2017), The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2017-2018, Etui, Background analysis 2017.02, <https://goo.gl/uXGJXP>

\* EL, IE, LV, PT and RO did not

receive the CSR

\*\* EL, IE, PT and RO did not receive the CSR

\*\*\* CY, EL; IE and PT did not receive the CSR

\*\*\*\* CY and EL did not receive the CSR

\*\*\*\*\* EL did not receive the CSR

Moreover, starting from the letter, not at all secret, sent in August 2011 by the European Central Bank (ECB) to the Italian Executive, the Italian industrial relations system has been under a sort of *special surveillance*.<sup>18</sup> Recently, European Commission's internal documents have stigmatised the scarce institutionalisation of the Italian collective bargaining system («The rules are not clear and not well specified»), ascribing the scarce reactivity of Italian wages to inflation and production trends to the rigidity of the wage setting, in a period in which the two indicators are both negative.<sup>19</sup> In particular, the Commission's offices deem that the rigidity is caused: by the centralization of the Italian collective bargaining system, as it squeezes the variable components of wages; and by the excessive duration of collective agreements, when keeping into account the slowness of renewal procedures. Therefore, the insufficient use of second-level bargaining produces rigidity in wage setting, as it «hampers the development of innovative solutions at a firm level that could improve productivity and foster the response of wages to labour market conditions».<sup>20</sup> According to the European offices, various – if not all – essential characteristics of the Italian industrial relations system intervene between the decentralization strategy of the collective bargaining system and the tools to achieve it.<sup>21</sup> Such components are uncommon institutionalization; excessive centralization; limited range of the second level; automatic mechanism of the subjective jurisprudential extension of the collective agreement; non-operativeness in the

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<sup>18</sup> See <https://goo.gl/2UnYk5>. For a reconstruction of the financial crisis of summer 2011 see S. Sacchi, *Conditionality by other means: EU involvement in Italy's structural reforms in the sovereign debt crisis*, in *Comparative European Politics*, 2015, Volume 13, Issue 1, pp. 77–92.

<sup>19</sup> See SWD (2016) 81 final: 39.

<sup>20</sup> See again SWD (2016) 81 final: 39.

<sup>21</sup> See M. Magnani, *The Role of Collective Bargaining in Italian Labour Law*, in *E-Journal of International and Comparative LABOUR STUDIES*, Vol. 7, No. 2 May-June 2018, <https://goo.gl/kmL6oq>, for an analysis of the legal framework under Italian law of the structure of the Italian collective bargaining.

private sector of the criteria for measuring the trade union representativeness; excessive duration of cooperative agreements.<sup>22</sup>

The Commission's pressing surveillance over the national wage setting mechanisms seems to have clashed with the traditional voluntarism of the Italian industrial relations system. As highlighted by comparative analysis, other methods (the rest of Mediterranean Europe and Eastern Europe) have promoted single-employer bargaining and the contextual weakening of multi-employer negotiations, primarily through legal interventions.<sup>23</sup> In Italy, as in the other abstention of law systems, the same process – although with relevant exceptions<sup>24</sup> – continued owing to the self-determination of workers' unions and employers' associations, in contrast with the European surveillance which insists on a new dirigisme concerning wages.<sup>25</sup>

This European interference on the wage setting system has raised much debate in Italy, in particular for the possible effects on the strength of the traditional national collective bargaining system. Against the more or less concerned tones of most of the commentators,<sup>26</sup> others manifest a certain scepticism toward the CSRs.<sup>27</sup> Deeming that since they implement a principle of political conditionality (economic aids or permanence in the Euro in exchange of structural reforms) they need to be framed – and evaluated – mainly from this

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<sup>22</sup> See again SWD (2016) 81 final: Box 2.4.1.

<sup>23</sup> See P. Margison, op. cit. and J. Visser, op. cit.

<sup>24</sup> Reference is made in particular to Art. 8 of Law No. 148/2011, adopted in summer 2011 by the Italian Executive in answer to the BCE's explicit request to "further reform the collective wage bargaining system allowing firm-level agreements to tailor wages and working conditions to firms' specific needs." See *supra* No. 5.

<sup>25</sup> According to T. Treu, op.cit, 405, on the other hand, this voluntarism "weakens" the industrial relations system in the presence of external and internal pressures for changes.

<sup>26</sup> Tones particularly concerning for Italy and the Mediterranean countries are found, for example, in G. Meardi, *Mediterranean Capitalism' under EU Pressure: Labour Market Reforms in Spain and Italy, 2010–2012*, Warsaw Forum of Economic Sociology, 2012, Volume 3, number 1(5); S. Bologna, *Liberalizing Industrial Relations in Southern-Europe Towards the End of a Coordinated and Egalitarian Model*, in *Economia & lavoro*, 50, 2, 2016, pp.101-120 and S. Leonardi, *L'impatto della nuova governance europea sulla contrattazione collettiva. Un confronto fra Italia, Spagna e Portogallo*, in *Quaderni di Rassegna Sindacale*, 2, pp.147-172. For an overall view, with particular attention toward what is occurring in the European institutions, see Giubboni S. (2018), *The rise and fall of EU labour law*, *European Law Journal*, Volume 24, Issue 1, January 2018, pp. 7-20. In an analogous sense P. Margison, op. cit. and R. Hyman, *What future for industrial relations in Europe*, in *Employee Relations*, <https://doi.org/10.1108/ER-02-2018-0056>; in particular, the latter considering the relative importance of internal and external drivers of change of industrial relations in Europe, includes Italy in the group of countries where "less coercive external pressures reinforced already strong domestic moves to liberalisations."

<sup>27</sup> See E. Ales, *La dimensione 'costituzionale' del Modello Sociale Europeo tra luci e ombre (con particolare riferimento ai diritti collettivi e al licenziamento)*, in WP C.S.D.L.E. "Massimo D'Antona". INT–129/2016, <https://goo.gl/MoYwnx>.

viewpoint, while they result challenging to mount from a technical-legal perspective. On the other hand, we can say that when CSRs take the legal form of European Union's Council Recommendations and are accompanied by a non-political sanction, they end up losing the typical character of soft law.<sup>28</sup>

From a political viewpoint, however, it is indisputable that these tools, in specific national contexts, have generated an unfavourable climate concerning social rights.<sup>29</sup> Indeed, they give the impression that the deregulatory intervention in this field may represent an acceptable option for exiting the crisis, thus causing the wavering of the traditional idea of Europe as a «bastion against deregulation at a national level.»<sup>30</sup>

Given these international tendencies, and taking into account the internal debate sparked off by the European interference, it is useful to verify the trends and health conditions of the Italian collective bargaining structure from empirical evidence. To this regard, in the present study, we utilized the Rilevazione su Imprese e Lavoro (RIL), a survey on firms and labour conducted by the National Institute for Public Policy Analysis (INAPP). At its fourth edition in 2015 (the previous years of the survey were 2005, 2007, 2010), the study considered a sample of about 26,000 firms' representative of the companies active in the extra-agricultural private sectors.

It was carried out with the Cati technique (Computer-assisted telephone interviewing) and provides a very detailed series of information on active

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<sup>28</sup> In particular, the CSRs lose their nature of soft law each time a single recommendation is underpinned by a single instrument of the EU secondary law, which provides for a sanction in case of non-compliance, that is the Stability and Growth Pact (SGP) and the Macroeconomic Imbalance Procedure (MIP). In fact, in such case: «A failure to implement the recommendations might result in further procedural steps under the respective EU law and ultimately in sanctions under the Excessive Deficit Procedure and the Excessive Imbalances Procedure and the related fines and/or suspension of up to five European Fund» (see <https://goo.gl/ZkFQwF>). In the same sense also E. Menegatti, op. cit., who deems the Council Recommendations legally binding and therefore executable before the Court of Justice.

<sup>29</sup> With particular regard to the Italian case, S. Sacchi, op. cit., talks about «implicit conditionality as a source of involvement of the EU in domestic policy making».

<sup>30</sup> See C. Barnard, *The Financial Crisis and the Euro Plus Pact: A Labour Lawyer's Perspective*, *Industrial Law Journal*, 2012, Volume 41, Issue 1, 1 March 2012, pp. 98–114. Barnard, *EU Employment Law and the European Social Model: The Past, the Present and the Future*, *Current Legal Problems*, 2014, Volume 67, Issue 1, pp. 199–237 clarified that: «(...) It is certainly clear that the European semester is a complex, multi-layered, multi-institutional process which encourages, *inter alia*, significant reform to labour law systems in some countries,» contributing toward the crisis of the European social model, in particular to its «Crisis of Legitimacy».

labour force composition, productive specialization, industrial relations, etc. besides data on corporate accounting.<sup>31</sup>

Therefore, the second paragraph of this contribution analyses the dissemination and coverage of multi-employer bargaining over the years, utilizing as a primary key of interpretation the trend in the same period of the Employers' Association Membership. Continuing, the third paragraph analyses the data relating to the single-employer bargaining, providing information on its dissemination over the years and then analysing its propagation and content also in the light of the latest data available (2015). Finally, a brief conclusion is provided based on the empirical evidence analysed in the previous paragraphs.

## **2. Employers' Association fragmentation and Industry-level Collective Agreement in Italy**

INAPP-RIL's survey allows, first of all, to analyse the development over time of the share of firms that state to be registered with an Employers' Association (Employers' Association Membership). From the data collected, it is possible to observe a progressive and essential decrease in membership rates (see fig. 1). If in 2005 slightly over 66% of the firms with at least one employee stated to be a member of a category association, ten years later (in 2015) the percentage decidedly dropped, and only 45% continued to be a registered member. The motivations at the basis of such trend are many, among which: the erosion of trade unionism; reduced importance of membership due to the decentralization of collective bargaining and to the increased competitiveness between firms; the difficulty to carry out proselytism due to the fragmentation of the entrepreneurial fabric.

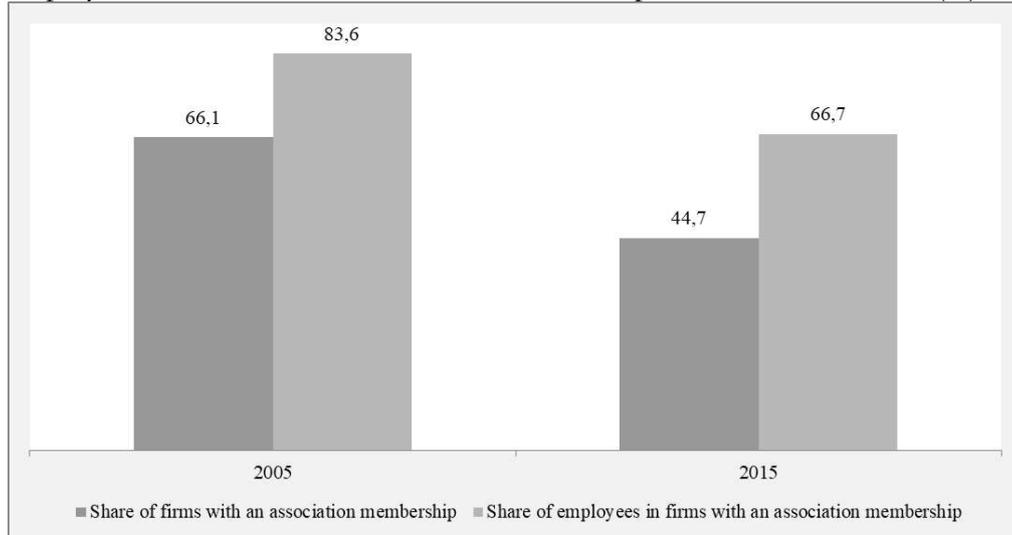
In order to acquire a more rigorous picture of memberships, and in particular to measure membership strength, fig. 1 also provides an overview of membership density, that is the percentage of workers in private sector firms, with at least one employee, members of an Employer's Association (Employers' Association Membership Density). In 2015, out of the total amount of employees, 66.7% worked in firms with an association membership

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<sup>31</sup> The strategy adopted to identify the surveyed sample was based on a stratified sampling with a variable likelihood extraction in proportion to firms' size; the sample allocation envisages to plan study domains coinciding with the region, size, legal form and sector of economic activity; the estimate phase provided for the creation of a calibrated estimator based on a series of auxiliary information. The totals given by the calibration procedure were drawn from the ASIA records (Archivio Statistico delle Imprese Attive – Statistical Records of Active Firms) provided by ISTAT and coincide with the study domains. The population of reference is the one provided by ISTAT with the ASIA records. For in-depth information see: <http://www.inapp.org/it/rii>.

(the average of OECD countries was equal to 51%), that is more than 6,600,000 people (in 2005 they amounted to almost 7,800,000, equivalent to 83.6% of the total amount of employees).

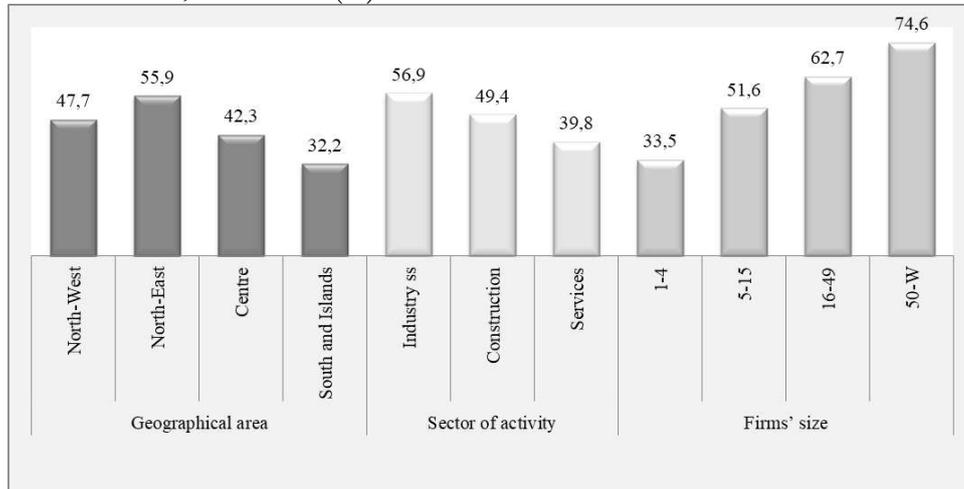
Figure 1 – Share of firms with an association membership and share of employees in firms with an association membership, Years 2005 and 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

RIL's data allow analysing in depth firms' characteristics that join an Employers' Association (fig. 2). In 2015, the latest datum available, the weight of the classical determinants within the Italian industrial relations system was confirmed: localization, the sector of activity and, especially, firm's size are all elements that condition the choice whether or not to join an association.

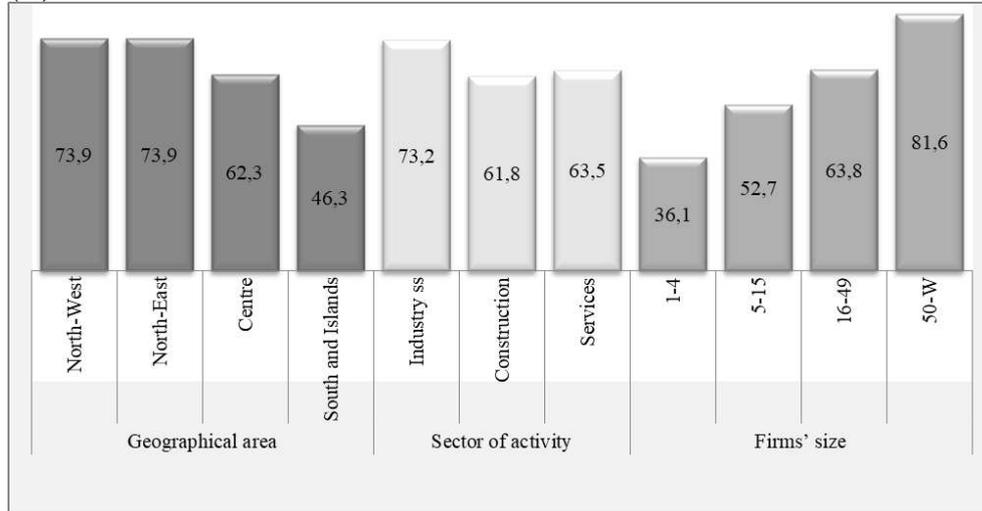
Figure 2 – Membership rate of firms with at least one employee per specific characteristics, Year 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

Also, in the case of the Employers' Association Membership Density, the variables of corporate demography seem to play a role in determining membership density variations (fig. 3). In fact, in 2015, only 46.3% of the employees in firms located in the South and Islands were employed in a firm with an association membership; whereas, such share reached almost 74% both in the North-West and in the North-East. Furthermore, taking into consideration the economic sector, membership density was higher concerning employees in the industry sector (73%), outdistancing both the services and the construction sectors. Firm's size is a highly discriminating factor: the higher the number of employees, the greater the share of workers in firms with an association membership, a percentage that reached almost 82% in firms with 50 or more employees.

Figure 3 - Incidence of employees in firms with at least one employee, members of an employers' association per specific characteristics, Year 2015 (%)

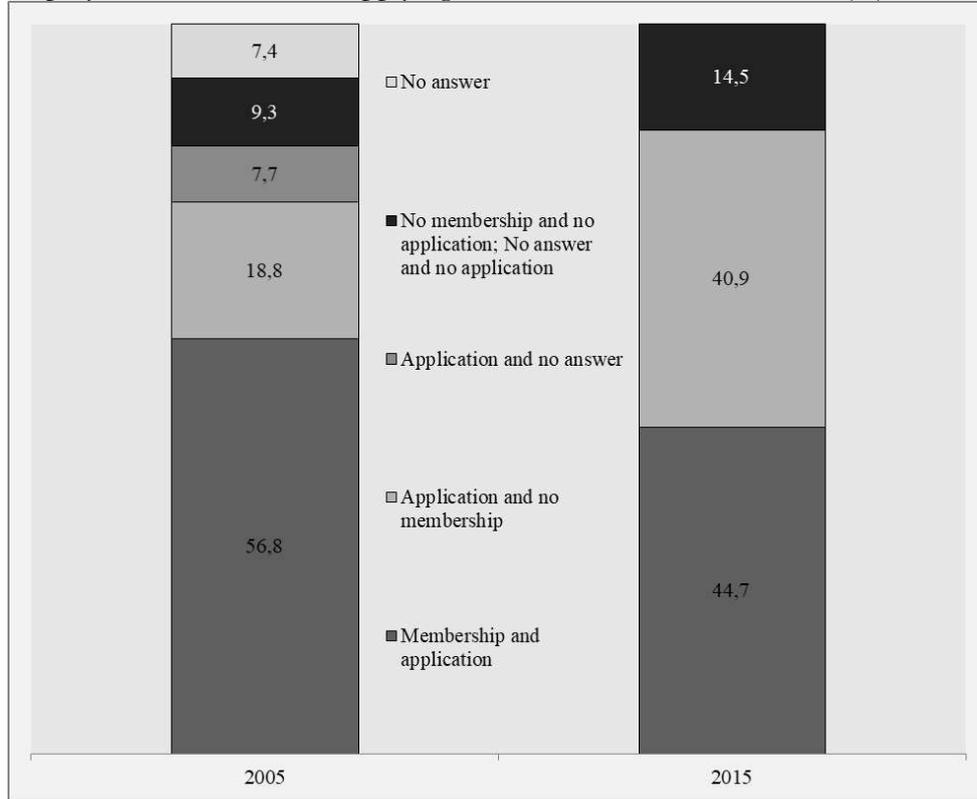


Source: Authors' calculations based on data from INAPP-RIL

Furthermore, RIL's data allow verifying how many firms stated to apply an industry-level collective labour agreement (Contratto collettivo nazionale di lavoro, CCNL) considering the trend of this variable in connection with the Employers' Association Membership (fig. 4 and 5). Concerning the overall share of firms that stated to apply a CCNL (obtained as follows: summing firms with membership in a category association and saying to ask a CCNL; firms starting to ask a CCNL although not being members of a category association; and, lastly, firms indicating to apply a CCNL, but not answering the question concerning membership).

In 2015, the mentioned share was equal to 85.5%, in slight increase compared to the 83.3% of 2005. Therefore, over the years, the number of firms applying an industry-level collective labour agreement has increased, but such a rise has occurred especially outside of an association membership logic. In fact, when observing the single modalities that constitute the overall share of firms with a membership, interesting dynamics can be identified: the percentage of firms with an association membership and that apply a CCNL has decreased by about 12%, against an over 22% increase of the share of those applying a CCNL, although not registered with any Employers' Association. Moreover, some firms preferred not to answer concerning their membership with an association, but that anyway stated to apply a CCNL.

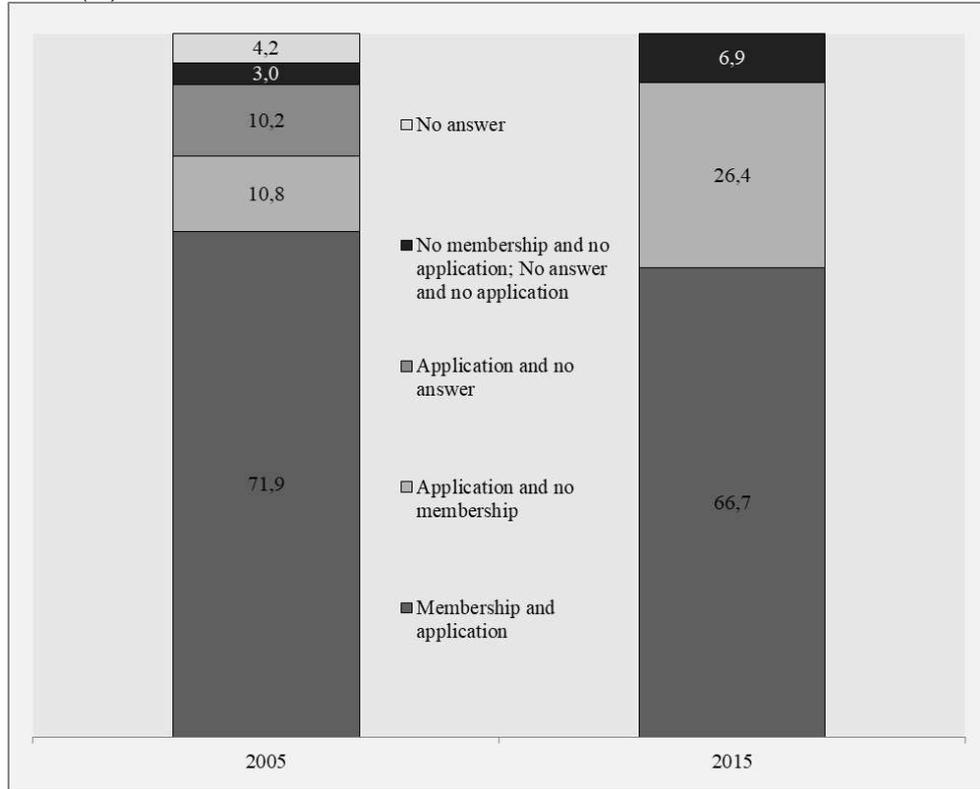
Figure 4 – Composition of firms with at least one employee, members of an employers' association and applying a CCNL, Years 2005 and 2015(%)



Source: Authors' calculations based on data from INAPP-RIL

The overall strength of the first-level collective agreement is evident also considering the employees' coverage (fig. 5). In fact, in 2015, 93.1% of the employees (equal to more than 9,200,000 people) were covered by a first-level agreement. A similar percentage was registered in 2005 (although the employees covered were numerically more, about 10,000,000). However, also considering this indicator, it is evident that the coverage of the CCNLs has been maintained over the years owing to the increase in the share of employees in firms that do not join an Employers' Association: such share, in fact, rose from 10.8% in 2005 to almost 26.4% in 2015.

Figure 5 – Composition of employees in firms with at least one employee, members of an employers' association and applying a CCNL, Years 2005 and 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

In synthesis, despite the concern for the Employers' Association fragmentation, in 2015 more than 2,600,000 employees in firms not members of associations were covered by a CCNL (in 2005 they were slightly over 1,100,000). In other words, the multi-employer bargaining coverage seems to hold, even though within the framework of an increasingly marked Employers' Association fragmentation.

It may be assumed that the primary stimulus to enter into an industry-level agreement, even spontaneously, continues to be based on the mechanism of the extension of minimum wages set by the same CCNLs. According to a consolidated interpretation of jurisprudence, in Italy, such minimum wages result to apply also to firms and workers that have not undersigned any

collective agreement (extra parties).<sup>32</sup> The development of this particular mechanism occurred in the absence of a legal mechanism of subjective extension of the effects of cooperative agreements (*erga omnes*), although provided for by the Constitution of 1948, never implemented. However, two issues remain.

The “non-coverage” of about 7% of employees (equal to about 685 thousand people) working in firms not members of associations and stating not to apply a CCNL (in 2005, the percentage was equal to 3%, amounting to about 324,000 employees). Such condition concerns mostly those who work in the services sector, in the South and firms from 5 to 15 employees.<sup>33</sup> Such not small amount of “non-covered” workers could have benefitted from the introduction of legal minimum wages, provided for by the so-called Jobs Act, which however was not introduced due to the opposition of trade unions and most of the Employers’ Associations.<sup>34</sup>

Secondly, the correct interpretation of the datum relating to the coverage of the CCNLs, which must keep into account the effects induced by the Employers’ Association fragmentation. As mentioned, according to RIL’s data, in 2015 the employees covered by an industry-level agreement in Italy amounted to about 9 million, corresponding to the 93% of the total amount of employees in firms with at least one employee. Such datum - positively affected by the staggering increase registered over the last years in the number of CCNLs entered into<sup>35</sup> - places Italy among the countries in which the multi-employer bargaining coverage is relatively stronger (the OECD average in 2013 was equal to 33%); however, the other side of the coin needs to be considered. RIL’s data – but in general all the Italian statistics relating to coverage rates – do not allow to obtain any information on the “quality” of the agreements applied, that is on the level of representativeness of the signatures. In other words, the datum does not keep into account a phenomenon, recently very

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<sup>32</sup> Visser 2016: 6 defines Extension: “ (...) An act of public policy based on explicit legislation mandating the government, a public agency or, in some cases, the court to apply the collective agreement beyond its signatories.” On the basis of this definition, there is no explicit legislation in Italy mandating the court to apply the collective agreement beyond its signatories; however, on the basis of a jurisprudence developed at the beginning of the 1950s, the courts exercise such function autonomously. For further in-depth information on this mechanism see Tufo, 2018.

<sup>33</sup> See F. Bergamante, M. Marocco, *Il doppio livello di contrattazione collettiva in Italia: tendenze recenti alla luce dell'indagine Inapp-RIL*, in Quaderni di Rassegna Sindacale, 2017, XVIII, 4, pp. 181-197.

<sup>34</sup> For further in-depth information see again Tufo, op. cit.

<sup>35</sup> In the period 2012-2017, according to the tripartite National Economic and Labour Council (CNEL, the body in charge in Italy to gather collective agreements), the amount of CCNLs in force passed from 549 to 868. See I. Feliciano I., *Italy: Increasing fragmentation in collective bargaining at sectoral level*, *Eurwork*, European Observatory of Working Life, <https://goo.gl/dM1igX>.

much debated, characterized by the proliferation of the so-called “pirate agreements,” that are contracts signed by scarcely representative organizations. They aim to carry out a contractual and wage dumping of these agreements signed by the most representative associations, therefore making the jurisprudential mechanism of the subjective extension of minimum wages both inefficient and uncertain.<sup>36</sup> In other words, the economic system seems to have developed a convenient and alternative system for opting out<sup>37</sup> of the sectoral collective bargaining<sup>38</sup>, taking advantage of the absence of legislation on representativeness and of voluntarism that characterizes the mechanisms for selecting bargaining actors on the workers’ and employers’ side.

### 3. Dissemination, Coverage, Contents of Second-level Collective Bargaining

What happened to decentralized bargaining in the period 2005-2015 according to INAPP-RIL’s survey?

To answer, it is necessary to make a preliminary methodological remark. Other empirical analyses on the Italian second-level bargaining take into consideration only a part of the entrepreneurial fabric, that is firms that reach a certain size.<sup>39</sup> However, due to the characteristics of such structure, we deem advisable to suggest an analysis that does not exclude smaller firms, as they represent the definitely most consistent part of the entrepreneurial panorama: in Italy about 89% of the firms, in fact, count up to 15 employees and employ around 35% of the total amount of employees. According to our opinion, excluding such a vast part of firms from the study, although of small or minimal size, does not allow to fully reason on the theme of firm-level

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<sup>36</sup> According to M. Pallini, op. cit., 14: «The main offense carried out by rogue agreements to national collective bargaining is represented in the competition in wage setting with reference to the minimum wage for all the companies in a specific sector».

<sup>37</sup> According to D’Amuri F., Nizzi R., *Recent developments of Italy’s industrial relations system*, in *Questioni di Economia e Finanza (Occasional Papers)*, 2017, 416, 6, Bank of Italy, Economic Research and International Relations Area, <https://goo.gl/yFBEUe>: «(...) In 2015 two per cent of employees in firms included in the Invind Banca d’Italia survey were covered by a ‘minor’ contract, characterized by pay levels that in some cases may be lower by as much as 20 per cent compared with those envisaged by the corresponding traditional CCNL (“National Collective Labour Agreement”)».

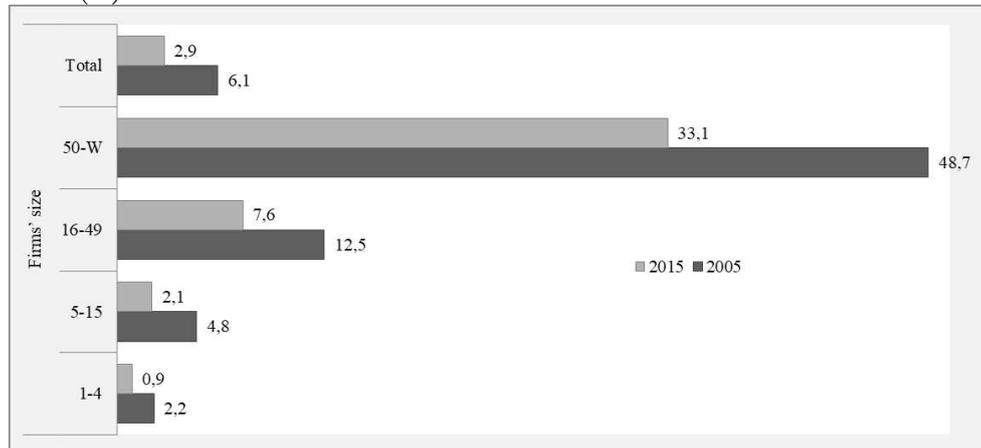
<sup>38</sup> F. Liso, op. cit., to this regard talks about an « (...) endogenous corruptive phenomenon that threatens to shatter the system and weaken the function».

<sup>39</sup> For example, lately the Bank of Italy has only been considering firms with more than 20 employees, the Fondazione Di Vittorio only those with more than 10. For a reconstruction and comparison see S. Leonardi, M. D. Ambra, A. Ciarini, op. cit., 21.

bargaining, especially if empirical evidence is used to analyse interventions aimed to promote their dissemination. Therefore, also in this case (as in the study of the industry-level agreement), the productive structures considered were those with at least one employee.

INAPP-RIL's survey shows a decrease, concerning the years under exam, in the share of firms starting to apply a second-level agreement (fig. 6), as well as in employees' coverage (fig. 7). Indeed, the Italian entrepreneurial structure fragmentation weighs massively on the dissemination of the second-level agreement. INAPP-RIL's data also confirm that single-employer bargaining is a prerogative of large organizations: in 2015, more than 33% of the firms involved (fig. 6) belonged to the larger dimensional class (more than 50 employees), and in the same dimensional level the coverage reached almost 52% (fig. 7). In 2005, the corresponding values were respectively 48.7% and 63.1%, thus highlighting a substantial drop over the years. In addition to such evidence, it is essential to specify that between 2005 and 2015 the Italian entrepreneurial structure underwent a further fragmentation. The number of micro firms increased (by about 7% those ranging from 1 to 4 employees), and the others decreased. In particular, firms with 16 employees or more fell by almost 18%. Moreover, the data show (fig. 6) that micro-firms underwent a drop in the tendency to implement second-level agreements (from 2.2% to 0.9%).

Figure 6 - Incidence of second-level bargaining per firms' size, Years 2005 and 2015 (%)

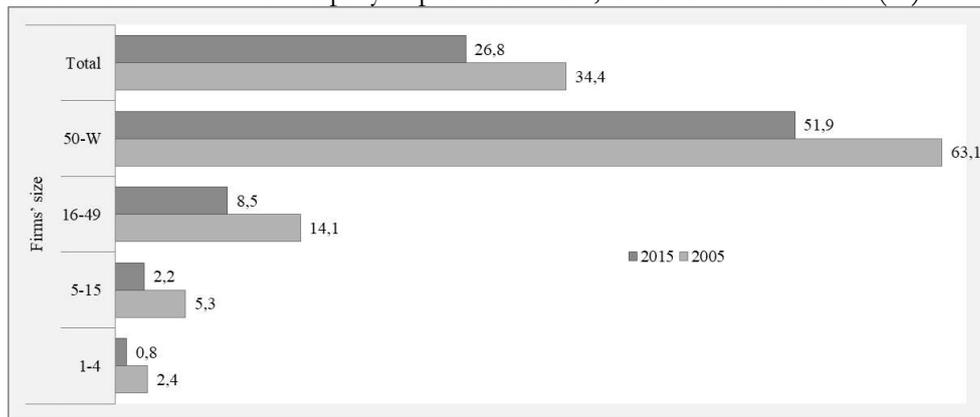


Source: Authors' calculations based on data from INAPP-RIL

Over the years (fig. 7), there has been a decrease also in the share of employees covered by the second-level agreement (from 34.4% to 26.8%). Even this drop

is due to what occurred over the years to the Italian firms' structure. In this case, the decrease in employees in large-sized firms contributed toward the overall drop of the coverage of firm-level bargaining. Whereas, the contribution of small-sized firms – already not very interested in the negotiation – was not particularly relevant.

Figure 7 - Incidence of second-level bargaining with regard to employees in firms with at least one employee per firms' size, Years 2005 and 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

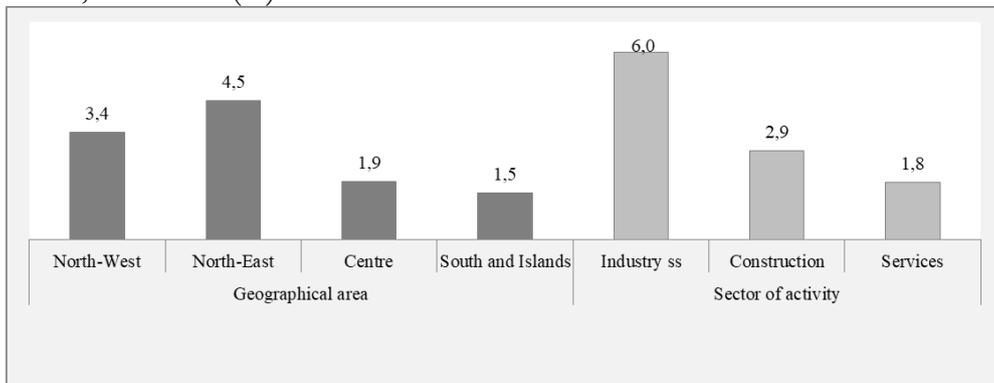
It is essential to make a final consideration on the trend of the second-level bargaining dissemination and coverage. If, by and large, the Employers' Association fragmentation, as mentioned in the previous paragraph, does not seem to produce any negative "effects" on the dissemination and coverage of the multi-employer bargaining, it is instead challenging to interpret the weight of such phenomenon on the single-employers bargaining. However, RIL's data highlight that these two variables have changed over time in an analogous sense, that is: the progressive decrease in memberships with category associations (fig. 1) corresponds to a specific overall reduction of the dissemination of decentralized agreements (fig. 6 and 7). In other words, it seems that the Employers' Association fragmentation may have exercised an adverse effect on the dissemination of second-level bargaining.

### *3.1 Firms' characteristics and Decentralized Bargaining*

With the aim to analyse in depth the firm/local-level bargaining dissemination and characteristics, only the data related to INAPP-RIL's 2015 survey were used.

Besides the firms' size, another determinant for the dissemination of second-level agreements consists of firms' geographical position, along with their economic sector (fig. 8). Utilizing an aggregated sectoral classification, the greatest dissemination of decentralized bargaining is observed in the industry strictly speaking. Concerning the geographical dimension, the North-West and the North-East are the areas with the highest number of firms starting to apply a second-level agreement.

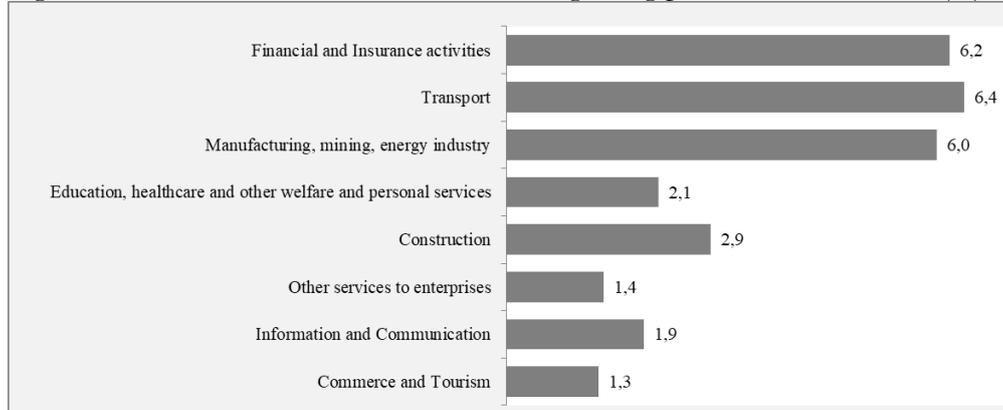
Figure 8 - Incidence of second-level bargaining per geographical area and sector, Year 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

Additional elements may be obtained on the extension of second-level bargaining by further disaggregating the economic sectors (fig. 9). The highest peak is registered in the Transport sector and the Financial and Insurance industry. On the contrary, Commerce and Tourism represent the fertile fields in which decentralized bargaining is less disseminated, with a share similar to that of Other services to enterprises.

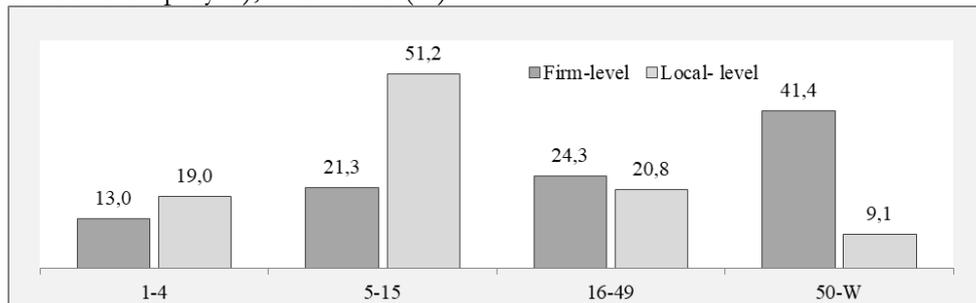
Figure 9 – Dissemination of second-level bargaining per sector, Year 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

Traditionally, where firms are too small, and there are no workers' representatives, it may be assumed that local-level bargaining is applied in an alternative to firm-level bargaining. The data at disposal confirm a strong diversity in the typology of bargaining applied from the firms' size. Moreover, greater dissemination of the local-level agreement is evident especially among firms with many employees ranging from 5 to 15 (fig. 10). In large firms, on the contrary, local-level bargaining is residual. In medium-sized firms (ranging from 16 to 49 employees), firm-level and local-level agreements are disseminated almost equally, although with a slight prevalence of the latter.

Figure 10 - Typology of second-level bargaining per firms' size (firms with at least one employee), Year 2015 (%)

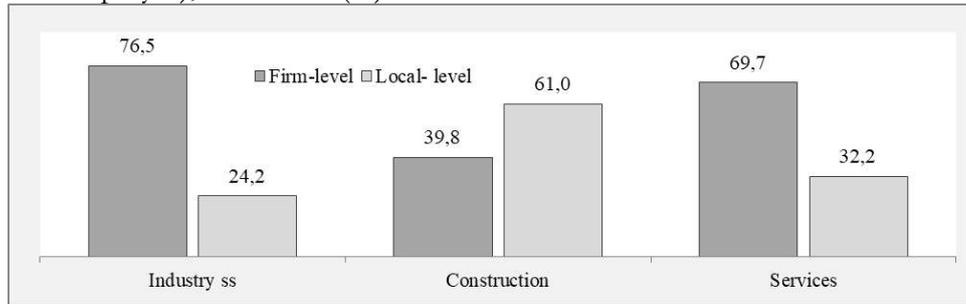


Source: Authors' calculations based on data from INAPP-RIL

Lastly, empirical evidence (fig. 11) confirms the traditional sectoral division of the two typologies of collective agreements used: the firm-level understanding is a prerogative of the Industry and Services sectors; smaller dissemination is

evident in the Construction sector where, instead, the local-agreement results to be more extended.

Figure 11 – Typology of second-level bargaining per sector (firms with at least one employee), Year 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

### *3.2 Contents of Second-level collective bargaining and the Role of soft incentives in Promoting it*

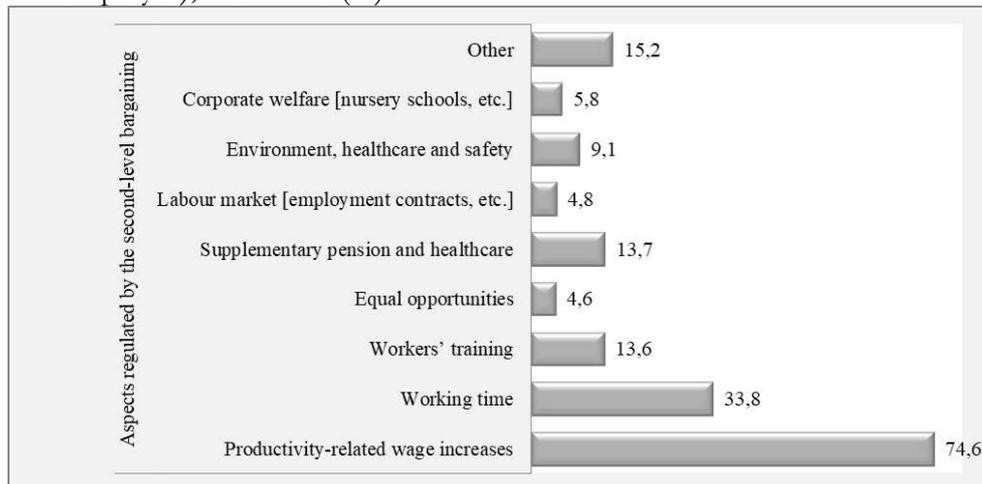
The contents of the second-level agreement are many and of different nature. However, INAPP-RIL's survey seems to highlight a particular specialization in the materials of firm-level bargaining.

The 2015 data confirm the use of bargaining mainly flattened on regulating productivity-related wage increases (fig. 12), also in virtue of the economic incentives that the Italian legislation, for quite some time now, has been recognizing (see *infra*). The second most recurring subject-matter concerns the regulation of working hours. The overall impression, therefore, is that, about contents, in 2015 decentralized bargaining concentrated mostly on hard aspects of the employment relationship, while the soft elements continue to be matters substantially not much attractive.

Concerning other themes, similar sensitivity is not observed when considering both corporate welfare and equal opportunities. The matters most frequently regulated concern supplementary pensions and healthcare. Similar attention is reserved for training which, de facto, seems to represent the scarce diffusion of training practices in productive contexts plastically. The full implementation of the Legislative Decree No. 80/2015 could represent an opportunity to open towards new matters the second-level agreements' contents. This decree provides further tax relief in favour of the firm-level collective contracts that regulate mechanisms to help work-life balance.<sup>40</sup>

<sup>40</sup> With a certain delay (12 September 2017) a Decree of the Ministry of Labour was approved to activate the tax relief. Such Decree, besides establishing that the agreement must involve at

Figure 12 – Contents of second level collective bargaining (firms with at least one employee), Year 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

Therefore, resorting to a second-level agreement seems to meet, for the most part, the firms' organizational needs, to the point that, as mentioned, it is more disseminated in economic sectors characterized by productive modalities that require greater flexibility.

Emerging also when observing the regulation of productivity-related wage increases, mostly concentrated in firms operating in the industry sector strictly speaking and in larger firms (fig. 13).

Other analysis investigated the role of economic incentives, tested since the late 90s, in the development of productivity-related wage increases.<sup>41</sup> In the past, a reduction in social assistance costs was recognized in favour of collectively agreed on productivity-related wage increases.<sup>42</sup> Recently, only

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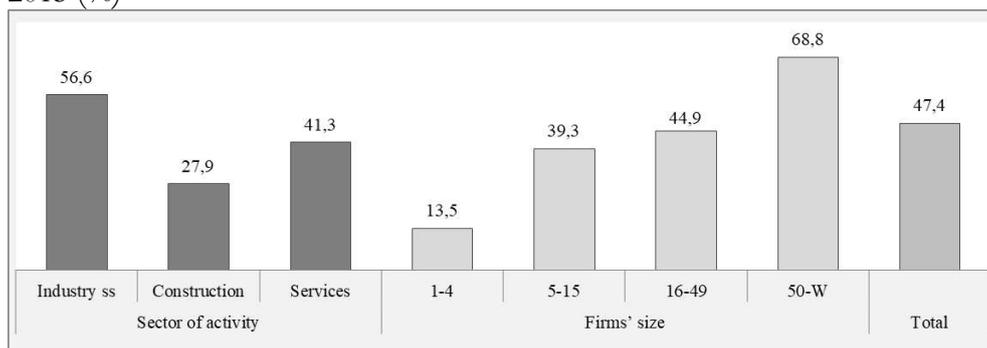
least 70% of the workers employed in average by the firm in the year prior to the one in which the application for accessing the tax relief is submitted, defines the criteria for the granting of the bonus and indicates the following areas of intervention: parenthood, organizational flexibility and corporate welfare.

<sup>41</sup> See F. Bergamante, M. Marocco, op. cit.

<sup>42</sup> For further in-depth information see A. Paliotta, M. Resce, *Local-level bargaining and measures for labour productivity in Italy. Empirical evidences from administrative data*, Paper presented at Industrial Relations in Europe (IREC) 2018, "Employment relations in the 21st century: Challenges for theory and research in a changing world of work", Leuven 10-12 September 2018.

lower taxation is established by law.<sup>43</sup> We observed that the impact of these policies on the dissemination of decentralized bargaining is uncertain, given the latter's general negative trend. If it is true that the share of firms starting to apply a decentralized agreement dropped to its minimum in 2015 (2.9%) - year in which no economic incentive had been envisaged. However, the recognition in 2010 of a double incentive was not able to stop the decrease in the dissemination of the second-level agreement, already started in the previous years. However, INAPP-RIL's survey, last conducted in 2015, does not show the effects of the 2016 Stability Law that renewed and widened the tax relief for productivity-related wage increases. Nonetheless, the first analyses of the administrative data relating to the firms that benefitted from the fiscal bonus (Paliotta, Resce, 2018) do not seem to highlight a particular success of the measure concerning the dissemination of the second-level agreement.

Figure 13 – Incidence of the productivity-related wage increases per sector of activity and firms' size within the framework of second-level bargaining, Year 2015 (%)



Source: Authors' calculations based on data from INAPP-RIL

#### 4. Conclusion

On the basis of the primary evidence contained in the descriptive analysis provided in the previous paragraphs, it may seemingly be stated that the barycentre of the Italian collective bargaining system - the “National Collective Labour Agreement” (Contratto collettivo nazionale di Lavoro – CCNL) - has not been affected by the European, legislative and social partners “multilevel” drive in favour of its decentralization. INAPP-RIL's survey confirms that the multi-employer bargaining coverage has been maintained: in 2015 the

<sup>43</sup> See L. Baccaro, C. Howell, *A Common Neoliberal Trajectory: The Transformation of Industrial Relations in Advanced Capitalism*, in *Politics & Society*, 2011, 39(4), pp. 521 –563.

employees in Italy covered by an industry-level agreement amounted to about 9.2 million, corresponding to 93% of the total amount of employees in firms with at least one employee.

However, in verifying the robustness of the Italian bargaining system, it could be misleading to consider the mentioned indicator “alone.”

Compared to other analyses, the empirical evidence collected provides an additional piece of information, which we deem even original, that is: the multi-employer bargaining has continued to be applied outside of an association membership logic. Indeed, there has been an increase in the share of firms that state to implement a sectoral agreement spontaneously, without joining an Employers’ Association.

It could be argued that this process leads the sectoral-level agreement to undergo a “transformation of institutional function despite unchanged institutional structure.”<sup>44</sup> The Employers’ Association fragmentation is a context which conceals the proliferation of “pirate agreements,” that is a system characterized by a “self-opting out” of the collective agreement. The risk of such a system is that the traditional jurisprudential mechanism of the subjective extension of the minimum wages established by the CCNLs could become uncertain and inefficient. Indeed, the phenomenon has become so intolerable that, in 2018, the parties entered into a new cross-sectoral agreement, based on a «certainly newer and more striking» content on how to react against the disorder of the bargaining system and the contractual dumping practices.

Furthermore, the empirical evidence highlights that, over the years, the number of employees not covered by a first-level agreement has increased, passing from about 324 thousand employees in 2005 to 685 thousand in 2015.

There is a concern for a possible proliferation of a not very representative sectoral agreement<sup>45</sup> and an increase in the number of “non-covered” employees. At the same time, and perhaps for the same reasons, second-level bargaining is at a standstill. In fact, traditional motivations related to competitiveness continue to make it preferable for small and medium-sized firms to maintain the centrality of the national sectoral collective agreement; and this is especially true – according to our opinion – when such agreement reaches the level of regulatory and economic flexibility considered indispensable, perhaps through “pirate agreements”, thus definitively discouraging firm-level bargaining.

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<sup>44</sup> See Liso, *op. cit.*

<sup>45</sup> I. Regalia, M. Regini, *Trade Unions and Employment Relations in Italy during the Economic Crisis*, South European Society and Politics, 2018, Volume 23, Issue 1, pp. 63-79.

Our empirical evidence highlights that, in the years under examination, the coverage of the second-level agreement, already limited, has further decreased (from 34.4% of the total amount of employees covered to almost 27%). Indeed, the fragmentation of the Italian entrepreneurial structure weighs a ton, as the single-employer bargaining remains a prerogative of large organizations: in 2015, 33% of the firms involved were made up of those belonging to the larger dimensional class (more than 50 employees), and in the same dimensional level the coverage almost reached 52%. INAPP-RIL's 2015 survey also confirms the traditional weaknesses of the second-level agreement with greater dissemination within larger firms, in the Industry and the North. In extreme synthesis, such evidence emphasizes a widespread, but "doped" coverage of multi-employer bargaining and little coverage of firm-level bargaining. On such basis, it is difficult to verify the exact impact of the new European macroeconomic governance on the Italian bargaining system. However, although the system seems to show a "weak resilience" toward external pressures,<sup>46</sup> a more significant concern is given by the endogenous and structural elements of the system: the increasing fragmentation of the Employers' Association mirrors the just as fragmented Italian entrepreneurial system, right junction for developing an organized decentralized system.

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<sup>46</sup> T. Treu, *op. cit.*

# Cross-cultural Human Resource Management Practices: The Case of Nigeria, USA and Japan

Samuel Emeka Mbah and Owolabi L. Kuye <sup>1</sup>

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## Abstract

**Purpose** – The article focused on comparative analyses of human resource management practices across cultures. The aim is to investigate why and how HRM practices differ or similar in Nigeria, USA and Japan.

**Design/methodology/approach** – Authors adopted the qualitative content analysis relying mostly on the use of secondary data generated from the Hofstede’s cultural dimension scores; the descriptive table, Bar chart, empirical and theoretical literature.

**Findings** – Based on the comparative analyses, the study revealed that HRM practices of Nigeria such as recruitment and selection, pay for performance, performance appraisal, training, and employment type are in developing stage and require new ideas or innovation to improve their standards.

**Research limitations/implications** – HRM practices are not universal in application; rather are influenced by the way they are managed across cultures. For this reason there is the need for further research to focus more on “Best-fit” which would address issues in the local context than “Best practice” which relates to universal application. More so, Hofstede’s research findings might not correctly represent what the individual, group or country’s cultural value orientations are in reality. Yet, it has remained one of the most popular models in cross-cultural research.

**Originality/value** – More deficiently till date, no study in literature has specifically undertaken a comparative analysis of HRM practices of Nigeria, USA and Japan. It is the need to fill this knowledge gap and add to literature that prompted this research.

**Paper type** – Qualitative and analytical paper

**Keywords** – *HRM Practices, Cultures, Institutions, Nigeria, USA, Japan*

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## 1. Introduction

The concept of culture is wide and complex. Culture contains ideas about different countries and as such has cross-country effects. Culture is defined in various ways. Taylor (1871) defines culture as a complex whole, which include knowledge, belief, arts, morals, laws, custom and any other capabilities acquired by man as a member of society. Culture is universal because culture is found in every human society and every organisation. A typical example of the culture found in human society is the “national culture” while the culture found in the organisation is called “organisational culture”

In a wider perspective, therefore, the concept of culture includes the national culture and organisational culture. Hofstede (2001) defines national culture as a profile of a society or country with respect to norms, values and institutions. The important aspect of any culture is its values and relations to people in the society or organisation. It is because values and relations are important in the society and organisation that they are used by most researchers as explanatory variable for cultural differences in comparative research (Kluckhohn and Strodtbeck, 1961).

Literature is replete with comparative studies of culture and HRM practices in advanced and Asian countries such as USA, Germany, Japan, China, India, Malaysia and so forth. Little is known in Nigeria about the comparative HRM practices across countries. More deficiently till date, no study in literature has specifically undertaken a comparative analysis of HRM practices of Nigeria, USA and Japan. It is the need to fill this knowledge gap and add to literature that prompted this research. The broad objective of this article therefore is to investigate why and how HRM practices differ or similar in Nigeria, USA and Japan. Other specific objective is to identify and compare HRM practices of Nigeria with those of USA and Japan based on cultural and institutional perspectives.

In order to achieve these objectives, the paper is structured into following sections and sub-sections, review of the literature, cultural perspectives, key cultural frameworks, Hofstede’s culture dimensions, institutional perspectives, varieties of capitalism, institutional isomorphism, convergence-universalism, research methods, data presentation, results, conclusion, contributions to knowledge and limitations of the study.

## 2. Review of the Literature

This section is structured into two major perspectives namely the cultural perspective, which consists of the key cultural frameworks and the Hofstede’s culture dimensions. The second major perspective is the institutional

perspective, which consists of varieties of capitalism, institutional isomorphism and convergence-universalism. Other sub-sections include research methods, data presentation, results, conclusion, contributions to knowledge and limitations of the study.

## *2.1 Cultural Perspective*

### *2.1.1 Key Dimensions of Culture*

There are several cultural frameworks in management literature that provide reasons for differences in HRM practices across countries. The following key theoretical frameworks are germane: Hofstede's Cultural Dimensions: Hofstede (1980 & 2001), Trompenaars and Hampden-Turner (1993), the GLOBE study conducted by group of researchers House, Hanges, Javidan, Dorfman & Gupta (2004)<sup>7</sup>, the works of Hall (1976) and the works of Kluchhohn and Strodbeck (1961) and so forth. Within the context and scope of this paper, the Hofstede's framework of culture dimensions is considered the most suitable perspective that provide reasons for differences in HRM practices across cultures. However, Hofstede framework still remains the most popular framework because the knowledge about cross-cultural differences originated from Hofstede's framework. Other frameworks lean heavily on the existing foundations already put in place by Hofstede's framework.

### *2.1.2 Hofstede's Cultural Dimensions*

The cultural factors that determine how inter-country differences affect HRM practices of different countries lean heavily on the work of Geert Hofstede on national culture dimensions which he developed. These dimensions provide a systematic framework for assessing the differences between nations and cultures. Hofstede proposed a scoring system using a scale from 1-100 based on the idea that value can be placed upon four cultural dimensions namely.

**Power Distance:** Refers to the extent to which members of a society or organisation expect and accept that power is unequally distributed along the hierarchy. This occurs in organisation when employees are differentiated from their bosses in terms of status, salaries, promotion etc.

**a. Individualism versus Collectivism:** This index means whether people would prefer to work as individual or in group. Collectivism refers to collective action or collective distribution of resources.

**b. Uncertainty Avoidance:** Refers to the degree of tolerance for uncertainty. It is the extent to which a society or organisation is willing

or ready to tolerate or avoid ambiguous or risky situations. Some can be risk averse while others can be risk takers.

- c. **Masculinity versus Femininity:** Refers to the extent to which a society or people in organisation has its social values clearly distributed among its members. Masculine societies value more male characteristics such as assertiveness, competitiveness, success, status etc. Whereas femininity means the dominant values in the society or organisation are caring for others and quality of life. In order to prevent the Western bias, Hofstede after the research on Confucian tradition added the fifth dimension (Hofstede & Bond, 1998).
- d. **Long Term and Short Term Orientation:** The long term and short term is concerned with time orientation. It concerns search for virtues which relates to the Confucian teaching. This cultural dimension describes the extent to which a society or organisation shows a pragmatic or practical future-oriented perspective rather than a conventional short term point of view.
- e. **Indulgence versus Restrain:** Refers to a society or organisation that allows relatively free gratification or satisfaction of basic and natural human drives. It relates to enjoying life and having fun while Restrain defines a society that suppresses gratification of needs and regulates it by means of strict social norms.

## *2.2 Institutional Perspective*

Institutional perspective involves different ways structures including rules, norms, routines and schemas become established as authoritative guidelines for social behaviour (North, 1990 & Scott, 2001). For better understanding, discussion on the institutional perspective is limited to varieties of capitalism, institutional isomorphism, and convergence-universalism and relative implications to HRM practices.

### *2.2.1 Varieties of Capitalism*

Varieties of capitalism refer to many different ways of organising a capitalist economy or economic system. According to Hall and Soskice (2001) two major types of market economy exist and other form of it originates from either of the two. First, Anglo-Saxon liberal market economies (LMEs) examples are USA and UK. Second, collaborative or coordinated market economies (CMEs) principally Germany and Japan. Nigeria's market economy type is not well defined. The economic theorists describe Nigeria's market economy as "Mixed Economy", "Transitional market economy" or "Neo-liberal Economy"

because there are existence and operation of both private and public companies in the economy under the Federal Government regulations, popularly classified as the “Command economy”.

More specifically, the liberal market economy in USA, co-ordinated market economy in Japan and the Mixed-market economy in Nigeria remain the focus of discussion in this sub-section.

**a. Anglo-Saxon Liberal Market Economy (LME), USA Model:** The USA Liberal market economy is known as the “liberal market economy”. This model is a free and compartmentalised market economy. In a free market economy there is no price control. Prices of goods and services are freely set by the forces of demand and supply until it gets to equilibrium without government interference. The USA liberal market economy is rigidly compartmentalised or separated in sectors and each sector maintains a certain level of autonomy (Whitley, 1992). Generally, a liberal market economy exhibits the following characteristics: Competition, radical innovations, private ownership, low rate of taxation, open financial market, low labour market protections, less welfare and avoidance of collective bargaining. The USA model incorporates interventionist role of government in promotion of general welfare, protection of rights and property of groups, encourages trade restrictions and subsidies. This implies that the USA liberal market economy is a blend of the mixed-market economy because of the interventionist role of government in the economy (Agarwal, 2017).

**b. Coordinated Market Economies (CME):** The example is Japan. This market economy exhibits the following characteristics, social market economy, strong and active institutional regulations with close ties between different shareholders, the relationship between the state, companies and their various stakeholders reflects the Japanese model of the Confucian Asian approach towards capitalism (Hofstede, 1998a). A productivity-oriented economy, with strong collective systems, incremental innovation, competitive advantage, promotes social welfare and so forth.

**c. Mixed-Market Economy or Transitional Market Economy:** There is no clear classification, of the Nigeria’s market economy. The modern economic theorists describe market economy in Nigeria as “Mixed-Market Economy” while Jackson and Deeg (2006) classified African States as “Transition Economies” using developing economies of Africa, Arab, and Latin American states as examples. A Mixed-market economy is an economic system that allows both private and public ownership type of companies to operate in its market environment with minimal intervention of government.

In a wider perspective, a mixed-market economy is a blend of principles of socialism and capitalism.

According to Kenton (2018) mixed market economy exhibits the following characteristics, centres on self-interest of individuals, safeguards its people and its market, government creates central plan that guides the economy, government controls activities of some important sectors like transportation, manufacturing sector, protects private property, allows free market and the laws of demand and supply to mention a few. The Nigeria's model of the "Mix-Market Economy" is exemplified in the 1986 Structural Adjustment programme (SAP), which exhibited characteristics of neo-liberal market economy as, privatisation of public companies, deregulation of the economy, fiscal and monetary policies to control inflation, reduction in the public expenditure, control of organised labour, liberalisation of trade and industry, removal of controls on global financial flows and its implications for HRM practices includes, weak trade union, ban on employment especially government owned companies, frequent retrenchment, delay in payment of salaries and wages, high rate of unemployment, workers are made redundant as there are no raw materials, no importation and austerity measures restrict exchange and free flow of capital and casualisation and other atypical forms of employment prevail and so forth. At this point we turn to comparative institutional perspectives of the three economic systems and relative implications for selected HRM practices.

### *2.2.2 Comparative Varieties of Capitalism and HRM practices in Nigeria, USA and Japan*

The comparative institutional perspectives of selected HRM practices in the three economic systems namely, the Mixed – Market Economy in Nigeria, the liberal market economy in USA and the coordinated market economy in Japan are presented thus. In Nigeria's mixed-market model, industrial relations system is decentralised as well as in the United States (Otobo, 2005 & 1986, Batt & Nohara 2010) whereas in Japanese coordinated market economy, the industrial relations system is centralised. (Batt & Nohara, 2010)

**Recruitment and Selection:** In Nigeria, recruitment is selectively done and determined by managerial decisions and socio-political connections (Fajana, Owoyemi, Elegbede & Gbajumo-Sheriff 2011; Fashoyin, 2010). In the USA, it involves selective hiring of new workers and minimal screening in hiring (Moriguchi, 2014) while in Japan; it is once a year selection of fresh graduates. A popular recruitment and selection practice called "Shukatsu" in Japanese language (Moriguchi, 2014)

**Compensation:** In Nigeria, wage structures are linked to specific jobs, and pay grades for performance while in the USA, individual rated and incentive pay prevail (Fajana, et al., 2011 & Moriguchi, 2014), but wages are not attached to specific jobs, ranks are loosely linked with specific jobs but pay increases and promotions exist (Fajana, et al., 2011) whereas in Japanese model, compensation and promotion are based on performance and seniority (Moriguchi, 2014)

**Training and Development:** Training and development is a bit slow and very expensive to invest in human capital in Nigeria (Fajana, et al., 2011). In the USA, training is decentralised to company level, highly innovative<sup>31</sup> whereas in Japan training methods include vocational training, and the use of job rotation (Moriguchi, 2014)

**Performance Appraisal:** Performance appraisal is sometimes a dialogue process (Fajana, et al., 2011). Self-evaluation method is not widespread in Nigeria. In the USA, rapid or continuous evaluation and promotion based on performance while, evaluation and promotion based on performance and experience is key in Japan (Moriguchi, 2014).

**Employment Type:** In Nigeria, the employment type is atypical, characterised by casualisation, contract labour, non-standard forms of employment (Fashoyin, 2010). USA employment type is flexible work arrangement, temporary and permanent forms of work organisation<sup>37</sup> whereas in Japan life-time employment applies (Moriguchi, 2011).

**Employee Representative:** In Nigeria, employee representative is characterised by low union density, union without union activities, and weak bargaining power (Adewumi, 2009), but with respect to USA, low union density prevails, bargaining power is decentralised to plant or enterprise level<sup>40</sup> whereas in Japan, collective bargaining is centralised to industry level and collective bargaining is done via the work council and active employee representative (Batt & Nohara, 2010)

### *2.3 Institutional Isomorphism*

The next aspect of the institutional perspective, which affects HRM practices, is the institutional isomorphism also called the power of isomorphism. According to DiMaggio and Powell (1983) there are three institutional isomorphism. They are:

**a. Coercive Isomorphism:** The coercive isomorphism also called coercive pressures refer to pressures or forces arising from organisations which force dependent organisations to act in a certain manner. This happens when powerful organisations force organisations with less power to act in compliance with certain actions and behaviour in order to receive legitimacy

and its subsequent benefits (Edward, Mason and Washington, 2009). Compliance with coercive pressures here means a conscious obedience to incorporation of values, norms or institutional requirements (Oliver, 1991). Benefits such as increased resources, legitimacy and attainment of accreditation and sanctioning accrue to organisations that do not comply with coercive pressures. Such coercive pressures may manifest at international level via ILO Conventions, at National level in form of regulatory pressures which include employment or labour laws, National University Commission Accreditation exercise, sector-wide collective bargaining agreements. Tsai (2010), noted that coercive pressures compel organisations to make changes in their HRM and employment relations policies and practices. For instance in 1980s and 1990s, it was revealed that internal and external factors placed pressure on large firms in Japan to change their lifetime employment, seniority-based pay and promotion system, because Japanese companies were losing market, and becoming less innovative and creative (Pudelko, 2009, Moriguchi, 2014). These forces led Japanese manufacturing sector to introduce performance based pay scheme in gradual replacement of the lifetime employment, seniority-based pay and promotion system (Ganbat, 2013). Through this process organisations such as Honda, Fujitsu and Sony revitalised themselves through this innovation and Japanese HRM practices gradually gained legitimacy among large manufacturing companies in Japan (Ornatowski, 1998). Currently, most companies in Japan have adopted reward system that is performance oriented and this has gradually taken over the traditional lifetime, seniority based pay and promotion in Japan (Pudelko, 2009).

**b. Mimetic Isomorphism:** Refers to a situation where organisations model themselves after other organisations in similar field of operation or within similar socio-cultural environment where they expect to be successful and legitimate (Paauwe & Boselie, 2003). Mimetic isomorphism may occur when organisational technology is poorly understood and goals are not properly defined or when there is significantly symbolic uncertainty within the environment which result in formal and informal pressures exerted on the organisation. The organisation in such situation would have no option than to mimic successful practices from other organisations in order to survive. Such modeling provides a rationale for action and can establish premises for decision making and strategy formulation. DiMaggio and Powell (1983) maintain that such strategic models can diffuse indirectly or unintentionally through such mechanisms as, employee transfers among organisations, or explicitly through consultants, trade associations, and via such tools as “benchmarking” or “best practices”. Strategy formulation as outcome of mimetic pressures has been noted in several studies as not only the sincerest

form of flattery but may prove to be a sincere form of strategy (Han, 1994, Tingling and Parent, 2002).

**c. Normative Isomorphism:** DiMaggio and Powell (1983, p.153) state that normative isomorphism is largely based on professionalisation, defined as “ the collective struggle of members of an occupation to define the conditions and methods of their work, to control the production of producers and to establish a cognitive base and legitimation for their occupational autonomy” Normative isomorphism results from the professionalisation of functions such as formal education requirements like business schools and business education serving as source of isomorphism. For instance, as more organisations hire managers from business schools or as more individuals in organisations pursue business degrees like the MBA, including those in professional programmes like the Chartered Institute of Personnel Management of Nigeria (CIPM), Institute of Chartered Accountants of Nigeria (ICAN), the more the tendency for common norms of behaviour, analytic models, and frameworks for strategic decision making to be diffused throughout organisations. Another aspect of professionalisation is the growth of professional networks, which span organisations and allow information and models to be diffused quickly through inter-organisational transfers of personnel, trade associations, the use of common consultants and interlocks among boards of directors’ etcetera. According to Lawrence, (1999) and Mizruchi and Fein, (1999), through these mechanisms and other similar frames of thoughts, norms for firm strategies and strategic behaviours are spread among organisations and practices become similar across organisations.

It implies that managers will operate from similar frame of understanding, use similar analytical tools, and employ similar processes in the development of firm strategies and thus the strategies that results often bear a remarkable similarity to those of other organisations within the network. By extension, organisations within the same network will exhibit similar HRM practices, policies and strategies. Although, conceptually different, the three namely, coercive, mimetic and normative isomorphism relate to one another and difficult to separate in practice.

#### *2.4 Convergence – Universalism in HRM*

The convergence debate is another crucial aspect of comparative HRM across cultures. Brewster, Harris and Sparrow (2002) maintain, that HR practices either ‘converge’ worldwide to be basically the same in each location. The concept of convergence in HRM is based on the assumption that the world is becoming increasingly global due to market forces, technological advancement

and HRM practices becoming more alike (Brewster et al., 2011, Mayrhofer & Morley and Brewster, 2004, Kerr, Dunlop, Harbison and Meyers, 1960). According to Fajana (2006, p.299) “as more societies adopt industrial forms of production in organisation, the logic of industrialism creates common characteristics and imperatives across the societies systems and practices tend toward becoming similar”. According to Brewster (2014) convergence increases strategic potential of HRM department; centralisation, professionalisation; employee resourcing; individualisation of employee relations; information to employees, as well as contingent compensation systems<sup>63</sup>. The central point arising from these authors is the fact that convergence and universalism can cause HRM practices to become similar across cultures. However, Mohan and Tomoki’s (2016) conducted comparative study between USA and Japanese-styles of HRM practices and the study revealed that the USA HRM practices tend to be potentially more influential or dominant but not as effective as Japanese-style HRM practices while those of African States are in transitional stage of development (Jackson & Deeg, 2006). The predominant assumption of potential influence of the US-style HRM practices is based on the universal model that HRM practices are transferable across (Ouchi, 1981).

Universal model also called Universalist HRM assumes that what works in one country can be applied to organisational units in other countries as well (Hofstede, 1980). In line with this assumption, Pfeffer, (1998), identified six HR practices consistently considered to be strategically universalistic to include recruitment and selection, compensation, employee participation, internal labour market, and training. Identifying and enacting these HR “best practices” will always result in great organisational effectiveness (Delery and Doty, 1996). In contrast, Brewster et al. (2011) aptly remarked that HR practices might not be uniform because there may be convergence at the policy level but different in practical terms at the operational level. The focus therefore, should not be about finding the “best practice” but finding the “best-fit” within local contexts, which is often firm specific.

### **3. Research Methods**

This study adopts qualitative content analysis approach. The study used a wealth of empirical literature to analyse how and why HRM practices across cultures differ or similar with a focus on Nigeria, USA and Japan. The empirical literature mostly utilised were drawn from Hofstede’s survey, which include the cultural dimension scores of the three sampled countries. To a great extent the dimension scores of the sampled countries constituted the secondary data and unit of analysis. Whereas other sources of secondary data

include journals, textbooks, web-links or internet source were methods of data collection. The research made use of descriptive tables and a bar chart generated from the dimension scores and used in turn to formulate the descriptive table. The descriptive Table and the Bar Chart explained the Hofstede’s cultural dimension scores and compared selected HRM practices of the sampled countries based on the findings of the analyses. The study adopted a phenomenological validation of the research methods based on the researcher’s own world view of the fact in issue.

**3.1 Data Presentation**

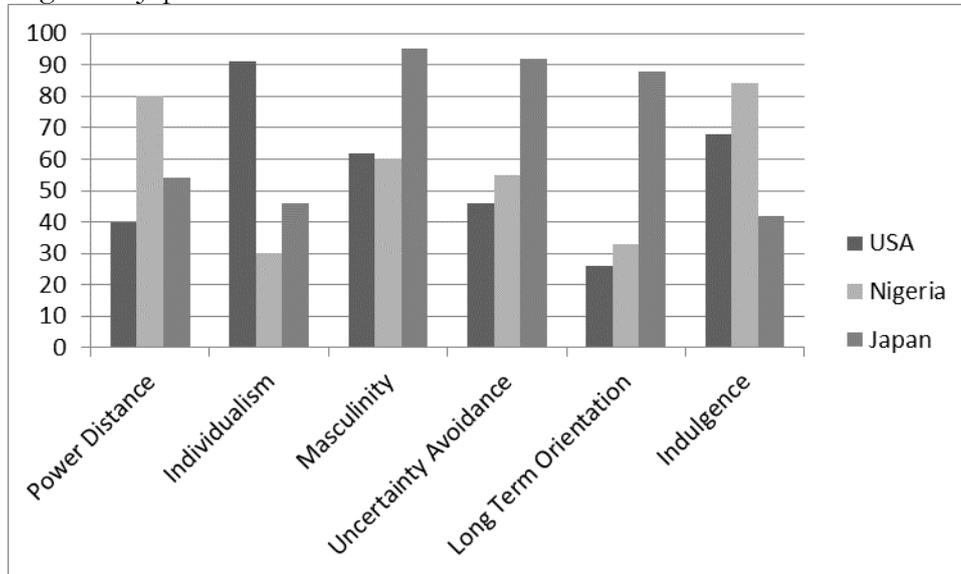
Descriptive data collected which were mostly drawn from dimension scores of the selected countries of Nigeria, USA and Japan were organised and tabulated in Table 1 and figure 1:

Table 1: Description of Hofstede’s Cultural Dimensions Scores of Three Selected Countries

Dimension	Power Distance	Individualism	Masculinity	Uncertainty	Long-Term	Indulgence
<b>USA</b>	40	91	62	46	26	68
<b>NIGERIA</b>	80	30	60	55	33	84
<b>JAPAN</b>	54	46	95	92	88	42
Comparison =, >, < Legend: “=” equal to, “>” greater than, “<” less than	Nigeria > Japan & USA; USA < Japan	USA > Japan & Nigeria; Nigeria < Japan	Japan > USA & Nigeria; Nigeria < USA	Japan > Nigeria & USA; USA < Nigeria	Japan > Nigeria & USA; USA < Nigeria	Nigeria > USA & Japan; Japan < USA

Source: Adapted from Eunjin (2015)

Figure 1: Bar Chart Indicates the Six Cultural Dimension Scores of USA, Nigeria & Japan



Source: Generated from Table 1

**Power Distance:** Table 1 and figure 1 show a comparison of the three selected countries. Nigeria scored 80, Japan scored 54 and USA scored 40. According to Hofstede's (1991) empirical data, countries scoring high in PD are predominantly located in the Far East Latin America, which include, Malaysia, Guatemala, Panama, Philippines, Mexico and Venezuela, are the top six countries<sup>72</sup>. In the World score ranking, Nigeria was ranked 10/11 among other West African countries, USA was ranked 38 while Japan was the 33 position (Brewster et al., 2011). This implies that in a high power distance country like Nigeria, target setting decisions is the prerogative of the employer because of the centralised structure while in USA target setting is joint decision of the employer and the employee. In other words, employee participation is encouraged. Similarly in Japan with score of 54 compared to the World average of 55 was not classified as high power distance culture rather as a moderate power distance country where mutual trust and loyalty as well as cooperation exist between the parties and decision making is shared at all levels. In Japan, target setting is a joint decision of both parties.

**Individualism vs Collectivism:** Table 1 and figure 1 show that America scored 91, Nigeria scored 30 and Japan scored 46 respectively and the World average was 43. Similarly, the World score ranking for the three countries included America as the 1<sup>st</sup>, Nigeria the 41<sup>st</sup>, and Japan was the 23<sup>rd</sup> position. Hofstede's (2001 and Hofstede, 1991) empirical survey listed America,

Australia, Great Britain, Canada, Netherlands and New Zealand, mostly Anglo Saxon countries as the top six countries that scored high in individualism culture, while the least individualist and most collectivist countries include Guatemala, Ecuador, Panama, Venezuela, Colombia, Indonesia, Pakistan, Costa Rica, mostly located in Eastern/Southern Asia including West Africa and Nigeria. USA is high individualism country; where workers are paid based on individual performance. Compensation system is based on pay for performance rated scheme unlike in Nigeria and Japan where reward and incentive system is collective or group payment scheme. Managers are more individualistic in USA versus greater collectivism in Nigeria and Japan. The assumption here is that USA belongs to individualism while Nigeria and Japan belong to collectivism (Hofstede, 2001 and Hofstede, 1991).

**Uncertainty Avoidance:** Table 1 and figure 1 indicate that Japan scored 92, Nigeria scored 55 and America scored 46 respectively and the World average score was 64. Similarly, the World score rankings for America on this dimension was 43<sup>rd</sup>, Nigeria was 34 while Japan was ranked 7<sup>th</sup> position. This implies that Japan operates a high uncertainty avoidance culture while Nigeria and USA scored below the cut-off score of 64. It means that Nigeria and USA are presumably uncertainty tolerant countries. According to Hofstede's empirical survey, countries that scored high on uncertainty avoidance are mainly situated in Southern Europe or in Latin America, which included Greece, Portugal, Guatemala, Uruguay, and Belgium are the top five-scoring countries (Hofstede, 2001).

Whereas countries with the lowest uncertainty avoidance are spread across the globe, and they are Singapore, Jamaica, Denmark, Sweden, Hong-Kong, Ireland, America, Great Britain, Malaysia and India. The Hofstede's empirical literature did not list Nigeria in countries scoring either high or low in terms of uncertainty avoidance, and this implies that Nigeria does not show a clear preference. In Japan, HRM practices like manpower planning, career planning or succession planning are built on long term forecasting. This takes care of unexpected situations. On the other hand, USA and Nigeria tolerate ambiguous situations and would face the risks as they arise (Hofstede, 2001). So preference for manpower forecasting, career and succession planning is low and by implication risk takers.

**Masculinity vs. Femininity:** Table 1 and figure 1 indicate that Japan scored 95, America scored 62 and Nigeria scored 60 and the World average was 50. With respect to the World score rankings, America ranked 15<sup>th</sup>, West Africa, Nigeria, 31<sup>st</sup>, and Japan was ranked 1<sup>st</sup>. According to Hofstede's empirical study the top five scoring countries in terms of masculinity are Japan, Australia, Austria, Venezuela, Italy and Switzerland. The countries with lowest masculinity index are Sweden, Norway, the Netherlands, Denmark, Costa Rica

and Yugoslavia; again, USA with score of 62 and Nigeria with score 60 compared to the World average score of 50 were considered moderate masculinity culture (Hofstede, 2001)<sup>78</sup>. It implies that USA and Nigeria would exhibit femininity culture and women workers are more likely to respond positively to flexible work arrangement than men workers.

**Long-Term vs. Short-Term:** Table 1 and figure 1 show that Japan scored 88, Nigeria scored 33 and America score 26. This implies that Japan is a long-term oriented country compared to America and Nigeria. From the empirical perspective, China, Hong Kong, Taiwan, Japan and South Korea Scored high on the long-term index. Pakistan, West Africa, Nigeria, Philippines, Canada, Zimbabwe, Great Britain and America scored low on this dimension (Hofstede, 2001 Hofstede, 1991). This implies that Japan would prefer high investment in human capital and long term return on investment while Nigeria and USA have preference for low investment in human capital with quick return on investment. USA has preference for investment in vocational training.

**Indulgence vs. Restrain:** Table 1 and figure 1 indicate that Nigeria scored 84, America scored 68 and Japan relatively scored 42. This means that Nigeria and America are indulgence oriented countries whereas Japan is a restraint oriented country. Restraint culture prevails in Eastern Europe, in Asia and Muslim world. The implication is that Nigeria and America relatively allow gratifications, enjoys having fun, awards, end-of year parties, wedding ceremonies birthday parties, public holidays. USA celebrates thanksgiving holiday every year. Nigerian leaders spend money and time to celebrate Nigeria's birthday as a nation. Whereas Japan would suppress any form of gratification as a restraint culture. It is very important at this point to compare specific HRM practices of USA, Nigeria and Japan based on the Hofstede's cultural dimensions (Hofstede, 2001).

Table 2: Comparison of Selected HRM practices of Nigeria, USA and Japan based on the Result of the Analyses

Dimensions	HRM practices	Nigeria	USA	JAPAN
<b>Power Distance</b>	<b>Setting Targets</b>	Targets are set or imposed by employers	Are Negotiated between employees and management	Are negotiated To encourage individual performance
<b>Individualism</b>	<b>Compensation/Reward/Incentive method</b>	Collective/Group incentive pay scheme  Group Salary grade level	Individual performance rated pay scheme	Collective pay system Payment for life even when the organisation is distressed
<b>Uncertainty Avoidance</b>	<b>Manpower Planning/Forecasting/Succession planning</b>	Low manpower forecast Low succession planning/career planning	Low manpower planning/ Low forecasting/Succession/Career planning	High manpower planning/ Forecasting/Succession planning/career planning
<b>Masculinity/Femininity</b>	<b>Flexible work Arrangements</b>	Women workers respond more to flex-time	Women workers respond positively to Flexi-time	Men are likely to respond negatively to Flexi-time. They are Assertive
<b>Long and Short Term Orientation</b>	<b>Investment in human capital</b>	Low investment in human capital  Expects quick return on investment	Poor investment in human capital  Expects benefits of investment here and now	Long –term investment in human capital  Expects Long-term return in investment
<b>Indulgence</b>	<b>Reward incentives/Gratifications</b>	Motivation via Awards as incentive  Celebrations as gratification	Motivation of employee’s performance via awards	Motivation is via seniority based payment and promotion not gratifications

Source: Compiled by Authors

### 3.2 Results

**a. Based on the comparative analyses of the Hofstede's cultural dimensions, the study revealed that:**

- The result of the research confirmed that the HRM practices of Nigeria are to a greater extent different from HRM practices of Japan and USA due to socio-cultural differences.
- Cultural differences reflect differences in HRM practices
- Socio-cultural realities have impact on HRM practices across cultures
- National culture through organisational culture manifests HRM practices
- Some of the culture dimensions failed in defining the Nigeria's true cultural classification for instances, in uncertainty avoidance index, Nigeria belongs to neither risk averse culture nor embraces risk as it comes thus classified as moderate.
- Revealed that USA and Nigeria in spite of scores above world average were considered moderate masculinity cultures.

**b. Findings based on the comparative varieties of capitalism: The study revealed that:**

- Market economies have implications for HRM practices based on the comparative differences of the market economies.
- USA liberal market economy has a blend of Mixed-market economy which allows minimal government intervention.
- USA operates a similar Mixed-Market economy compared with the Mixed-Market Economy in Nigeria, which is totally different from the Japan's Coordinated Market Economy.
- the study generally revealed that HRM practices of Nigeria such as recruitment and selection, pay for performance, performance appraisal, training, and employment type are still developing and require new ideas or innovation to improve their standards

**c. Findings based on convergence-universalism. The study found that:**

- HRM practices in USA, Nigeria and Japan would likely become more similar as convergent pressures across cultures occur. This increases the strategic potential application of HRM practices.
- Changes in HRM practices are result of internal and external pressures from the environment.

- It is only possible to imitate, benchmark, or transfer HRM practices across cultures where there are similarities or closeness in socio-cultural environment.

The study then concluded that HRM practices are not universal in their applications as cultural and institutional differences influence the way they are managed across cultures.

#### **4. Contributions to Knowledge**

- a. The study established that socio-cultural realities have impact on the comparative analysis of HRM practices in Nigeria, USA and Japan;
- b. The study established that HRM practices linked to high performance work practices in a particular country or organisation may or may not be applicable in another country or organisation. Hence, established that further research to focus on “best fit” rather than “best practice” across cultures
- c. More significantly, the article fills the existing knowledge gap and adds to comparative literature in the Nigerian context.

#### **5. Limitation of the Study**

The limitation of this study is predicated on the shortcomings of the Hofstede’s cultural dimensions. Hofstede’s research findings might not correctly represent what the individual, group or country’s cultural value orientations are in reality. To make generalisations based on one company response is not good enough in fulfilling the requirement of cultural research. Scholars criticised Hofstede’s cultural homogeneity by assessing only individual value orientation and applying the findings on overall community was not satisfactory and cannot provide valid information regarding culture of entire country. But in spite of these criticisms, Hofstede’s framework of cultural dimensions still remains the most prominent in comparing human resource management practices across cultures.

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# The Social and Economic Problems of Home-based and Outdoor Working Women in Punjab, Pakistan

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## Abstract

**Purpose** – The purpose of this paper is to investigate the social and economic problems of home-based (indoor) and outdoor working women in Pakistan.

**Design/methodology/approach** – The paper analyses the literature on the binary logistic regression analysis and the maximum likelihood estimation method. The data were collected through a questionnaire from 1500 women workers in urban and rural areas of Punjab, Pakistan using simple random sampling technique.

**Findings** – The results of the logistic regression analysis showed that the education, husband's education level, satisfied work, get work, attitude, equal pay, harassment, burden and comments are statistically significant.

**Research limitations/implications** – While conducting the survey to the workers, some difficulties have been occurred because many women workers are illiterate. Beta regression analysis can also be used to improve the study in the future studies.

**Originality/value** – The paper analyses for the first time the problems of women workers in Punjab, Pakistan using the binary logistic regression analysis.

**Paper type** – Research paper

**Keywords** – *Home-based work; Women; Employment; logistic regression analysis; Economic Development.*

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## 1. Introduction

Employment is a fundamental requirement for the individuals and development of a country. The women workers in Pakistan have experienced disadvantages relative to men within the same class. Social and cultural factors have historically kept the most women from entering the job market. On the other hand, many women find job due to the recent changes in society caused by increased economic pressures, expansion of educational facilities and increased access to learning (Hussein, 2009).

Social and economic problems have a huge impact on both women workers. Women in Pakistan were generally assumed a non-productive part of the population. Although the studies provide the evidence of the growing share of the women's work in the economy, the women have poor working conditions in Pakistan. There are two types of women workers in Pakistan: home-based and outdoor working women. The term "home-based worker" means women who work in their homes with the work sourced from the middle men.

Home-based work constitutes a significant part of an informal economy. In the South Asia, the number of home-based workers is estimated at over half a billion, the majority of them (80%) are women workers (Homenet Pakistan, 2005). In Pakistan, almost 80% of total labour force is engaged in informal sector and more than 50% of this consists of women. Approximately, 77% to 83% of the women in informal sector are home-based workers (Homenet Pakistan, 2005).

The financial and social condition of home-based women workers were compared by Kazi and Raza (1989) with the other women who do work outside in the region of Karachi, Pakistan. They collected data through a questionnaire from 1000 married women at the age group of 19-50 years in Karachi. They found that home-based women workers were considered the lowest group among females in low level occupations.

Cheema and Yasmeen (2003) showed the problems of women in garment factories Faisalabad, Pakistan. A survey was conducted with three different textiles mills in Faisalabad and 150 women workers were selected through purposive sampling technique. They concluded that women faced different problems like harassment, bad attitude of supervisors and mental torture from family members.

Nazly et al. (2004) discussed that there were no association between the women education and their awareness about abuse by the middleman in home-based industry. The data were selected from 150 respondents through purposive sampling. The results showed that home-based women workers were mostly illiterate but they were aware about their abuse by the middleman.

Ozguler (2012) investigated the working condition of home-based women workers in Turkey. The data was collected through a pilot survey in Eskisehir, Turkey. He pointed out the attitude, importance of women and their expectations towards home based work.

Labour force data from Pakistan Bureau of Statistics and World Bank found that labour force participation of women in Pakistan, as percentage of total women workers and the percentage of total countries work force, was below when compared to the international standard and developed countries (Sarwar and Abbasi, 2013). It was also found that the majority of women were accumulated in informal sectors mostly in agriculture. They mentioned that the gender discrimination was ingrained in political, legal, economic and cultural factors that adversely affect the status of women, limit the employment opportunities and employment options for women.

Hassan and Azman (2014) showed the financial and socio-cultural causes which were effective on home-based women workers. They conducted a survey with home-based women workers at the age group of 20-60 years in Lahore, Pakistan. They faced some difficulties while conducting the survey because many women workers were illiterate. The empirical results showed that the major problems faced by home-based women workers were gender difference, low-income, low education level, socio-cultural barrier and poverty. Several researchers claimed that participation of women in economic activities outside their homes could help them achieve political and social liberation (Sawar and Abbasi, 2013). The perceptions of the families that girls were going to contribute family income, leads to the greater investment in their health and education (Roos, 2008). Women employment was linked to low fertility rates and greater trends of family planning, thus helping to control the population of country (Brewster and Rindfuss, 2000). Some studies showed that women working outside their homes gain more self-confidence, independence, influence over families and awareness about health and enhanced social activities (Awan, 2015; Kabeer and Mahmud, 2004; Iversen and Rosenbluth, 2006).

The aims of the study are (i) to examine the profile, type and nature of work undertaken by home-based women workers; (ii) to analyze the main challenges faced by the home-based women workers including low wages, invisibility, gender disparity and mainstreaming of their contribution in the national economy; (iii) to determine the level of awareness of the home-based women workers regarding their rights, micro credit schemes and market trends. The paper is organized as follows: In Section 2, an overview of the logistic regression analysis is presented. A description of the survey about women workers in Pakistan, the descriptive statistics of the variables and the results of

the study are given in Section 3. Some concluding remarks are presented in Section 4.

## 2. Methodology

Logistic regression analysis is used to distinguish between two or more groups. The binary logistic regression analysis is conducted when there are only two categories of the dependent variable. Typical application areas are cases where one wishes to predict the likelihood of an entity belonging to one group or another, such as in response to a marketing effort (likelihood of purchase/non-purchase), credit worthiness (high/low risk of default), insurance (high/low risk of accident claim), medicine (high/low risk of some ailment like heart attack), sports (likelihood of victory/loss).

A regression analysis is performed with a transformed value of Y, called the *Logit* function. The equation, which is shown below for independent variables, is given by

$$\text{Logit}(Y) = \ln(\text{odds}) = b_0 + b_1x_1 + \dots + b_nx_n \quad (1)$$

where “ $\ln(\cdot)$ ” is the natural logarithm, “ $b_0$ ” is the intercept, “ $b_i, i=1, 2, \dots, n$ ” are the regression coefficients and “ $x_i, i=1, 2, \dots, n$ ” are the independent variables. Here, odds refer to the odds of Y being equal to 1. Odds is defined as the probability of belonging to one group divided by the probability of belonging to the other ( $\text{odds} = p / (1-p)$ ). Here, “p” is the probability that shows if trait is present in observation i.e.  $P(Y=1)$  and “1-p” is the probability that shows if trait is not present in the observation i.e.  $1-P(Y=1)$ .

In the binary logistic regression analysis, is an indicator of the change in odds resulting unit change in the predictor. They are the odd ratios for the predictor. Furthermore, the Wald statistic checks whether the coefficient b for the predictor is significantly different from zero. If the coefficient is significantly different, it can be assumed that the predictor has a significant contribution to the prediction of outcome.

As seen in Eq.(1), the right-hand side is a linear function that does not guarantee values between 0 and 1. By taking the exponent of each side of the equation to get  $\text{odds} = e^{\ln(\text{odds})} = e^{b_0 + b_1x_1 + \dots + b_nx_n}$  and dividing both sides of this equation by  $(1 + \text{odds})$ , we obtain

$$\text{odds} / (1 + \text{odds}) = e^{b_0 + b_1x_1 + \dots + b_nx_n} / (1 + e^{b_0 + b_1x_1 + \dots + b_nx_n}). \quad (2)$$

Then, we have

$$p = e^{b_0 + b_1x_1 + \dots + b_nx_n} / (1 + e^{b_0 + b_1x_1 + \dots + b_nx_n}). \quad (3)$$

This equation yields  $p$ , the probability of belonging to a group ( $Y=1$ ) rather than the log of the odds of the same. Note that the right-hand side of equation (3) can only yield values that are between 0 and 1 (Maalouf, 2011).

While the linear models use the ordinary least squares (OLS) estimation of coefficients, the maximum likelihood estimation (MLE) technique is used for the logistic regression analysis (Luo and Wang, 2008). In other words, it tries to estimate the odds that the dependent variable values can be predicted using the independent variable values. This is done by starting with a random set of coefficients, and then iteratively improving them based on improvements to the “log-likelihood” measure (Zuhair and Hussain, 2015). After a few iterations, the process stops when further improvement is insignificant.

### 3. Results

In this study, a questionnaire based survey was conducted with 1500 women workers at the age of 18-62 years in urban and rural areas of Punjab, Pakistan. The questionnaire was replied by 1096 outdoor and 404 home-based women workers. Simple random sampling technique was utilized to gather information. Then, the binary logistic regression was applied to find out the problems of the home-based and outdoor working women workers. SPSS (Statistical package for the Social Science) version 21 with 5% level of significance was used for statistical analysis.

The binary logistic regression analysis was performed taking type of labour (home-based and outdoor women workers) as the dependent variable. The dependent variable, type of labour, has two categories where 0 indicates “home-based” while 1 shows “outdoor” worker.

Age, income, education, pay on time, harassment, burden, place of residence, get work, equal pay, comments, family support, satisfied work and attitude were chosen as the independent variables. Descriptive statistics for the variables age, income and daily working hours are given in Table 1.

**Table 1.** Descriptive statistics of the variables age, income and daily working hours.

	N	Minimum	Maximum	Mean	St. Deviation
Age (Year)	1500	18	64	35.77	8.647
Income (Monthly)	1500	2000	10000	5595.47	1847.651
Daily working hours	1500	1	4	2.65	0.697

As seen from Table 1, the mean age of respondents is 36 years, the maximum age is 64 and the minimum age is 18. The mean income is 5596 and the maximum daily working time is 4 hours. The frequencies of the other independent variables are given in Table 2.

Table 2. The frequencies of the other independent variables

		Frequency	Percent (%)
Education	Illiterate	1181	78.6
	Educated	319	21.4
Husband's Education	Illiterate	935	62.3
	Educated	365	37.7
Satisfied Work	Yes	792	53.0
	No	708	47.0
Get Work	Yes	524	35.0
	No	976	65.0
Attitude	Non Cooperative	375	25.0
	Cooperative	1125	75.0
Equal pay	Yes	434	28.9
	No	1066	71.1
Pay on time	Yes	1346	90.0
	No	154	10.0
Harassment	Yes	115	8.0
	No	1385	92.0
Family Support	Yes	1005	67.0
	No	495	33.0

Burden	Yes	1222	81.5
	No	278	18.5
Comments	Yes	261	17.4
	No	807	53.7
	Sometimes	432	28.9

As seen in Table 2, most (78.6%) of the workers and their husband's (62.3%) are illiterate. In Asia, particularly in Pakistan, India and Bangladesh, the education profiles of home-based workers, predominantly that of women, remains low (Bajaj, 1999). Very few women enter formal school and thus remain illiterate (Hiralal, 2010). It can be inferred from the relevant literature that illiteracy has badly affected the status of home-based women workers. 53% of the women workers satisfies from their works. The vast majority (65%) of workers doesn't get works easily. As seen from Table 2, 75% of the workers deal with a cooperative attitude of colleagues/owner. The percentage of workers who gets equal pay is 28.9%. Most (90%) of the workers get their salaries on time and many of them (92%) do not feel sexual harassment while working. The percentage of workers who takes support from family is 67% and the percentage of the workers feeling the effects of the double burden is 81.5%. 53.7% of the labours meet the comments of people.

To show the effects of these independent variables on the dependent variable, the following logistic regression model is used:

$$\ln(p/1-p) = b_0 + b_1x_1 + \dots + b_{14}x_{14}$$

where the variables are defined as follows:

$\ln(p/1-p)$  = The log odds of type of labour,

$X_1$  = age (age in years),

$X_2$  = income (monthly income of respondents),

$X_3$  = daily working hours,

$X_4$  = education,

$X_5$  = husband's education,

$X_6$  = satisfied work (respondents satisfied with work or not),

$X_7$  = get work (respondents get work regularly and easily or not),

$X_8$  = attitude (cooperative or non-cooperative attitude of colleagues/owner),

$X_9$  = equal pay (respondents get equal pay or not),

$X_{10}$  = pay on time (pay on time or not),

$X_{11}$  = harassment (feel sexual harassment or not on work place),

$X_{12}$  = family support (family support their work or not),

$X_{13}$  = burden (feel double burden or not),

X<sub>14</sub>= comments (people draw comments or not).

The Omnibus tests of model coefficients show that the model with these independent variables performs better predicting the outcome or not. It has the null hypothesis that intercept and all coefficients are zero. As seen from Table 3, p-value is statistically significant and we can reject this null hypothesis. Hence, the variables included in the model are better.

Table 3. Omnibus tests of logistic model coefficients

	Chi-square	df	Sig.
Step	-1.878*	1	0.171
Block	722.349	9	0.000
Model	722.349	9	0.000

\* A negative Chi-square value indicates that the Chi-square value has decreased from the previous step.

Table 4 includes the values for -2 Loglikelihood, Cox&Snell's R<sup>2</sup> and Nagelkerke's R<sup>2</sup>. It can be seen that Nagelkerke's R<sup>2</sup> is 0.624. Cox&Snell's R<sup>2</sup> is 42% and shows that the probability of being outdoor women worker is explained by the logistic model.

Table 4. Summary of logistic regression model.

-2 Log likelihood	Cox & Snell's R <sup>2</sup>	Nagelkerke's R <sup>2</sup>
772.100	0.425	0.624

The classification results in Table 5 shows that the model is reasonably good with 86.7% overall percentage.

Table 5. Classification table

Observed		Predicted		
		Type of Labour		Percentage Correct
Type of Labour		Home based	Outdoor	
Home based		225	114	66.4
Outdoor		60	905	93.8
Overall Percentage		86.7		
a. The cut value is .500				

Table 6 also includes the test of significance for each of the coefficients in the logistic regression model. For small samples the t-values are not valid and the Wald statistic is used. The Wald statistic is basically t<sup>2</sup> which is Chi-Square

distributed with  $df=1$ . However, SPSS gives the significance levels of each coefficient. Logistic regression results with backward selection is presented in Table 6.

Table 6. The results of the logistic regression model.

	Regression Coefficient	S.E.	df	Wald Statistics	P-value	Exp(B)
Education ( $X_4$ )	0.001	0.000	1	83.691	0.000	1.001
Husband's Education ( $X_5$ )	-0.385	0.156	1	6.103	0.013	0.680
Satisfied Work ( $X_6$ )	-1.783	0.216	1	68.177	0.000	0.168
Get Work ( $X_7$ )	0.555	0.208	1	7.073	0.008	1.741
Attitude ( $X_8$ )	-1.876	0.299	1	39.437	0.000	0.153
Equal pay ( $X_9$ )	1.778	0.265	1	45.110	0.000	5.917
Harassment ( $X_{11}$ )	4.656	1.140	1	16.678	0.000	105.222
Burden ( $X_{13}$ )	2.970	0.301	1	97.610	0.000	19.492
Comments ( $X_{14}$ )	0.667	0.120	1	30.977	0.000	1.948
Constant	-2.856	0.502	1	32.355	0.000	0.058

Table 6 gives the regression function as  $-2.856 + 0.001X_4 - 0.385X_5 - 1.783X_6 + 0.555X_7 - 1.876X_8 + 1.778X_9 + 4.656X_{11} + 2.970X_{13} + 0.667X_{14}$ . As seen in Table 6, of the 14 independent variables, 9 variables were found most significant. Education of worker, husband's education, satisfied work, get work, attitude, equal pay, harassment, burden and comments are statistically significant, showing that these independent variables have impact on the model while age, income, daily working hours, pay on time and family support have no impact on the model because they are not statistically significant. So, it is found that the socio-economic factors that effect on type of labour (home based or outdoor) are education, husband's education, satisfied work, get work, attitude, equal pay, harassment, burden and comments.

Table 6 also shows the positive association between education of labour and type of labour. Educated labours generally work outdoor. On the labour market, education provides both productive capacities to individuals and their signals to potential employers hence, attained qualifications are a main asset in worker competition for jobs available on the labour market (Gangl, 2000). Better-educated people typically have lower unemployment (Stiglitz et al., 2009) as, regularly, unemployment rates decline with increasing levels of qualifications (Gangl, 2000).

There is a negative association between husband's education and type of labour. Papps (2010) found that a married woman's work hours might be

related to her husband's education, even controlling for his wage rate. He suggested that women's work hours were positively related to spousal education at the time of marriage but also fall more rapidly over time after marriage among those with the most educated husbands. Men's education is found to influence their wives' work hours, even when holding the wages of both spouses constant. Papps (2010) also found that wives of well-educated men withdraw from the labour market more rapidly than other women after marriage.

The results of this study show that home-based laborers in Pakistan are more satisfied from their work than outdoor laborers. Home-based women workers had a substantially higher job satisfaction compared to those who were not able to work at home and their job attrition rates dropped a whopping 50%. Table 6 also shows that there is a positive association between get work and type of labour. Women who work outside get work regularly and easily.

Table 6 clearly indicates that there is a negative association between attitude and type of labour. Outdoor laborers deal with some non-cooperative attitude of colleagues/owners. Not surprisingly, this study also finds that women working outside get equal pay relative to home based workers in Pakistan. Saeed (2014) found that women homebased workers earn substantially less than those women who work outside the home in Pakistan.

Home-based work is expected to feel sexual harassment than work done outside the home; hence the relationship between the outdoor work variable and type of labour is expected to be positive. In the same way, the other variables (burden and comments) have a positive relationship with type of labour. Outdoor workers feel more double burden than the home-based women workers in Pakistan. Table 6 shows the positive association between comments and type of labour and it is statistically significant.

#### **4. Conclusions**

Women occupy an important role in economic development. In different countries of the developing world women constitute a greater or lesser contribution to the economy, depending on the stages of economic development and cultural traditions. Pakistan, being one of such countries, where low literacy levels and restriction on economic activities of women have acted as major constraint towards full utilization of their human potential.

The purpose of this present study was to identify the problems of home-based and outdoor women workers. It can be concluded that the women workers play dual role inside and outside their homes. The major problems that faced both type of women worker during work are education, husband's education,

satisfied work, get work, attitude, equal pay, harassment, burden and comments.

The findings of the study indicated that home-based women workers are invisible and unrecognized, bound by socio-cultural barriers, lacking awareness and access to fundamental human rights and social protection facilities, living and working in extremely miserable conditions. Specific findings with respect to gender discrimination and disparities being faced by home-based women workers.

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# Plow, Adolescent Fertility and Foreign Direct Investment

Deniz Güvercin<sup>1</sup>

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## Abstract

**Purpose** – The purpose of this paper is to examine the impact of adolescent fertility on Foreign Direct Investment (FDI). We used cross country data for the year of 2014 to unravel the causal relation.

**Design/methodology/approach** – To eliminate the risk of possible omitted variable bias, and reverse causality we use an instrumental variable approach. The instruments used are the plow use variable, and the variable showing the years since the transition to agriculture identifying the male dominant cultural values.

**Findings** – 2SLS estimation results indicate that adolescent fertility increases FDI. In particular, the result shows that the lower bargaining power of the women at the job market due to a rise in early age fertility would stimulate FDI inflows.

**Research limitations/implications** – The research proposes the presence of causality running from adolescent fertility to FDI and invites future empirical investigation using richer data set.

**Originality/value** – The results provide significant implications for both gender distribution of labor market earnings and the applied labor economics. The study is the first study in the literature exploring the nexus between these variables, thus, has significant contribution.

**Paper type** – Research paper

**Keywords** – *Adolescent Fertility, FDI, Plow, Two Stage Least Squares*

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## 1. Introduction

There have been several empirical papers focusing on the role of FDI in economic development, particularly in technology transfer. One variant of this literature focus on the determinants of the FDI which are prerequisite to have to attract FDI and benefit at maximum from it. However, until recently the labor market determinants of FDI was gender blind and was focusing solely on the unit labor cost or the labor market flexibility without gender focus. The newly developing literature on the nexus between FDI and gender distribution of labor market returns mainly focus on the gender wage gap and gender biased skill composition without giving a particular place on the fertility behavior of the women. The paper aims to contribute to the literature by mainly focusing on adolescent fertility and its impact on the FDI.

Along with the bargaining power of the labor that we emphasize in the study, there are several factors referred in the literature that would attract FDI. Edwards (1990), Asiedu (2002), Chakrabarti (2001) argue that trade openness stimulates FDI inflows. Corruption is also considered in the literature as one of the determinants of the FDI (Smarzynska and Wei, 2000). There is no consensus in the literature regarding the impact of corruption on the FDI (Akçay, 2001; Wheeler and Mody, 1992; Henisz, 2000). De jure and de facto legal obstacles, institutional inertia, bureaucracy, easiness of undertaking investment in the country which define the business environment in the country are argued that would affect size of FDI (Kumar et al. 2002). Democracy would be correlated with economic, political stability and the conducive economic and political environment that would affect FDI entrance (Addison and Heshmati, 2003; Guerin and Manzocchi, 2009).

Moreover, lower quality infrastructure which leads to lower expected profits would affect the FDI level (Blonigen, 2005) negatively. De Mooij and Ederveen (2003) show that the median tax elasticity of FDI calculated at the 25 studies is -3.3. Blonigen (2005) argue that low legal protection against the confiscation of the assets decreases the investment by foreign firms in the host country. The rule of law which defines the quality of contract enforcement, property rights, and affect the probability of crime occurrence is used in empirical studies as one of the determinants of FDI (Bailey, 2018; Gani, 2007). Inflation is also used as the factor determining size of FDI as it is significant macroeconomic stability indicator (Kinoshita and Campos, 2003; Botric and Skuflic, 2006). Buckley and Casson (1981) argue that serving to the host market through FDI or export depends on several variables such as transportation cost, establishment cost incurred in the host country, and the size of the host market. They argue that if the (horizontal) FDI faces with

increasing returns to scale due to the large size market in the host country, the trade would not be preferred way to enter the host market.

Until recently the FDI literature has been gender-blind. However, recent studies (Oudraogo and Marlet, 2017; Vahter and Masso, 2018; Bui et al. 2018; Chaudhuri, 2014; Blanton and Blanton, 2015) fill the gap in the literature by providing evidences on the nexus between gender wage gap and the FDI. Bui et al. (2018) using data for the 27 developing economies in the Asia-Pacific region over the period 1992-2011 show that gender equality in economic conditions decreases FDI. They also show that improvement in the political rights of women affects negatively size of FDI implying that rise in the bargaining power of women in political processes would generate deleterious consequences for FDI.

Reich (1981), Bowles and Gintis (1990) explain the wage determination as the result of the bargaining process between capitalist and labor where the wage moves according to bargaining strength of these classes. Women spending a significant amount of time by providing labor for the housework, have less mobility and time flexibility as an employee, thus, traditionally have lower bargaining power in the labor market (Vijaya and Kaltani, 2007; Onaran and Baslevent, 2004). Vijaya and Kaltani, (2007) argue that capital movements in the country, mainly FDI would reduce more the women's traditionally low bargaining power due to harsh competition conditions exerted on the domestic firms.

There are certain factors which are highly correlated with the traditional gender roles determine the bargaining position of the women in the wage determination. The general and specific human capital levels which are highly associated with the labor productivity are at the core of the bargaining process. Topel (1991) show that individuals accumulate specific (tenure) and general (experience) human capital during the job which is lost as they leave the labor market. Erosa et al. (2002) show that childbearing generates significant gender differences in turnover rates, with a sustained impact on employment and wages. Therefore, women leaving the market to childbear would lose significant size of her human capital leading to reduced productivity, and wage level.

Fertility behavior and the timing of the fertility well studied issues in the literature. Axinn & Barber (2001), Basu (2002) argues that education affects the fertility decision, and Becker(1981), Güner and Knowles (2002) demonstrate that labor market outcomes such as low future wages resulting from childbearing affect the current fertility decision. Becker (1973) model the fertility in his model of demand for children which relates the labor market outcomes to the fertility decision through substitution effect. Becker (1981) in his famous quality-quantity trade-off model argues that an increase in the

marginal cost of quality (of children) results in a reduction in family size indicating the quantity-quality trade-off. Michael and Willis (1976), Kearney and Levine (2009), Guinnane (2011) argue that contraceptive use decreases fertility. Adsera (2005), Kravdal (2002), Easterlin et al. (1980) argue that economic uncertainty and sudden economic recession decrease fertility. Kulu and Vikat (2007) argue that housing prices affect fertility decision.

Regarding the fertility timing issue, Malthus (1789) argues that couples do not marry and have children until they reach a sufficient income level to survive as a family. Therefore, he explains that fertility decision and the marriage decision are not separate issues. From the Becker' (1973) perspective, it can be claimed that women with lower expected future wage would prefer not to delay childbearing.

Women faced with the unequal gender distribution of resources, mainly if the opportunity cost of not accumulating the specific and general human capital is low, would have a higher fertility rate, have a higher percentage of a teenage birth. Particularly, general economic conditions might stimulate teenage birth due to low opportunity cost, or might enforce women to postpone marriage/fertility. Moore (1978), Kirby et al. (2001) emphasize the poverty, unemployment as one of the determinants of the teenage childbearing. According to Ni Bhrolchain and Beaujouan (2012); education and childbearing are incompatible activities implying lower fertility rate for young women attaining education. Kraus and Castro-Martin (2018) using data from the 2700 adolescents in secondary schools in Madrid in 2011 show that although Latin American adolescents' fertility timing reflects the cultural motivations from the origin society, they adopt the fertility timing preferences in the host country. Therefore, cultural traits and social norms are useful at adolescent fertility rates.

There are studies on the literature examining the labor market consequences of the teenage childbearing. Moore and Waite (1977) show that teenage mothers have 1 - 4 years less schooling than mother delayed fertility. Fletcher and Wolfe (2009) show that there is an adverse effect of teen childbearing on high school completion and the income level of young adults. Fletcher and Wolfe (2009) using the teenagers who had a miscarriage as the control group and by including community-level factors and birth control choices show that teenage childbearing reduces the probability of receiving the high school diploma by 5 to 10 percentage points, reduces the annual income as by \$1000 to \$2,400, and increases the likelihood of receiving cash assistance. There is also further evidence provided in the literature regarding the nexus between the fertility induced withdrawals from the labor force and the lower wages (Korenman and Neumark, 1992; Blau and Kahn, 2017). Women are postponing the first birth face with higher employment probabilities and wages (Bratti,2015).

Moreover, loss in human capital due to childbearing would last in the form of lower returns to experience dubbed “mommy track” (Miller, 2011; Bratti, 2015). Notably, women who postpone the first birth have wage premium even she has the same number of children with women who did not delay the first birth. Therefore, women worker experiencing the first birth earlier would provide a premium to the employer as they have lower bargaining power in the labor market.

Young mother during the period of pregnancy and the childbearing after pregnancy would lose some part of the general and specific skills due to many leaves of absences. The employer might exploit the fact that the young mother might not signal the real loss in human capital that would be incurred in the process and bargain for the wages under marginal productivity.

Additionally, employer might extract more wage from the young mother if she is highly risk-averse and face high job search cost, or have locational preferences for the job. Joyce and Keiller (2018), argue that employers might exploit the fact at wage settings that women after first birth look for a job closer to home. Empirical evidence referred above show that women lose a significant proportion of the employment probability by giving early birth; thus, they would face higher job search cost which would decrease the bargaining power of the young mother. In particular, young women suffering from higher childcare per dollars earned in the labor market would prefer low unemployment duration, thus, would accept low wage offers from the employers who might exploit this preference of the young mother.

Moreover, there is also a self-selection issue playing a role in determining the bargaining power of the mother. Particularly, mother entering the labor market who suffer from the opportunity cost of not consuming the time for child-rearing might require immediate money to cover the cost of childcare that would reduce the bargaining position of young mother.

Foreign direct investment, particularly the vertical FDI exploits the local comparative advantages. There is a consensus among scholars that the greater integration to the world economy generates an increase in female employment particularly in the manufacturing sector due to lower unit cost, manual dexterity, stability and flexibility of the female labor (Onaran and Başlevent, 2004; Joeke, 1995; Çağatay and Berik, 1991; Pearson, 1998). High adolescent fertility implying a low level of specific (tenure) and general (experience) human capital levels and possible further interruptions in the women’s career path would suggest the lower level of bargaining power in the job market that the FDI might exploit. Furthermore, due to poor local /general economic conditions, the presence of significant social immobility, the gender wage gap, or gender-based social norms, a considerable number of talented women, particularly in developing countries, do not enter the labor force or enter late

following their first birth as an added /part-time worker. In developing countries where the opportunity cost of human capital accumulation is high, the credit market is imperfect, a talented young mother from lower socioeconomic segments would not signal the talent level with education. Therefore, a young mother with a high capacity of talent and high productivity but having low bargaining power would be available for the FDI at low wages. The paper aims to examine the significance of adolescent fertility as the determinant of FDI. Because the linkage has not been considered between the variables before, the article makes a significant contribution to literature. The paper uses cross country data for the year of 2014 by employing an instrumental variable approach due to the risk of obtaining biased coefficients resulting from the omitted variable bias. The next section discusses the identification strategy which is followed by empirical model and estimation results.

## 2. Identification Strategy

Fertility behavior might be affected by economic incentives. Particularly, technological advancement and structural transformation of the economy through external sources including FDI would change the wage level, incentives to invest in human capital, gender segregation in sectors, the opportunity cost of childcare, housework. Therefore, there would be reverse causality from FDI to adolescent fertility where the income effect of FDI and technological spillover by FDI might affect labor market outcomes and gender-based distribution of labor market returns. Moreover, there would be some omitted variables correlated with both FDI and adolescent fertility that neither can be observed nor measured correctly. For example, globalization, technological shift or change in tastes and preferences would affect both market fundamentals, FDI and the job prospects for women, adolescent fertility. Therefore, there should be exogenous variation in adolescent fertility that is not accounted by neither omitted variables nor the FDI itself.

OLS would produce biased coefficient estimates in the presence of omitted variable bias and reverse causality. To deal with the endogeneity issues, we implemented the Instrumental Variable approach. The instrument we used two variables which would not be correlated with the flow of FDI (exclusion restriction) and would be associated with adolescent fertility (instrument validity). The first instrument is the plow use in agriculture which is showed (Boserup, 1970; Alesina et al. 2013) that is highly correlated with the emergence and persistence of the male dominant family structure.

Plow use necessitates the manpower as it involves the control of the big animals, and uninterrupted working routine which would contradict with the

women labor routine that is interrupted due to home production tasks (Hazarika, 2018). Alesina et al. (2013) show that plow-use and the gender-based division of labor and gender-based division of political positions, and the validity of glass ceiling in the society is highly correlated in the sense that organizations which use plow densely (higher percentage of population is descended from ethnic groups adopted the plow in agriculture) have lower female labor force participation and seat share in national parliaments. The second instrument used is the years since the transition to agriculture by Hansen et al. (2015), Jha and Sarangi (2014). The device is used as it shows that in agricultural societies with a long history, there is more rigid gender division of labor rendering the low labor force participation rate for female labor and emergence of gender-based social norms.

Because the adolescent fertility would be highly correlated with the gender-based social norms, and patriarchal authority (Adler, 1980; Jorgensen and Alexander, 1983; Cusik, 1987; Hindin, 2000), the plow use is implemented as the instrument. Moreover, because gender based norms might affect the FDI variable we added variables such as gender inequality in education attainment, seat share of women in parliaments to control variation in FDI due to gender based social norms. Additionally, we included set of control variables to bolster the exclusion restriction on instruments.

2SLS econometric procedure is used to explore the impact of adolescent fertility on FDI. At the first stage the instruments along with other control variables are regressed on adolescent fertility, and at the second stage the predicted values for adolescent fertility obtained in the first stage and control variables are regressed on the FDI. Wooldridge's robust test score shows that the over-identifying restrictions are valid and instruments are not correlated with error term.

In the literature variables, there are variables used to indicate the patriarchal norms, notably MAS Index (Masculinity index) developed by Hofstede. However, the index values might be affected by the FDI as FDI might affect the gender division of labor and feminization of public and private spheres of the society. Plow use overcomes the reverse causality as there is no possible channel through which FDI would affect the adaptation of plow in agriculture. Moreover, as the variation in the current labor market outcomes correlated with the adolescent fertility would not generate variation in the plow use in agriculture violating the homogeneity of the instruments and generating bias in the estimated coefficient. The variables indicating the current political and economic development which would be correlated with the plow use are already included as the control variables to the model. Therefore, it can be argued that the 2SLS-IV estimation results would not suffer from bias.

### 3. Data

Cross country data for the year of 2014 is used. The sample selection is based on data availability. The source of the data and the descriptive statistics are displayed at the table below.

**Table 1. Data Source & Descriptive Statistics**

Variables	Source	Observation	Mean	St. Dev
FDI (% of GDP)	World Development Indicators	185	4.3	6.4
Adolescent Fertility (per 1,000 women ages 15-19)	World Development Indicators	191	48.7	41.2
Plow	Alesina et al. (2013)	204	.48	.48
Neolithic		166	4806.5	2495.5
GDPPC (Constant 2010, \$)	World Development Indicators	192	14083.4	18728.3
Inflation (CPI, %)	World Development Indicators	175	4	6.5
Telephone Subscription	World Development Indicators	209	19.18	19.1
Trade (% of GDP)	World Development Indicators	186	95.3	55.3
Service (Value Added , % of GDP)	World Development Indicators	165	54.7	13.4

Industry (Value Added , % of GDP)	World Development Indicators	185	26.6	13.6
Credit (Domestic credit to private sector , % of GDP)	World Development Indicators	167	56.02	44.4
<b>Baseline Controls</b>				
Government Education Expenditure (% of GDP)	World Development Indicators	100	4.7	1.5
Women in Parliaments (% of total seats)	World Development Indicators	186	95.3	55.3
Female Secondary School Enrollment ( % of total)	World Development Indicators	131	86.6	29
Population Growth	World Development Indicators	209	1.38	1.41
Secondary Gender (Secondary School Enrollment Gender Parity Index)	World Development Indicators	148	.98	.07
Secondary General (Secondary School Enrollment Rate ,% of total)	World Development Indicators	124	71.5	22.9
Urban Population (% of total)	World Development Indicators	209	59.2	24.25
Life Expectancy (at birth)	World Development Indicators	194	71.7	8.07
Polity 2	Polity IV Project	157	4	6.2

Political Rights	World Bank	190	3.4	2.2
Business Freedom	Heritage Foundation	175	64.5	17.2
Property Rights	Heritage Foundation	172	42.5	24.7
Corporate Tax Rate	Heritage Foundation	175	24.2	9.2
Tariff Rate	Heritage Foundation	171	6.27	5.27
Regulatory Quality	World Governance Indicators	200	-.02	.99
Corruption (Freedom From Corruption Index)	Heritage Foundation	175	39.3	21.6
<b>Historical Controls</b>				
British Legal Origin	La Porta et al. (1998)	193	.33	.47
French Legal Origin	La Porta et al. (1998)	193	.44	.5
Ancestral Political Development	Alesina et al. (2013)	204	3.3	1.04
Ancestral Economic Development	Alesina et al. (2013)	204	6.3	1.38

In all models including the models estimated with OLS, the adolescent fertility have positive coefficients suggesting the positive impact of adolescent fertility on the FDI. The coefficients are .06, .1 for OLS, and vary between .11 and .26 for 2SLS. Therefore, increase in adolescent fertility attracts FDI suggesting the significance of the teenage childbearing on the FDI. We used appropriate controls such as seat share of women in parliaments, the female secondary

school enrollment rate, ancestral economic and political development, gender gap in secondary school enrollment, and ancestral economic and political development to bolster the exclusion restriction.

Results indicate that the impact of GDP per capita on the FDI is negative. Few economic controls are significant in any of the model. Telephone use which is used to measure the infrastructure has positive significant (in one model) impact on the FDI. Population growth has positive significant (in one model) effect on FDI. Corporate tax rate as a policy variable has negative significant, and property rights as the variable representing the institutions have a considerable positive impact on the FDI. Therefore, countries with a lower tax rate and well-protected property rights would attract higher FDI. In one model the results imply that secondary school enrollment gender parity index representing the unequal gender attendance to secondary schooling would decrease the FDI. Life expectancy which is used to proxy the labor productivity is positive indicating that higher life expectancy increases FDI. A polity2 variable which shows the level of democracy in the country varying in the range of -10 (hereditary monarchy) and +10 (consolidated democracy) is positive significant (in one model) indicating that as the democracy improves, FDI increases.

**Table 2. Regression Results**

Dependent Variable: FDI/GDP							
	OLS	2SLS	2SLS	OLS	2SLS	2SLS	2SLS
Adolescent Fertility	.06** (.03)	.12* (.06)	.1* (.06)	.13* (.07)	.26* (.15)	.25* (.13)	.18* (.1)
GDPPC	-.0001 (.00007)	- .0001** (.00006)	-.0001 (.00008)	- .00015* (.00007)	-.00013* (.00007)	- .00006 (.00008)	-.00017* (.00007)
Trade	.017 (.035)	.01 (.03)	.016 (.03)	.016 (.025)	.002 (.019)	-.0008 (.016)	.005 (.02)

Patent							.000012 (.000012 )
Service			-.026 (.12)	-.023 (1)		-.14 (.14)	
Industry			.12 (.12)	.14 (.11)			
Credit			-.01 (.03)	-.012 (.02)			
Telephone Subscription	.05 (.06)	.06 (.06)	.12 (.08)	.13* (.07)	.014 (.08)		.08 (.06)
Secondary General	-.027 (1)	-.016 (.094)	-.07 (.12)	-.07 (.1)	.15 (.15)		.15 (.12)
Inflation	.008 (.08)	.01 (.07)	-.016 (.16)	-.004 (.14)	.27 (.18)	.04 (.17)	
Government Education Expenditure						.68 (.64)	
Secondary Gender	-3.12 (10.8)	-1.6 (10.8)	-6.75 (12.1)	-7.6 (10.7)			-33.9** (15.3)
Secondary Women					.05 (.08)	.04 (.05)	
Women Seat Share					-.1 (.09)	-.09 (.08)	
Population Growth	.08 (.5)	.12 (.52)	.35 (.55)	.3 (.52)	.79 (1.08)	-1.16 (1.44)	1.8* (.97)
Life Expectancy	.2 (.17)	.25 (.15)	.53 (.32)	.55** (.28)		.72* (.41)	
Urban	-.03 (.09)	-.017 (.08)	.022 (.11)	.035 (.087)	-.1 (.12)	-.05 (.05)	-.1 (.08)
Polity2	.07 (.11)	.05 (.11)	.3 (.18)	.3** (.15)			-.17 (.16)

Business Freedom					.2 (.15)	.1 (.09)	.06 (.07)
Corporate Tax Rate	-.17 (.11)	-.18* (.11)	-.11 (.12)	-.13 (.12)	.24* (.13)	-.28** (-.14)	-.08 (.11)
Rule of Law							.06 (.32)
Regulatory Quality							1.7 (1.5)
Corruption					.02 (.11)	-.07 (.096)	.15 (.08)
Tariff Rate						.14 (.13)	
Property Rights	.09* (.05)	.12** (.06)	.06 (.06)	.07 (.06)	.18* (.10)	.16* (.09)	
Political Rights					-.13 (.1.2)	-.26 (.55)	
<b>Historical Controls</b>							
Legal UK			1.65 (4.24)	1.8 (3.7)		2.62 (4.18)	
Legal France			-3.27 (3.38)	-3.21 (2.7)		.11 (2.4)	
Ancestral Political Development	-1.15 (.71)	-.84 (.68)	-1.2	-1.1 (.8)	.78 (.1.05)	.92 (.88)	-2.1*** (.8)
Ancestral Economic Development	.34 (.55)	.14 (.56)	-.06 (.67)	.18 (.66)	.72 (.91)	.01 (.57)	.73 (.75)
Continental Dummies	YES	YES	YES	YES	YES	YES	YES

Constant	-7.4 (12.7)	-22 (.15)	-25.6 (16.3)	-34.3* (18.4)	-49.4 (35)	-65.2* (37)	14.2 (15.1)
Observation	91	89	82	80	62	69	65
R <sup>2</sup>	.26	.24	.33	.33	.14	.22	.4
F-Test	.09	.00	.00	.00	.00	.00	.00
Wooldridge's Robust Score Test		.36		.73	.18	.11	.72

#### 4. Discussion and Conclusion

The paper explores the linkage between adolescent fertility and the FDI by giving particular attention to the endogeneity issues. It contributes to the literature by being the first study tackling the issue and has originality in using the historical plow use as the instrument to eliminate the risk of the omitted variable bias and reverse causality. To this purpose, we used cross country data for the year of 2014 where the sample selection is based on the data availability. OLS and 2SLS estimation results indicate that the using OLS would lead to underestimation of the valid coefficient indicating the negative bias. Results suggest that OLS estimated coefficients are .06, .1, and they are between .12 and .26 for 2SLS depending on the covariates included in the model. Therefore, the empirical results suggest that the rise in adolescent fertility attracts FDI conditional on the covariates included into the model indicating the significance of the premium (skill and unit cost) provided by the female labor in the countries with high adolescent fertility. Therefore, the study contributes to the literature that accounts the unit labor cost and human capital level (Dunning, 1988; Zhang and Markusen, 1990; Noorbakhsh et al., 2001) as the labor market origin determinants of FDI by showing the relevance of adolescent fertility in attracting FDI.

The downward bias in OLS estimated coefficients would indicate the omitted variable bias. Moreover, results suggest that the GDP per capita affects negatively the FDI inflows which comply with the results provided by some studies in the literature (Jaspersen et al. 2000; Edwards, 1990; Sadig, 2009). Telephone use (only in one model) used to proxy infrastructure shows the positive impact on the FDI entrance as it is emphasized in the literature (Kinoshita and Campos, 2003; Mollick et al. 2006). Democracy (only in one model) also affects positively the FDI complied with the results provided by (Guerin and Manzocchi, 2009; Addison and Heshmati, 2003). Life expectancy

which is used to measure the labor productivity affects positively FDI complies with the results provided by Alsan et al. (2006) and Globerman and Shapiro (2002). The final model indicates that as the education becomes free of gender bias, then FDI would not find attractive to invest in the host country. Furthermore, results suggest that property rights affect positively, corporate tax rate affects negatively the FDI.

It can be argued that teenage childbearing does not produce solely job market consequences, but bears to produce consequences valid for the general economy. We, in particular, argue that FDI which is considered as one of the primary means of knowledge and technology transmission would be attracted by the premium provided by the female labor having low bargaining power due to early childbearing.

The results might also indicate the trap of underinvestment in human capital by female labor where the FDI enables the stability of underinvestment. FDI by exploiting the low bargaining position of young mothers would generate incentives to provide flexible, low paid labor (with a higher probability of employment) that would shape incentives to early birth give particularly in societies where the skill premium is captured mostly by male workers.

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# Positive Discrimination in Labour Law: A Comparative Study between Egyptian and Saudi Legislation

Ola Farouk Azzam<sup>1</sup>

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## Abstract

**Purpose** – The purpose of this paper is to explore positive discrimination in labor law. It points out that women, children and the disabled are positively discriminated in terms of working conditions and leave so that to highlight their legal status and working conditions in Egyptian and Saudi legislation.

**Design/methodology/approach** – The paper analyses the literature on the social, economic and physical conditions of children, the disabled and women, especially in Egypt and Saudi Arabia.

**Findings** – The paper analyses that the legislator in Egypt and Saudi Arabia took into account the social, economic and physical conditions of some workers and then established positive discrimination for them.

**Research limitations/implications** – The research uses an analytical approach based on some empirical data.

**Originality/value** – This paper describes the objectives and the reasons why the legislator, in Egypt or Saudi Arabia, regulates positive discrimination for some workers.

**Paper type** – A Mixed Method Approach (Quantitative and Quantitative data collection) has been adopted in this paper.

**Keywords** – *Positive discrimination; Vulnerable working groups; Child labor; Disabled persons; Women's leave; Safe and health; Working conditions*

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## 1. Introduction

Labor Law is considered to be one of the branches of social law that aim to protect the working class. It ignores the principle of power of will in the contractual relationship between the worker and the employer, and considers this relationship to be a link between two parties. The law imposed a set of restrictions on the employer's freedom to contract and organize for the protection of workers.

Labor Law did not only regulate this organization but also interfered and organized the working conditions of vulnerable groups in the labor relationship; women, children, and the disabled were regarded as weak parties, all requiring legal protection. Labor Law has regulated and prohibited women from working at night, in hazardous conditions, and along with affecting their employment after childbirth, and on certain holidays. As for children and the disabled, the legislator considers their weakness and lack of physical ability to perform work to be similar to the adult worker. Therefore, we are exposed to categories dealing with special rules in Labor Law, through the following divisions:

Chapter I: Rules of Child Labor in the Labor Law.

Chapter II: Rules Related to the Employment of the Disabled.

Chapter III: Rules Concerning the Employment of Working Women.

### The Concept of Positive Discrimination in Labor Law

Positive discrimination means a set of guarantees and benefits that the legislator regulates in labor law and provides protection to vulnerable groups that are not equal in relation to others, whether because of their social status or the circumstances surrounding them. Accordingly, affirmative action does not mean discrimination or racial discrimination between two sexes and their preference over the others. This means that the legal relationship is unequal because of the presence of a vulnerable party or a party that is surrounded by certain circumstances that require protection and a range of guarantees.<sup>2</sup>

### The Wisdom of Positive Discrimination in Labor Law

The Labor Code is realistic in that it regulates the factual situation of workers and the working conditions of each worker. Therefore, when the legislator of the Labor Code regulated labor rules, he did not regulate them in a single way

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<sup>2</sup> Salama Abdul Tawab, Ola Farouk Azzam: Introduction to Social Legislation, Dar al-Nahda al-Arabiya, Cairo, Egypt, 2013, p.94.

but organize them by distinguishing certain groups and treating them according to certain circumstances.

Women, children and the disabled are grouped by circumstances protected by the legislator when organizing their work. The prohibition of work in hard and hazardous conditions or at night provides for some exceptions for women, as they may work at night under certain circumstances and under certain conditions, because of the social status they hold. Women have been given several holidays that have not been given to men as a result of their being a mother or a wife. Conversely, disabled persons have been allocated a proportion of the employment to other workers.

### **Chapter I. Rules of Child Labor in Labor Law**

Children are the future. Their protection and the opportunity for their physical and mental development is their aspiration. International organizations across the world have been alerted by this fact. Firstly, they sought to regulate child labour through laws, international conventions on the protection of children, and the prominent role played by the International Labor Organization (ILO)<sup>3</sup>. The protection of child labor requires the regulation of age-related norms in terms of determining a minimum age and the constraint of employment before that age. Conditions of child labor are followed by a ban on employment in hard or hazardous labor, as well as in night work; in addition, it is important to determine the daily and weekly hours of child labour, as well as organizing their vacations and rest times. The protection of children also requires the provision of medical care, given the possibility that they may be at higher risk than other workers, for their early employment.<sup>4</sup>

### **Minimum Age for Child Labor (and Exceptions)**

Working environments affect children growth, especially at an early age; they need to be given the opportunity to grow and develop before engaging in labor. The law has therefore set a minimum age for child labor. The definition of a minimum age for child labor is not limited to Unified Labor Law, No. 12 of 2003, which provided a rule limiting this age, prohibiting the employment of children before the end of development, and specifying exceptions to this age,

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<sup>3</sup> There are many recommendations and conventions that have been adopted in order to protect children from the prohibition of child labor and restrictions on juvenile labor. No. 182 of 1999 on the Prohibition of the Worst Forms of Child Labor.

<sup>4</sup> Hossam Eddin Kamel Ahwani: Explanation of the Labor Law, without publisher, 1991, p.3.

but also the provisions of Egyptian Child Law.<sup>5</sup> While the Saudi legislator organized child labor in the new Saudi labor system (Act No. 219 of 1422H).<sup>6</sup> Both the Labor Law and the Children's Law have regulated the rules of child labor, which cannot be derogated. These rules are similar in several respects and differ from others, but Children's Law is the latest version of Standard Labor Law.

### **Minimum Age for Child Labor: Prohibition of Employment of a Child Under the Age of 15**

There has been a change in the minimum age of child labor in Egypt; the law has witnessed an upward spiral in determining the minimum age that does not prohibit child labor before reaching a predetermined age. This change is to raise the minimum age for child labor in both Labor Law and the Children's Law.<sup>7</sup> One might note that there is a correlation between compulsory education laws and labor and child laws, particularly in terms of determining the age of employment. Article 98 of the Unified Labor Law states: "In the application of the provisions of this Law, a child shall be deemed to be a 14-year-old child or a person who has passed the age of completion of basic education and has not attained the age of eighteen years". Thus, every employer who uses a child under the age of 16 is obliged to give him documentation proving that he works for him, and the picture of the child is attached to it and approved by the competent manpower office.<sup>8</sup> Article 99 of the Labour Law states that: "the employment of female and male children shall be prohibited before reaching the age of completion of basic education, or fourteen years or older. However, they may start training at the age of twelve". In order to complete the above, the Saudi legislator required fulfilment of certain conditions in Child Labor, namely that: "1. No person under the age of 15 shall be employed and shall not be allowed to enter the workplaces. The

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<sup>5</sup> The legislator saw the need to provide more protection for the children. Their work was regulated by a law of their own, No. 12 of 1996, as amended by Law No. 126 of 2008. And the article 1 of this Act stipulated that: "The State shall ensure the protection of children and mothers, take care of children and provide for the right conditions for their formation in all aspects of freedom and human dignity." The State also guarantees, as a minimum, The Convention on the Rights of the Child and other relevant international instruments in force in Egypt".

<sup>6</sup> The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

<sup>7</sup> Salah Ali Hassan: Labor Inspection and Protection of Labor Rights, Comparative Study between Arab Legislation and International Standards of Work, Supplement No. 20/21, Journal of Law, Helwan University, Egypt, January / December 2009, p. 103.

<sup>8</sup> Egyptian Labor Law No. 12 of 2003, Official Gazette No. 14, dated 7/4/2003.

Minister may raise this age in certain industries or regions or for certain categories of juveniles.

2. Notwithstanding paragraph (1) of this Article, the Minister may permit the employment or employment of persons between 13 and 15 years of age in light work, taking into consideration the following:

2/1. They are not likely to be harmful to their health or growth.

2/2. Work does not interfere with their attendance at school and their participation in vocational guidance or training programs, and does not impair their ability to benefit from the education they receive.<sup>9</sup>

Legislation has set a minimum age for child labor, linking this to the completion of basic education, taking into consideration the age of basic education, and leaving the child with the opportunity to complete the necessary teaching of writing and reading. The Uniform Labor Law requires that a contract of employment be prohibited for every child under the age of 14 or under the age of primary education as well as his training before the age of twelve years.

Thus, the Child Law No. 126 of 2008 defines the child in Article (1) of the Law. It states that: "The child in the field of care provided for in this Law shall mean any person under 18 years of age. Article 1 of the Saudi Labor Law defined the event as a person who has completed the age of 15 years and has not attained the age of 18 years. Age shall be established by birth certificate, national identity card or any other official document. If the official document does not already exist, age shall be determined by one of the parties specified by a decision of the Minister of Justice in agreement with the Minister of Health".

Additionally, the Saudi legislator required fulfilment of certain conditions related to child labor, stating in Article 163 of labour law that it is prohibited to employ juveniles during the night for twelve consecutive hours, except in cases determined by the Minister. Article 164 states that juveniles may not be employed more than six hours per day, except for the month of Ramadan. The actual working hours shall not exceed four hours.

Working hours shall be organized so that the juvenile does not work for more than four consecutive hours, without a period or more for rest, food and prayer, not less than one hour for half an hour and not to remain in the workplace for more than seven hours.

Juveniles may not be employed on weekly rest days, holidays, public holidays, and annual leave. The exceptions provided for in Article 106 of this Law shall not apply to them".<sup>10</sup>

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<sup>9</sup> Section X: Run the events/ Article 162, of The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

In light of that text, it is clear that the Child Law has raised the minimum age of employment for juveniles. Therefore, an employer may not employ a child under the age of 15 years or who has not reached the level of education, whichever is greater, and his training is prohibited before the age of thirteen years.

### **The Penalty for Violations of the Minimum Age for Child Labor**

The rule relating to the establishment of the minimum age for child labor concerns public order. The legislator aimed at allowing time for the childhood development and the protection of his health, as well as for the necessary amount of education. Therefore, violating this rule is punishable with two penalties, a civil and a criminal one:

(1) Criminal Punishment: Article 74 of the Children's Law provides for this penalty: "Any person who contravenes the provisions of Part 5 of this law shall be punished by a fine not less than one hundred pounds and not more than five hundred pounds. Moreover, in case of repetition, the punishment shall be increased by the number of cases and shall not be suspended. The Saudi legislator in the Labor Law/ Article (152) argues that: "The employer shall be punished by a fine of not less than five hundred riyals and not more than three thousand riyals, the fine shall be multiplied by the number of workers who have committed the violation".

It is clear that the Egyptian and Saudi legislators have agreed on the criminal penalty (being a monetary fine). This penalty is not sufficient to compel the employer to respect the provisions of the law and the rules on child labor.

(2) Civil Punishment: Since the rule relating to the determination of the minimum age for child labor is a peremptory norm of public order, it follows that it violates the contract of employment, and therefore any employer employing children below the thresholds referred to above is infringing the law.<sup>11</sup>

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<sup>10</sup> Also the article (156) states that: The employer shall, prior to the operation of the event, collect the following documents:

1- National identity card or official certificate of birth.

2- A certificate of health suitability for the required work, issued by a competent doctor, and certified by a health authority.

3 - The approval of the guardian of the event.

These documents must be saved in the event file.

Section X: Run the events/ Article 163-164, of The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

<sup>11</sup> El-Said Eid Nayel: The Mediator in the Explanation of the Labor and Social Security Schemes in Saudi Arabia, Al-Rashed Publishers, Saudi Arabia, Second Edition, 2014, p. 78.

### Exceptions to the Minimum Age for Child Labor

The minimum age for child labor shall apply to all workers. However, children may be employed before reaching this limit, if those exceptions concern training or employment in some work or in connection with the employer.

#### (1) Training Exceptions

Article (99) of the Unified Labor Law prohibits the training of children before the age of twelve years. Article 64 of the Egyptian Child Law prohibits the training of children before the age of thirteen. Thus, an employer may conclude a training agreement with a child who is thirteen years old and may not train the juvenile before that age.

The Saudi legislator in the Labor Law/ Article 167 sets forth that: “the provisions of this section shall not apply to the work performed by children and juveniles in schools for the purposes of general, vocational or technical education and in other training institutions, and shall not apply to work performed in enterprises by persons who have attained the age of at least fourteen years if such work shall be carried out in accordance with conditions determined by the Minister. The work shall be an essential part of the following:

1. An educational or training course with primary responsibility for a school or training institution.
- 2 - A training program implemented in the largest part, or all in a facility if the competent authority has approved it.
3. An orientation or orientation program designed to facilitate the choice of profession or type of training”.

Therefore, the reason for the legislator's reduction of the minimum age for training juveniles from the age of employment is that training does not require considerable physical strength and therefore does not affect the health and development of the child. Moreover, training is often not done in the workplace but in educational institutions, e.g. VET institutions. The legislator may also exclude this age group from lifelong training. Egypt lacks schools for work training, so the training of children at an early age is reflected before their involvement in the world of work.<sup>12</sup>

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<sup>12</sup> Hossam El-Din Kamel El-Ahwani: Op.cit, p. 346.

## **(2) The Exception to Hidden Laws**

The legislator excluded from the application of the minimum age children employed in the agricultural sector and the work of pure agriculture (103 unified work). Moreover, the legislator excluded from the application of the provisions of the law, and thus the age of employment, domestic workers (M4).

## **(3) Family Burden Exception**

Article 3 of the Unified Labor Law stipulates that the provisions of this law shall not apply to members of the employer's family, and thus excludes such persons from applying the minimum age for employment of children. The legislator's position on this exception is justified by the fact that the relationship of kinship is stronger than the law.

The employer is more knowledgeable than others about determining the age of his relatives. This exception requires that the child be a member of the employer; that is to say, working in a nearby establishment, and that the employer is compelled to provide food, water clothing and so on. In other words, the first is obliged to support the second legally.

## **Chapter II. Child operating rules**

The Labor Law authorizes the Minister of Manpower and Immigration to issue a decree defining the system of employment of juveniles, conditions of employment, work and occupations in which children may be employed. The Minister of Manpower Decree No. 118 of 2003 promulgated the rules governing child labor. Among these regulations are:

### **(1) Health Care and Medical Examination**

Every child has the right to health, social, and treatment services. The employer who employs children to work in the facility is obliged to provide them with such care and treatment. The Egyptian Child Law stipulates that each child has the right to care. According to Article 1 of the Ministerial Decision, the employer is obliged to conduct a medical examination of the child before they are employed, in order to ensure their physical and health safety, especially when children are engaged in certain environments that may endanger them. Health care and medical examinations are carried out at the

expense of the employer through the General Authority for Health Insurance.<sup>13</sup>

The employer's obligation to perform the medical examination does not in itself provide sound protection for the working juveniles. Article 65 of the Egyptian Child Law and Article 3 of the aforementioned Ministerial Decision require the employer to take the necessary measures to carry out a regular medical examination of the child who works for him, through the General Authority for Health Insurance, at least once a year. The article also states that work shall not cause pain or physical or psychological harm to the child or deprive him of his opportunity to attend school and recreation and develop his abilities and talent. The employer shall be required to insure him and protect him against the harm of the profession during his period of employment;

## (2) Providing a Safe and Healthy Working Environment

In order to complete the process of protecting the working child, the State shall guarantee to the child, in all fields, the right to a healthy and clean work environment and to take all effective measures to eliminate harmful illegally by providing employers with all necessary information, measures and procedures of the Egyptian Child Law.

## (3) Identification of Working Hours, Rest Times and Prohibition of Overtime

Article 101 of the Unified Labor Law and Article 66 of the Egyptian Child Law prohibit the child from working more than six hours a day, provided that the working hours include periods of eating and rest, not less than one hour in total, and that children are not working for four consistent hours. The legislator also banned the child from working overtime or carrying out work on weekly rest days and public holidays. Article 65 of the Egyptian Child Law stipulates annual leave for the seven-day worker, which may not be postponed or denied for any reason.

Imposing an employer's obligation to work hours, rest times, and statutory holidays, the legislator sought to protect the working child for his physical well-being and provided him with the opportunity to complete his growth. Therefore, it is prohibited to employ the juvenile in times other than those specified by law or on holidays or to assign him additional work, in addition to depriving him of his annual leave or postponing it for any reason.

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<sup>13</sup> Salah Ali Hassan: General Principles in Social Legislation, faculty of law, Helwan university, Egypt, 2011, p.107.

#### (4) Prohibition of Night Work for Working Children

Article 101 of the Unified Labor Law and article 66 of the Egyptian Child Law prohibit the night-time operation. The child may not work between 7 pm, and 7 am. Perhaps this time has been designated for child development, so as not to be exposed the child if he worked at night to disturbances in his sleep and change habits to unhealthy habits. The child is more in need of night rest than other workers, and the night is full of dangers that may be inflicted on the child if he works at night, at the premises of the establishment or on the way home or to work. If the employer has the power to regulate the work of his or her establishment and to take such measures as may be necessary for the organization of the work, he shall set the working hours for his employees, but he may not employ the child between 7 pm, and 7 am.

#### (5) Other Obligations for the Employer

In addition to the previous obligations of the employer, which are regulated by law and the Ministerial Decision for the organization of child labor, other obligations are intended to control the duties of the employer and to provide real protection for the working child. These include:

- obligations imposed on the employer under the labor law:

the legislator (in article 102 of the Unified Labor Law) requires the employer, who employs one or more children in his or her enterprise:

to produce a copy containing the provisions contained in Chapter III of Part VI on child labor (articles 98, 103, consolidated), which shall be posted in the workplace;

to release a statement explaining the working hours and rest periods adopted by the competent administrative authority, e.g. the directorates of the labor force in whose district the place where the child works is located;

to inform the competent administrative authority of the names of the children working for it, the work assigned to them and the names of the persons entrusted with supervising their work, in order to facilitate the supervision of the employer's implementation of the provisions of the law on the employment of children.

The employer shall also be bound by the delivery of the child working in the establishment, remuneration, and such other rights to whom the child is legally entitled.

In order to complete the above, the Saudi legislator required fulfilment of the conditions laid down in Child labor/ Article 146. In this sense, juveniles may

not be employed in hazardous work or industries, or in occupations and businesses that are likely to endanger their health, safety, or morals due to their nature or the circumstances in which they are performed. Article 106 states that “the employer shall inform the competent labor office of each event he occupies during the first week of his employment, and shall keep in the workplace a register of juvenile workers indicating the name and age of the juvenile, the full name of his guardian, his place of residence and the date of his employment”;<sup>14</sup>

- preparation of documents and documents for children

In this regard, Article 68/5 of the Egyptian Child Law states that the employer shall keep official documents attesting to the age and health of all his workers and provide them upon request. He shall be responsible for ascertaining the age of his working children;

- providing accommodation for working children

Article (68/4) of the Egyptian Child Law provides for the provision of separate accommodation for child workers from other adults if the working conditions require their stay;

- prohibition of child labor in hazardous work

Article 65 of the Egyptian Child Law prohibits the employment of children in any type of work which, by their nature or circumstances, can endanger the health, safety or morals of the child. The employment of any child in the worst forms of child labor, defined in Convention No. 182 of 1992, is specifically prohibited. The Saudi legislator in the Labor Law (Article 136), specified that no person may be employed in the mine or quarry under 18 years of age, and no woman may be employed in any mine or quarry;

- occupational health and safety precautions for child labour

Article (68/6) of the Egyptian Child Law stipulates that all occupational health and safety reserves shall be provided at the workplace, in addition to its commitment to the training of child laborers in their use and how to deal with them. Egyptian and Saudi legislators agreed to protect children in terms of

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<sup>14</sup> Section X: Run the events/ Article 106/146, of The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

allowing them to obtain sufficient education to familiarize themselves with the rules of writing and reading before entering the labor market, as well as prohibiting them from operating at night to complete their physical development or employment in hazardous work.

### **Rules Relating to the Employment of Disabled Persons**

Legislation is keen to address the problem of disabled persons, who are partially unable to perform the work and who need rehabilitation in order to be able to perform the appropriate work with their physical condition (see the Vocational Rehabilitation Law for Disabled Persons, No. 14 of 1959, 39 of 1975, as amended by Law No. 49 of 1982). The legislator also allocated the sixth chapter of the Egyptian Child Law No. 126 of 2008 to regulate the rehabilitation and work of the disabled.

### **Definition of the Disabled**

Article 2 of the Rehabilitation of Persons with Disabilities Law, No. 39 of 1975 defines the disabled person as: “any person who has become unable to rely on himself in the performance of work or other work and stability in it, and his ability to do so due to organic, mental, sensory or congenital disability since birth”.

### **Protection and Rehabilitation of the Disabled**

A disabled person, a child or a young person, deserves health, economic, and social care by the State; it is his or her right ; it is obliged to provide or facilitate the provision of medical, psychological, social and educational services.<sup>15</sup>

In this regard, article 72 of Egypt's 2012 Constitution states: "The State commits itself to the care of the disabled with health, education, economic and social rights, provides them with employment opportunities, promotes social culture and provides public facilities to suit their needs".

Article 75 of the Egyptian Child Law stipulates that the State shall ensure that the child is prevented from being injured and from any work that may harm his or her health or physical, mental, spiritual or social development. The State shall take the necessary measures for the early detection of disability and the rehabilitation and employment of disabled persons upon reaching the age of employment. The state will also take appropriate measures for the contribution

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<sup>15</sup> Ola Farouk Azzam: Social and Professional Integration of Workers with Special Needs in the Labor Market, Journal of the Faculty of Law, Ain Shams University, V. 2017, Egypt, p.22.

of the media to awareness-raising and counseling programs in the field of prevention of disability and to promote awareness of the rights of children with disabilities, and to sensitize them and their caregivers to facilitate their integration into society.

### **The Right of the Disabled Child to Rehabilitation**

Rehabilitation is one of the most fundamental rights that must be guaranteed to the disabled child. Rehabilitation is meant to provide the social, psychological, medical, educational and professional services that must be provided to the disabled child and his family to enable him to overcome the effects of his disability. The State performs rehabilitation and compensatory services for the disabled for free, within the limits of the amounts included for this purpose in the general budget of the State, as stipulated in Article (77) of the Egyptian Child Law.

Qualified authorities are committed to the rehabilitation of the disabled child by handing him a certificate, free of charge, to each child who has been rehabilitated, as well as the relative certificate, in addition to other data (79) of the Egyptian Child Law. This certificate obtained by the disabled child is handed over to the Manpower Office upon registration.<sup>16</sup>

### **Disability Employment Provisions**

Under the Rehabilitation of Persons with Disabilities Law No. 39 of 1975, the employer is obliged to employ a percentage of disabled persons (5%); employers employing 50 or more workers in the private sector must use 5% of the total number of workers in the unit workforce to work. Article 82 of the Egyptian Child Law stipulates that an employer who employs 50 or more workers, whether working in a place or a single town or village, can use disabled children nominated by the labor force offices, with a minimum of two percent and up to five percent, as stipulated in the Rehabilitation of Persons with Disabilities Law. Taking into account the requirements and benefits of free choice of the worker, the employer may fill this percentage by means candidates other than those nominated by the labor force offices. The disabled person who received the certificate of qualification, under Article 8 of the Rehabilitation of Persons with Disabilities Law, registers his name with the

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<sup>16</sup> Ola Farouk Azzam: Social and Professional Integration of Workers with Special Needs in the Labor Market, op.cit, p.62.

Manpower Office in which his residence is located<sup>17</sup>. The scope of the employer's obligation to employ a disabled person is limited only to employers, who use at least 50 workers under the Labor Law. This obligation is therefore not applicable in cases where the labor law does not apply to individual workers, such as casual workers.<sup>18</sup>

The Manpower Office is obliged to register the names of the disabled in a special register.

The employer who uses a disabled person shall notify the competent office of the disabled person with a letter of acknowledgment of arrival within ten days from the date of receipt of the work (9/2), in order for the Manpower Office to inventory and count the number of workers Disabled.

In order to provide protection for the disabled, the legislator stipulates, under Article 83 of the Egyptian Child Law, to compel the employer to maintain a particular register for the names of persons with disabilities who have obtained the qualification certificates that have been attached to him. Also, this office should be informed of the total number of employees and the number of jobs held by the disabled persons and the remuneration they receive. The Saudi legislator in the Labor Law (Chapter II) sets forth that “employment of disabled persons, pursuant to Article 28, refers to each employer employing 25 or more workers”. The nature of his work enabled him to employ disabled persons who have been professionally rehabilitated to occupy at least 4% of his total number of disabled persons who are professionally qualified, whether by nominating employment units or others. It shall send to the competent labor office a statement of the number of jobs and jobs occupied by persons with disabilities who have been professionally rehabilitated and their remuneration.

Article 29 also specified that: “if a worker suffers a work injury resulting in a lack of his normal abilities, he shall not be prevented from performing any work other than his previous work. This shall not prejudice the compensation he deserves for his injury”.

### **The Penalty for Violating Provisions Relating to the Employment of Disabled Persons**

Article 84 of the Egyptian Child Law provides for the punishment of anyone who contravenes the provisions of the two previous articles relating to the rate of employment of disabled children and obliging the employer to keep a record for the registration of disabled workers and handing it over to the

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<sup>17</sup> Fatma Mohamed Al-Razzaz: Explanation of Labor Law, Helwan University, Egypt, 2004, p.98.

<sup>18</sup> Hossam El-Din Kamel El-Ahwani: Op.cit, p. 329.

administrative authority upon request with a fine not less than one hundred pounds and not exceeding one thousand pounds.

The employer may be ordered to pay the disabled person an amount equivalent to the prescribed or estimated salary for the work for which he is nominated, monthly, as of the date of proving the violation and for a period not exceeding one year.

Under article 86 of the Egyptian Child Law, the legislator exempts prosthetic devices, aids, spare parts, means, production equipment and means of transportation necessary for the use and rehabilitation of disabled children of all types of taxes and fees.

### **A comment on the organization of Egyptian and Saudi legislators for the work of the disabled**

In our view, the Egyptian and Saudi legislators still lack more social protection for the disabled and their working conditions, but they have identified a certain percentage of jobs for the disabled, although this percentage is not sufficient, especially in Egyptian law. In Saudi law, the ratio is 4%, while in Egyptian law the percentage of each establishment employing 50 workers is a small share that does not achieve adequate employment for the disabled.

### **Chapter III. Rules Concerning the Employment of Working Women**

Women are men's sisters at work; equality between men and women in the performance of work is required in terms of the legal provisions regulating the employment of workers. Women are a human force whose work must be organized in order to make the best use of them. The last decades have witnessed their involvement in all fields of work. International organizations have taken notice of this early and have concluded several agreements.

Although the principle of equality and non-discrimination in the workplace must be enforced, women workers need some kind of positive discrimination in terms of their labour regulations because of their physical weakness compared with men, and the working woman is a wife and mother at home. Most family tasks, which are not borne by the working man, necessitated the special treatment of women in proportion to their abilities and circumstances. In order to provide the necessary protection for women, the legislator imposed several restrictions on the employment of women. The organization of women's labor legislation is one of its sources in international conventions to ensure equality and non-discrimination. Thus, we address the rules relating to the employment of working women, through two requirements.

First requirement: legal regulation of women's work.

Second requirement: Prohibition of the Employment of Women in Hazardous or Harmful Laws.

### **Legal Regulation of Women's Work**

The law establishes the principle of equality and non-discrimination between men and women in the field of labor relations. Article 88 of the Unified Labor Law stipulates that all provisions of this law shall be applied to female workers, in the same way as workers (corresponding to article 122/5 of the French Law).<sup>19</sup>

### **First: Banning Women's Night Work**

The legislator has established a general principle of equality and non-discrimination among all workers in the field of work; it applies to women workers with the same rules as all workers, including the exclusion of the employment of workers at night. However, since some work is performed by nature at night, workers may be employed at night to perform these tasks. With regard to women, they may not be employed at night except in legally prescribed cases.

Therefore, it is not permissible to employ women, as a rule, at night; because night work has negative effects on women's health, and stress, in addition to night work, this leads to increased sensitivity of the body to the effects and damage of the work environment.<sup>20</sup>

Moreover, night work has an evident effect on the role of women as wives and mothers, the role that is superior to the performance of work and any other social duty. The work of women at night causes them to leave to their husbands and children their family duties. Night work may also expose women to risks in when going to or returning from work.

For all of this, the subject of women's work has been widely welcomed by international and Arab organizations. Many agreements have been concluded to regulate the work of women, and this concern has not only been on the international side, but on the internal level.

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<sup>19</sup> L'article 122/5 du code du travail française 2008, et Jean-Maurice Verdier et autres: Droit du travail, 12 édition, Dalloz, Paris, 2002, pp.264.

<sup>20</sup> Fatma Mohammed Al-Razzaz, d. Salama Abdel Tawab Abdel Halim: General principles in social legislation, d., 2006, p.107.

### **(1) International Organizations related to the Work of Women at Night**

International conventions have banned women's work at night, as this has a clear effect on women's physical health and family responsibility. Under Convention No. 4 of 1919, the night is meant for rest hours, not less than eleven consecutive hours, and the employment of women is prohibited between 10 pm, and 5 am. The agreement aims to achieve the welfare of working women and the health of all workers, and increase the productivity of workers who receive the necessary rest. Convention, No. 90 of 1948, authorized the competent authority to determine the night rest of working women within limits established by the Convention.<sup>21</sup>

These three conventions prohibit the employment of women, at any age, at night in all establishments, except for an establishment where only members of the same family work. The two Conventions set out two exceptions to the rule prohibiting women at night: the first is the case of force majeure; and the second takes place if the facility uses raw materials or materials in the process of preparation and is susceptible to rapid damage, requiring women to work at night to keep them from being damaged.<sup>22</sup>

Despite the efforts of the International Labor Organization (ILO) concerning the exclusion of night work for women, there is a trend calling for the abolition of this restriction, which violates the principle of equality of opportunity between women and men, as well as the principle of equality and non-discrimination. The International Convention on the Elimination of all Forms of Discrimination Against Women, 1976, which called for the revision of laws aimed at the protection and discrimination of women and men, and the 1985 International Labor Conference on equal opportunities and equal treatment of men and women.<sup>23</sup>

### **(2) Internal Organizations concerning the Work of Women at Night**

Legislation prohibits the employment of women between 7pm and 7 am (m. 89), except in cases, works and events that are determined by a decision of the competent minister, where they may not be operated at night except within the limits of the specific works and events. This article authorizes the Minister of Manpower and Immigration to issue a decision specifying the conditions and

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<sup>21</sup> In this regard, the ILO conventions such as the Convention No. 4 of 1919 concerning the work of women at night, as amended by Convention No. 41 of 1934, amended by Convention No. 89 of 1948, Convention No. 103 of 1952 on the Convention on the Protection of Maternity, 171 for the year 1990 ..., and also the ILO website: [www.ilo.org](http://www.ilo.org).

<sup>22</sup> Salah Ali Hassan: Op.cit, p. 115.

<sup>23</sup> Loc. cit.

jobs in which women may be employed at night. The decision of the Minister, No. 155 of 2003, concerning the regulation of the employment of women at night was issued. The decision on the principle of banning women's night work also included two exceptions:

a) Article 4 of the Ministerial Decision stipulates that the rules on the work of women at night in cases of force majeure shall not apply if the work in the establishment ceases for an unforeseeable reason.

b) Article 5 of the said resolution stipulates that the provisions of this resolution shall not apply to women workers who hold administrative or technical supervisory positions.<sup>24</sup>

Thus, women may be employed in night work when specified by the competent minister, e.g. between 7 pm and 7 am, such as work in hospitals, hotels, restaurants, entertainment houses, pharmacies, media and work to avoid the loss of perishable material or the unavailability of male labor.<sup>25</sup>

We can mention what the Saudi legislator has written in article 194: "Subject to the provisions of Article 4 of this Law, women shall work in all fields that are compatible with their nature and prohibit their operation in hazardous works or harmful industries. The Minister shall determine by profession the occupations and works that are harmful to health or that may expose women to specific dangers, prohibiting their employment or restricting them under special conditions".

The legislator wanted to ban the employment of women at night to observe the marital and family duties of the worker, to allow her to perform her household duties and to take care of the children and the family, especially at night. When women are employed at night, a permit must be obtained from the competent administrative authority to employ women at night, and the employer is obliged to provide all the protection and security guarantees for working women at night.<sup>26</sup>

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<sup>24</sup> Dr. Hammam Mohamed Mahmoud Zahran: Labor Law, Individual Employment Contract, New University House, Alexandria, 2007, p.172.

<sup>25</sup> Hossam El-Din Kamel El-Ahwani: Op.cit, p. 314.

<sup>26</sup> Eid Nile: Op.cit, p. 101104, d. Hammam Mohamed Mahmoud Zahran: previous reference, p. 167174, Jean-Maurice Verdier et autres: Droit du travail, Op.cit, pp.264-267.

## **Prohibition of the Employment of Women in Dangerous or Harmful Work**

### **(1) Role of International Conventions in Banning the Employment of Women in Hazardous Work**

The International Labor Organization (ILO) has issued several conventions and recommendations that prohibit the employment of women in hazardous or arduous work, which may affect the health or physical integrity of women or adversely affect their employment as mothers and wives.<sup>27</sup>

Convinced of the non-employment of women in dangerous or harmful acts, the Saudi legislator agreed with the Egyptian legislator, and in Article 150 he stresses that: “Women may not be employed during the night for eleven consecutive hours except in cases where the Minister issues a decision”.

### **(2) Prohibition of the Employment of Women in Hazardous Work in the Unified Labor Law**

The law prohibits the employment of women in work that are harmful to them; this may be due to the weakness of women’s physical power. They are less able to bear the hardships of some work, so the legislator took into account the ability of women to make this effort. Article (90) of the Minister of Manpower and Immigration, No. 155 of 2003, specified in Article 1 that hazardous work, for which women cannot be employed, is subject to the flaw that women workers are exposed to illness, accident, shame, or endangering their morals (e.g. work in tourism, mining, industry or dealing in metals).<sup>28</sup> Also, the Saudi legislator in Article 136 of Labor Law states that “no person may be employed in the mine or quarry under 18 years of age, and no woman may be employed in any mine or quarry”.

## **Protection of the Motherhood of Working Women**

The legislator has established positive discrimination in the area of labor relations for the benefit of women; this may be due to their circumstances, in terms of their limited physical capacity, in addition to their role as housewives, wives and mothers, a social duty that is beyond any other obligation. The legislator gave her leave in which she played her role as a mother, as a wife,

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<sup>27</sup> Fatma Mohammed Al-Razzaz, Salama Abdel Tawab Abdel Halim: Op.cit, p. 110.

<sup>28</sup> Hammam Mohamed Mahmoud Zahran: Op.cit, p. 177, Salah Ali Hassan: Op.cit, p. 119.

maternity leave and leave to care for her child. It also included provisions for the care of the infant and the establishment of nurseries.

### **First: Vacation Status**

Article 91 of the Unified Labor Law, as well as Article 70 of the Egyptian Child Law, provides for the granting of maternity leave lasting ninety days (three months) to the working woman.

In the Labor Law and the Egyptian Child Law, the legislator provided for maternity leave, which was consistent with international labor standards; it always sought to protect vulnerable groups, such as working women, as stipulated in article 3 of Convention No. 103 of 1952 on maternity protection, which stated the following:

“1. Maternity leave shall be granted to every woman to whom this Convention applies and a medical certificate shall indicate the possible date of the situation.  
2. Maternity leave shall not be less than twelve weeks and shall include a compulsory leave period after discharge”.

The prohibition on the employment of women during the 45 days following the situation is related to public order, and therefore it cannot be agreed that it is contravened because the purpose of this prohibition is to protect the health of both the worker and the child.

Although the worker does not perform work during pregnancy and maternity leave, she is not entitled to a wage but receives compensation equivalent to the comprehensive wage on maternity and maternity leave and her employment contract is suspended during this leave. The Labor Law has determined that the worker shall receive compensation equal to the comprehensive wage, to be complied with by the insurance body and not by the employer, while the Child Law has determined that the worker shall be entitled to full-time maternity leave. In any case, what the worker receives, whether paid or compensated, shall be equal to the wage.<sup>29</sup>

Article 91 of the Unified Labor Law stipulates that the worker shall be entitled to maternity leave for ten months in the service of one or more employers.

Labor Law limited the right of workers to obtain leave that was granted only twice during the period of their service, with one or more employers, and perhaps the wisdom sought by the legislator behind that provision is not to exhaust the employer and not disturb the work in his establishment.

Note that the provisions on maternity leave are the minimum of what should be provided to the worker, and therefore it may be agreed to increase the

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<sup>29</sup> Fatma Mohammed al-Razzaz: op.cit, p. 353.

duration or number of the days of leave, and should not be derogated. However, the legislator once again rearranged the status of the Egyptian child law, and Article 70 of the law stipulates that the worker has the right to receive maternity leave in any sector or any establishment, provided that it does not exceed three times the length of her service. In this case, the legislator of the Child Law, in 2008, increased the number of days off for agreed upon in the 2003 Labor Law.

Article 90 of the Unified Labor Law provides for the prohibition of dismissal or termination of employment during maternity leave since the employment of the worker is a right established by law and does not entitle the employer to dismiss her or to terminate her service. This does not mean that this provision adds absolute immunity to the worker, but it constitutes temporary immunity for the leave period. This provision is a specific application of the prohibition provided for in Article 127 of the Labor Law<sup>30</sup>.

Article 115 of the Saudi Labor Law stipulates that: "A working woman is entitled to maternity leave for the four weeks prior to the possible date of delivery and the subsequent six weeks. The likely date of delivery shall be determined by the doctor of the establishment or by a medical certificate certified by a health authority. The employment of women is prohibited in the six weeks following birth".<sup>31</sup>

Also, Article 122 specifies that: "the employer shall pay the working woman during her absence from work on maternity leave the equivalent of half of her wage, if she has a year's or more service with the employer, and the full wage if the period of her service is three years or more on the day of commencement of leave. If she has benefited in the same year from full-paid maternity leave and is paid half of her pay during the annual leave if she has benefited in the same year from half-paid leave". Furthermore, Article 135 sets forth that "the employer shall provide medical care to the working woman during pregnancy and childbirth".

Moreover, the Children's Law reduces the day-to-day working hours of the pregnant woman, of at least one hour, from the sixth month of pregnancy, and prohibits her from working overtime during the pregnancy until the end of the sixth month from the date of birth.

The employer may impose a penalty on the worker, which is to deprive her of her full compensation for the duration of maternity leave. The purpose of the legislator to grant the worker the right to leave is to provide her with the opportunity to recover after pregnancy and childbirth, and the burden and

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<sup>30</sup> Salah Ali Hassan: Op.cit, p. 122.

<sup>31</sup> Section IX/ Women run: Article 115: The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

effort she requires, in addition to caring for her young child. Therefore, the employer decides to apply this penalty if she violates the rule<sup>32</sup>.

Additionally, Saudi Labor Law stipulates that the contract shall be terminated in accordance with the provisions of this section if she works for another employer during the period of her authorized leave. In this case, the original employer may deprive her of her wages for the period of leave.

### **Second: Baby Care**

In order to complement the protection of working women and their children and their families, the legislator gave the child who breastfeeds her child in article 93 of the Unified Labor Law, as well as in article 71 of the Egyptian Child Law, the right to two daily breaks to feed her child and the duration of each half-hour period. The worker has the right to combine these two periods. These two working hours shall be calculated in addition to the prescribed rest periods.<sup>33</sup> The employer may not refuse the worker's request to take the comfort period or to include it. It is a right given to him by the legislator, and he is not entitled to deprive him of it. This period is considered to be an increase in the daily rest of the workers according to article 81.

As for the Saudi Labor Law, it stipulates that: "A woman who has returned to work after her maternity leave has the right to take a period or periods of rest not exceeding one hour per day in addition to the rest periods granted to all workers. This period or periods of working hours shall be calculated, entailing a reduction in wages".<sup>34</sup>

The worker is required to take care of the infant and to breastfeed her child, so if it is proved that she does not breastfeed, she is not granted this rest.

### **Third: Childcare Leave**

Taking into consideration the role of women working as mothers, and the child who is the hope of the future, and his need for the mother for proper education and upbringing, the worker might decide to take leave to take care of

<sup>32</sup> Ahmed Hassan El-Borai: *Al-Wajeez in explaining social law, Labor Law and Social Insurance*, Cairo University, Egypt, 2003, p.684-686.

<sup>33</sup>Article 71 of the Egyptian Child Act provides that: "A woman who breastfeeds her child during the two years following the date of the situation, as well as the prescribed rest period, shall have the right to two other periods for this purpose, each of which shall not be less than half an hour. The worker shall have the right to combine these two periods , And these two periods of working hours are calculated, and this does not entail any reduction in wages. "

<sup>34</sup> Section IX/ Women run: Article 114: The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

her child. The legislator granted this leave to a worker under article 94 of the Unified Labor Law, and article 72 of the Egyptian Child Law. According to the former, a worker who employs 50 or more workers has the right to receive unpaid leave for a period of not more than two years to take care of her child, which can only be given twice during her period of service and three times according to the Egyptian Child Law in 2008. The worker does not perform work during childcare leave, so he is not paid or compensated for. Childcare leave is unpaid, and the contract of employment is suspended during this leave.<sup>35</sup>

Accordingly, the employer for whom the worker works shall pay social insurance contributions or pay compensation equal to 25% of her salary on the date of commencement of leave, depending on the worker's choice.

The fact that the worker is on childcare leave does not negate the continuity of her relationship with the establishment. She is still employed at the establishment, and therefore this leave is calculated from her period of service and her seniority. The period of leave shall expire at the end of the period or the reason for such leave, such as the child's 18 years or the transfer of custody of the child to the non-mother.

#### **Fourth: The Obligation of the Employer to Provide a Nursery**

Following article 96 of the Unified Labor Law and article 73 of the Egyptian Child Law, the employer is obliged to provide a nursery for the children of his workers, during the period of work, and the organization of the implementation of this commitment. In the text of the Labor Law and the Child Law, the legislator has divided the employer's implementation of his obligation to provide a nursery for the children of his workers, between two cases: the first case relates to the employer who employs one hundred workers or more in one place of work. In this case, the employer is obliged to establish a nursery for them. The employer is compelled to establish a nursery if he employs one hundred workers, whether in a single establishment or many establishments in one place. The road is in a unit where this number of workers is concentrated, not in the establishment unit or its multiplicity. The legislator requires that such a number of workers is available to the employer so that the latter has a high financial capacity to perform the obligation.<sup>36</sup>

As for the second case, the employer who employs less than 100 workers in one area of work. Employers in one work area must participate in the provision of a nursery to care for the children of the workers. They have the

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<sup>35</sup> Fatma Mohammed al-Razzaz: op.cit, p. 353.

<sup>36</sup> Salah Ali Hassan: Op.cit, p. 125.

option of establishing a nursery or entrusting a nursery to shelter the children of the workers.

Saudi Labor Law (article 115) stipulates that: In all places where women work and in all professions, the employer shall provide them with seats, in order to secure their rest.<sup>37</sup> Article 149 also established that: 1. Every employer who employs 50 workers or more should create a suitable place where there are a sufficient number of nannies to take care of the children of workers under the age of six, if the number of children is ten or more.

### **Leave for the Woman who has lost her Husband (widows/ Edaa):**

The Saudi legislator has aligned himself with other legislators to organize special leave for women, which is the one for the woman who loses her husband. Article ((106)) of the Saudi Labor Law stipulates that: A working woman whose husband dies shall be entitled to leave with full pay for a period four months and ten days from the date of death.

The Saudi legislator alone organizes such a holiday, which he organized for religious reasons, according to which a widowed woman should not leave her house four months and ten days (for three months, his wife is saddened by forty days of mourning for her deceased husband), before this period.

The Egyptian legislator did not provide for leave to the woman who loses her husband, although there was many in the religious circles opined that a woman should not leave her home before four months and ten days have passed by since her husband's death.

### **Penalty for Violating Provisions Relating to the Employment of Women**

Article (74) of the Egyptian Child Law stipulates that anyone who contravenes the provisions of Part Five concerning the provisions of women's employment shall be punished by a fine of not less than one hundred pounds and not more than five hundred pounds. The fine shall be multiplied by the number of workers who have committed the offense. In the event of repetition, the penalty shall be increased by the number of cases and shall not be suspended. Moreover, the work of women in hazardous work, which is forbidden to work, leads to the nullity of the contract of work absolutely nullifying the violation of public order and public morals, in addition to the criminal liability of the employer according to the provisions of Article 248 of the Unified Labor Law.

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<sup>37</sup> Section IX/ Women run: Article 194: The Royal Decree No. M / 51 dated 23/8/1426 H approved the Cabinet Decision No. 219 dated 22/8/2005. (1426).

### **Comment on the Organization of Egyptian and Saudi Legislators for the Work of Women**

Egyptian and Saudi legislators have made great strides in providing social protection to working women. Arranging working conditions that are consistent with their nature of a woman, their work has been banned in hazardous and harmful acts such as mining, oil, and others. He also gave her a range of days of leave commensurate with her nature as a mother, such as maternity leave, child care, and breastfeeding.

The Saudi legislator alone regulates leave following the death of the husband, which is given to the wife (4 months and ten days). The reason for organizing this leave is purely religious; it is the religious opinion that prohibits the woman from leaving her home at the time of her husband's death (4 months and ten days), which is the period for the widow. The Egyptian legislator, despite the state's adherence to the Islamic religion, did not organize such leave and took the other religious approach that allows women to deal with the all aspects of life, including performance of work. The position of the Egyptian legislator is the right and the first to follow, as women have many other days of leave and the interest of the establishment in which it works is not to disrupt or stop the work of women.

### **Conclusion**

The study dealt with positive discrimination in the labor law through three chapters. The first considered the rules on child labor, which set out the provisions for determining the age at which the child may be employed, the exceptions to this age in terms of training (e.g. prohibiting their work in hazardous and arduous work and prohibiting their work at night and providing medical care for them).

The second chapter deals with the conditions and rules of work of the disabled, in terms of allocating a compulsory percentage of the employment rates for them, and prohibiting their engagement in hard work or in activities not suitable to their nature. Finally, the third chapter deals with the rules of women's work and shows the benefits they receive as a worker both in terms of prohibiting work in hazardous or arduous work or work at night, as well as granting them leave such as maternity leave, nursing or childcare. This study has reached several conclusions and recommendations.

## Results

- Positive discrimination does not mean discrimination and racial preference in the contractual relationship, but rather means a set of guarantees and benefits regulated by the law in the labor law granted to vulnerable groups that are not equal in relation to others, whether because of weakness or the circumstances surrounding them.
- Both the Egyptian and Saudi legislators agreed to prevent the employment of women, children and the disabled in hazardous or arduous work or mining.
- Egyptian and Saudi legislators have agreed to ban child labor before they reach the age of 15 years, with the exception that they may be employed before this age in light work. Training may be from the age of 13.
- It is prohibited to employ women, children and the disabled at night from 7:00 p.m. to 7:00 a.m., except for women, who may sometimes be employed for some purposes such as nursing or working in the media.
- The Egyptian and Saudi legislators disagreed about the rate of employment of the disabled. The Egyptian legislator allocated a percentage of 5% for each establishment employing 50 workers, while the Saudi legislator allocated 4% for each establishment employing 25 workers.
- Egyptian and Saudi legislators agreed to organize some leave for working women, such as maternity leave and breastfeeding. The Saudi legislator alone regulated the leave of the woman who lost her husband.

## Recommendations

- We recommend that the Egyptian and Saudi legislators organize the employer's commitment to adjust work at the establishment to provide employment opportunities for the disabled and benefit from it and transform it into a productive capacity in society.
- We recommend the Egyptian legislator intervenes and raises the employment quota for the disabled from 5% for each facility employing 50 workers to 4% for each facility employing 25 workers, similarly to Saudi legislation.
- We recommend that the Saudi legislator repeals leave for women who have lost their husband. It is long leave (four months and ten days) and may make some establishments refuse to employ women after many days without working.

- We recommend that everyone concerned with educating women, children and the disabled be informed about their rights and that they be given these rights and not be deprived of them.

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