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Companies and New Organizational Work Methods: towards a Multidisciplinary Perspective

by **ORSOLA RAZZOLINI**¹

Abstract:

Labour Law has arisen around the Classical Employment Contract which, on one hand, worked successfully in the past because it satisfied the need of flexibility of the Vertical Firm; on the other hand, being different from all the other contracts because of the inequality of bargaining power between the employer and the employee, it could not longer be regulated by Contract Law and its main principle, the Freedom of Contract. In the last forty years changes in nature of the dominant mode of competition have led Companies to restructure their Economic Organizations and look for different contractual models in order to satisfy different needs of flexibility. It might be observed an increasing demand both for Self-Employed workers or other Atypical workers and for inter-firm cooperative agreements. The above mentioned contractual relations may often comprise a kind of Economic Organization (Network Form of Organization) which might be described as something among Market and Hierarchy. This paper, through the analysis of the concept of «Economic Dependence», which might be suffered by contracting parties (independent contractors or small firms) embedded in Network Forms of Organizations, aims to stress that both Labour Law and Commercial Law should take into consideration different organizational paradigms.

SUMMARY: 1. Vertical Firm, Employment Contract and Labour Law – 2. Vertical disintegration of productive processes and vertical disintegration of productive relations – 3. The commercial contract as a tool for creating Intermediate Organizational Forms – 4. Labour Law and Commercial Law responses to the emergence of Intermediate Organizational Forms – 5. An outline about the effects of the emergence of Intermediate Organizational Forms on the legal concept of “Employer” – 6. Conclusion

1. Vertical Firm, Employment Contract and Labour Law

In this paper I address the question whether changes in Economic System and Organizational Forms require us to reconsider the way we draw the boundaries between

¹Ph.D. Candidate in Law of Business at Bocconi University; Visiting Research Student in Industrial Relations at the London School of Economics and Political Science.

Labour Law and Commercial Law². I suggest that conditions that justified separate legal framework to regulate contractual relationships between Employer and Employees (namely Inequality of Bargaining Power) are now present in inter-firm contractual relationships. Therefore, there is a case for the extension of the scope of Employment Regulation, by analogy, to some inter-firm contractual relationships.

Economic Systems and Legal Order have always been connected one to the other³. Even though it seems difficult to understand what follows what⁴, the 19th Century conception of the Economic System as a Market System might be related to the XIX Century conception of the Commercial Law, whose simple, analytical framework, mainly turned to facilitate, respect and enforce voluntary choices, seems to reflect and support the ideal of a market economy, enhancing the freedom and the equality of individual citizens⁵.

In the 20th Century the emergence of the large vertical-integrated firm as the dominant instrument for the allocation of resource, has enhanced the role of the Classical Employment Contract upon the other Market Contracts. Particularly, the Classical Employment Contract, although it can exist a part of the vertical firm, plays a dominant-setting role in this kind of economic organization, for, conferring on firm the right and the power to specify the tasks that their employees should undertake “within certain limits”⁶, enables the firm to direct and control every aspect of the factory production⁷.

² By Commercial Law I mean, according to Paul Davies and Mark Freedland «those general principles of the law of contract which would apply to the contract if it were not regulated by labour law» (see P. DAVIES and M. FREEDLAND, *Employees, workers, and the autonomy of labour law*, in *Legal Regulation of the Employment Relation*, by H. COLLINS, P. DAVIES, R. RIDEOUT, Kluwer Law International, 2000, 269).

³ See M. WEBER, *Law in Economy and Society*, translated by E. SHILS, Cambridge, Harvard University Press, 1954, in particular 11-40, 98-197; P. SELZENICK, *Law, Society, and Industrial Justice*, Transaction Books, London, 1919, reprinted in 1969; R. W. GORDON, *Critical Legal Histories*, in *Stanford Law Review*, 1984, vo. 36, 57-125.

⁴ See M. WEBER, *The Economic system and the normative orders*, cit., 34, «Factual regularities of conduct (“usages”) can, as we have seen, become the source of rules for conduct (“conventions” “law”). The reverse, however, may be equally true. Regularities may be produced by legal norms, acting by themselves or in combination with other factors»; S. DEAKIN and F. WILKINSON, *The Law of the Labour Market. Industrialization, Employment, and legal evolution*, Oxford University press, 2005, cha. 1, 45.

⁵ See M. WEBER, *Law in Economy and Society*, cit., spec. 98 and ss.; for criticism see K. POLANYI, *The Great Transformations*, Beacon Press, Boston, 1944, 43 and ss., who observes that a Market Economy, which implies a self-regulating system of market, can exist only in a Market Society; R. W. GORDON, *Critical Legal Histories*, op. cit.; See also H. COLLINS, *The Law of Contract*, Butterworths, London, 1997, 5-6.

⁶ See R. H. COASE, *The Nature of the Firm*, *Economica*, 1937, op. cit.; See also D. MARSDEN, *A Theory of Employment Systems*, Oxford University Press, 1999, 248, who observes that how these limits are established and regulated is what lead workers to accept the managerial authority ad its directive and coordinating power.

⁷ See M. PERSIANI, *Contratto di lavoro e organizzazione*, Padova, 1966, 45, who views the Employment Contract as the source of the labour hierarchical organization. See also M. GRANDI, *Le modificazioni soggettive. I. Le modificazioni del rapporto di lavoro*, Milano, 1972; see also L. MENGONI, *Contratto di lavoro e impresa*, in L. MENGONI, *Il contratto di lavoro*, by M. NAPOLI, Milano, 2004, 3-38. A similar conclusion has been reached also from the Economic Analysis of Law perspective. Namely, Ronald Coase, in his pivotal work, has enhanced the role of the Classical Employment Contract as a way of organizing the economic activities which enables the entrepreneur to save

It has been stressed the Classical Employment contract differs from the other Market Contracts for it seems to combine both a market and a bureaucratic dimension (dual dimension)⁸. On one hand it represents a simple market contract providing a port of entry into the bureaucratic organization; on the other hand, it represents a bureaucratic relation, embedding the employees in a system of rules and hierarchical ranks planned in order to allow the entrepreneur to achieve his goals⁹.

In the meantime, Employees differ from the other contractors for, despite the formal contractual undertaking, they are placed into a condition of subordination. It has been observed that condition of subordination combines both a Market and Bureaucratic Aspect¹⁰: on the one hand, the large, specific and idiosyncratic investment made in the relationship with the employer, the difficulty of finding alternative jobs in other firms, the fact that wage provides Employees with subsistence, places them into a status of Market Dependence; on the other, the role Employees occupy inside the organization, the existence of bureaucratic rules and hierarchical ranks, the management's legitimate authority and power, places them into a status of Bureaucratic Dependence.

The conception of the Employment Relationship as an asymmetric power relationship justified the provision of Employees with Industrial Democracy tools, on the one hand, and statutory rights, on the other, mainly turned to counteract the inequality of Bargaining Power between Employer and Employees¹¹. Particularly, it justified the construction of a legal framework (Labour Law) autonomous and separated from the general Contract Commercial Law for it questions its main principle: the freedom of contract.

transaction costs by substituting only one contract to a series of market discrete transactions. See R. H. COASE, *The Nature of the Firm*, *Economica*, 1937, vol. 4, n. 16, 386-405.

⁸ See H. COLLINS, *Market Power, Bureaucratic Power and the Contract of Employment*, in *Industrial Law Journal*, 1986, vol. 1, 10; see also G. F. MANCINI, *La responsabilità contrattuale del prestatore di lavoro*, Milano, 1957, who theorized the dual composition of the Employment Contract as both a contractual agreement and a bureaucratic relation. By recognizing that the Employment Contract combines both a market and a bureaucratic dimensions, COLLINS and MANCINI both aim, on one hand, to better understand and theorize the content of the Employment Contract; on the other hand, to avoid the distortions and the fictions of the traditional Contractual approach. It is worth pointing out that, here, by "Bureaucracy" is meant, according to Macneil's definition, «a particular form of governance of human affairs dominated by reasoned and detailed planning» (see I. MACNEIL, *Bureaucracy and Contract of Adhesion*, in *Osgood Hall Law Journal*, 1984, vol. 5, 8). The concept of "Bureaucracy" and "Bureaucratic Authority" is developed by M. WEBER, *The Theory of Social and Economic Organization*, New York, Oxford University Press, 1947; P. Selznick, *Law, Society and Industrial Justice*, op. cit., cha. 2.

⁹ See H. COLLINS, *Market Power, Bureaucratic Power and the Contract of Employment*, op. cit., 1 and ss.

¹⁰ See H. COLLINS, *Market Power, Bureaucratic Power, and the Contract of Employment*, op. cit., 1-2; see also G. F. MANCINI, *La responsabilità contrattuale del prestatore di lavoro*, Milano, op. cit.

¹¹ See S. and B. WEBB, *Industrial Democracy*, London, 1919; Lord WEDDERBURN, *Labour Law and the Individual*, in Lord WEDDERBURN, *Labour Law and Freedom. Further Essays in Labour Law*, London, 1995, 286 and ss.; D. MARSDEN, *A Theory of Employment System*, 82. See also M. PEDRAZZOLI, *Democrazia industriale e subordinazione*, Milano, 1985; R. DE LUCA TAMAJO, *La norma inderogabile nel diritto del lavoro*, Napoli, 1976; P. DAVIES and M. FREEDLAND, *Kahn Freund's Labour and the Law*, London, Stevens, 1983, 18.

Traditionally, neither self-employment contracts nor other commercial contracts fall within the field of application of Labour Law. In fact, independent contractors, although they perform the service personally, do not need their bargaining power to be supported, insofar as it is assumed to be equal to that of all other contractors; the latter argument is *a fortiori* applicable to entrepreneurs who do not perform the service personally but in the conduct of an independent business.

2. Vertical disintegration of productive processes and vertical disintegration of productive relations.

At the end of the 1970s the classical vertical-integrated firm gradually loses its predominant economic place.

The so-called “fall of Fordism” has been attributed to changes in nature of the dominant mode of competition¹². Namely, external markets liberalization and technological changes; the increasing demand for specialized and flexible production instead of demand for mass and standardized consumer goods; the increasing demand for skilled work-force¹³.

In order to face up to the economic changes, Companies have started to reduce their productive process at the *core business*, outsourcing and contracting out economic activities for which they do not own anymore a specific competitive advantage.

The vertical disintegration of productive processes necessarily involves vertical disintegration of productive relations¹⁴.

On one hand, firms, much more than in the past, tend to arrange different aspects of production through subcontracting, franchising and outsourcing¹⁵.

¹² See J. RUBERY and D. GRIMSHAW, *The organization of employment. An international perspective*, Palgrave Macmillan, 2003, 53.

¹³ See B. HARRISON, *Lean and Mean. The Changing Landscape of Corporate Power in the Age of Flexibility*, 1998; R. B. REICH, *The Work of Nations. Preparing Ourselves for 21 Century*, 1992; P.A. HALL and D. SOSKICE, *Varieties of Capitalism: The institutional foundations of competitiveness*, Oxford: Oxford University Press, 2001; D. SOSKICE, *Divergent production regimes: coordinated and uncoordinated market economies in the 1980s and 1990s*, in AAVV, *Continuity and change in contemporary Capitalism*, Cambridge, University press, 1999, 101 ss.; F. AMATORI, *L'impresa: una prospettiva storica*, Milano, 2000; A.D. CHANDLER, F. AMATORI, T. HIKINO, *Grande impresa e ricchezza delle nazioni 1880-1990*, 1999, Bologna; J. RUBERY and D. GRIMSHAW, *The organization of employment. An international perspective*, Palgrave Macmillan, 2003, 50 and ss.; S. BOLOGNA and A. FUMAGALLI, *Il lavoro autonomo di seconda generazione. Scenari del post-fordismo in Italia*, Milano, 1997; E. RULLANI and L. ROMANO, *Il postfordismo. Idee per il capitalismo prossimo venturo*, Milano, 1998.

¹⁴ See H. COLLINS, *Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Law*, in *Oxford Journal of Legal Studies*, 1990, 353.

¹⁵ See W.W. POWELL, *Neither Market nor Hierarchy: Network Forms of Organizations. Research in Organizational Behavior*, Jai Press Inc., Greenwich, Connecticut, 1990, vol. 12, 295 and ss.; H. COLLINS, *Long-Term Production and Distribution Relations: Intense Co-operation without Legal Enforceability*, *Paper for the Law and Economic Group*, 2005, 1; H. COLLINS, *Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Law*, op. cit., 353; F. CAFAGGI, *Reti di Imprese tra regolazione e norme sociali. Nuove sfide per diritto ed economia*,

On the other hand, it might be observed an increasing demand for Self-Employed workers or other atypical workers: e.g. part-time workers, temporary workers, casual workers¹⁶.

There seem to be reasons for viewing Self-Employment Contracts and other Commercial Contract as functional substitutes of the Classical Employment Contract.

Firstly, both Self-Employment Contracts and Commercial Contracts enable Companies to achieve an efficient acquisition of labour at a lower cost, avoiding mandatory Employment Rules. Secondly, they allow Companies to allocate on the independent contractor or on the entrepreneur the risk of performing the service, saving monitoring¹⁷ and other organizational costs¹⁸. Finally, the transition from employees to either independent workers or entrepreneurs might be also related to the increasing of knowledge and skills which characterizes the performance of work itself in certain economic sectors (namely Knowledge Intensive Sectors)¹⁹. The greater are the skills and the knowledge of the work, the greater is its sufferance of being expressed through the Classical Employment Relationship, which reflected an Economic System in which «the ownership of the means of production coincided with the possession of technical knowledge and skill»²⁰. Therefore, especially in Knowledge Intensive Sectors, Firms may decide to outsource some economic activities to other firms or independent contractors for they do not own anymore the

Bologna, Il Mulino, 2004; S. DEAKIN and J. MICHIE, *Contracts, Co-operation, and Competition. Studies in Economics, Management and Law*, New York, 1997; P. MARITI and R. H. SMILEY, *Co-operative Agreements and the Organization of Industry, Firms Organization and Contracts*, Oxford University Press, 2001, 276 and ss.; K.J. BLOIS, *Vertical Quasi-Integration*, in *Firms Organizations and Contracts*, Oxford University Press, 322.

¹⁶ See H. COLLINS, *The Scope of Employment Regulation*, has stressed that the full-time contract of employment, which was the dominant model in the first half of twentieth century, has declined as a proportion of the workforce to about 50%. «Instead of the vast majority of the workforce being employed under contracts for full-time work of indefinite duration, the pattern changed with the rise of part-time work, self-employment, temporary work and casual work».

¹⁷ See observations developed by M. PEDRAZZOLI, *Dal lavoro autonomo al lavoro subordinato*, in *Impresa e nuovi modi di organizzazione del lavoro*, Atti delle giornate di studio in Diritto del Lavoro, Salerno 22-23 maggio 1998, who relies on the Agency Costs Theory and the Game's Theory in order to explain, to some extent, the increasing demand for self-employed workers.

¹⁸ Particularly, the decision to outsource production and other functions might be related, from a transaction costs-economics perspective, to an increasing in organizational costs compared to transaction costs. It might be argued that, in front of the external market liberalization and technological changes, companies are no longer able to produce by themselves everything they need: hiring skilled workers is too expensive; entering into a employment relationship is not any more an efficient way of organizing economic activities as in the past; producing all the functions is too difficult and expensive as well; making large investments in technology is too dangerous because it changes too rapidly. Hence, Market seems to come back as a way of governing economic relations more efficient than Hierarchy.

¹⁹ See also S. BOLOGNA, *Dieci tesi per la definizione di uno statuto del lavoro autonomo*, in S. BOLOGNA e A. FUMAGALLI, *Il lavoro autonomo di seconda generazione*, op. cit.

²⁰ O. KAHN-FREUND, *Servants and Independent Contractors*, in *Modern Law Review*, 1951, vo. 14, 505.

capabilities they need in order to carry out them and to control how employees perform their tasks²¹.

Apparently, the transition from Employment Contract towards a series of standard Market Contracts can be aligned with the transition from Hierarchical Organizational Forms towards Market Organizational Forms. Notwithstanding, it seems worth keeping in mind that Market and Hierarchy are only polar models, extreme points on a continuum with many Intermediate or Hybrid Organizational Forms in between²².

3. The commercial contract as a tool for creating Intermediate Organizational Forms.

What interests me here is stressing that Self-Employment and Inter-Firm Relationships, because of certain features, may represent modes of organization of productive activities among Market and Hierarchy. In order to do this, I rely, to a large extent, on the New Institutional Economics and Relational Contract Theory.

With regard to inter-firm relationships, we may consider, for instance, franchise contracts, which seems to create «neither an employment relation nor an independent contracting relationship»²³, and some supplier partnerships.

With regard to Self-Employment relations, we may consider, for instance, the increasing diffusion in Italy, until the Labour Market Reform has come into force (d.lg. n. 276/2003), of the so-called CO.CO.CO (Collaborazioni Continue e Coordinate): namely, self-employment relations in which work is performed by an independent worker personally, continuously and according to the directives of solely one purchaser²⁴.

The New Institutional Economics perspective, fathered by Coase and Williamson²⁵, has stressed the role of contract as form of private ordering/ governance structure which arises, in the service of economizing in transaction costs, as response to the varying of two

²¹ The idea that the growth and the size of a firm are determined also by the direction of its capabilities was stressed by E. T. PENROSE, *The Growth of the Firm*, Oxford Basil Blackwell, 1968.

²² The idea that "Market" and "Hierarchy" or "Firm" are not opposing terms but extreme points on a continuum from "Market" to "Firm" with many intermediate states in between – firms like market and market like firms – was stressed by G. B. RICHARDSON, *The Organization of Industry*, in *Economic Journal*, 1972, 883-896; See also C. KOENIG and R.A. THIETART, *Managers, engineers and government, Technology and Society*, 1988, 10, 45 and ss.

²³ See G. K. HADFIELD, *Problematic Relations: Franchising and the Law of Incomplete Contracts*, in *Stanford Law Review*, 1990, vol. 42, no. 4, 928.

²⁴ The INPS data, collected in 2002, reveal that the number of "Collaborazioni Continue e Coordinate", in Italy, has increased from 1.000.000 in 1996 until 2.300.000 in 2002.

²⁵ See R. H. COASE, *The Nature of the Firm*, *Economica*, 1937, vol. 4, n. 16, 386-405; O. E. WILLIAMSON, *The Economic Institutions of Capitalism*, New York, Free Press, 1985; O. E. WILLIAMSON, *Comparative Economic Organization: The Analysis of Discrete Structural Alternatives*, in *Administrative Science Quarterly*, 1991, vol. 36, no 2, 269 and ss; O. E. WILLIAMSON, *The Mechanisms of Governance*, Oxford University Press, 1996.

main attributes of transactions: asset specificity and uncertainty²⁶. In one of his most recent writings, Williamson recognized that “Market and “Hierarchy” are only polar model, among which «hybrid governance structures», defined as «various forms of long-term contracting, reciprocal trading, regulation, franchising and the like»²⁷, can emerge as alternative modes of governance of transactions which differ in terms of uncertainty and asset-specificity.

It is worth noting that Williamson's New Institutional Economics Analysis relies, to a large extent, on the Relational Contract Theory, fathered by Macaulay and Macneil²⁸. In particular, Macneil has stressed the features which differentiate some contracts from formal market discrete transactions (which cannot really exist), by focusing his attention on the contractual relation rather than on the contract *per se*. A contract is not a “market contract” but rather a “relational contract” whenever it presents the following main features: the extended duration of the relationship (time-factor)²⁹; the incompleteness, which derives from contracting parties' incapacity to reduce important terms of the arrangement to well-defined obligations³⁰; the existence of unilateral power, which invariably comes out when «a time-factor is added (as it must be in real-life contracts) between the time of exercise of choice (bilateral power) and the actual exchange of goods»³¹.

Therefore, from a New Institutional Economics and Relational Contract perspective, some commercial contractual relations represent Hybrid or Intermediate modes of

²⁶ See O. E. WILLIAMSON, *The Economic Institutions of Capitalism*, New York, Free Press, 1985; O. E. WILLIAMSON, *The Theory of the Firm as Governance Structure: From Choice to Contract*, in *Journal of Economic Perspectives*, 2002, vol. 16, no. 3, 171 and ss, in which Williamson argues that transactions, which differ in their attributes in terms of asset specificity and uncertainty, can be aligned with governance structures.

²⁷ See O. E. WILLIAMSON, *Comparative Economic Organization: The Analysis of Discrete Structural Alternatives*, *cit.*, 280.

²⁸ The Relational Contracts are defined as those contracts which are not discrete market contracts. See S. MACAULAY, *Non-Contractual Relations Business: A Preliminary Study*, in *American Sociological Review*, 1963, vol. 28, 55 and ss.; I. R. MACNEIL, *The New Social Contract. An Inquiry into Modern Contractual Relations*, Yale University Press, 1980, 10 and ss. See also I. R. MACNEIL, *The many features of contracts*, in *Southern California Law review*, 1974, vol. 47, 691-816; I. R. MACNEIL, *Economic Analysis of Contractual Relations: its shortfalls and the need for a “rich classificatory apparatus”*, in *Northwestern University Law Review*, 1980-1981, vol. 75, no. 6, 1018 and ss.; M. A. EISENBERG, *Why there is no law of relational contracts*, in *Northwestern Law Review*, 2000, vol. 94, 805 and ss.; V. P. GOLDBERG, *Relational Exchange. Economics and Complex Contracts*, in *American Behavioral Scientist*, 1980, vol. 23, no 3, 337-352; C. J. GOETZ and R. E. SCOTT, *Principles of Relational Contracts*, in *Virginia Law Review*, 1981, vol. 67, no. 6, 1089 and ss.

²⁹ It's worth noting that Macneil underlines the fact that «it's not the duration *per se* that matters, but what extended duration permits it to happen», see I. R. MACNEIL, *Economic analysis of Contractual relations: its shortfalls and the need for a “rich classificatory apparatus”*, *cit.* 1042.

³⁰ See C. J. GOETZ and R. E. SCOTT, *Principles of Relational Contracts*, in *Virginia Law Review*, 1981, vol. 67, no. 6, 1089 and ss.

³¹ see I. R. MACNEIL, *Economic analysis of Contractual relations: its shortfalls and the need for a “rich classificatory apparatus”*, *cit.* 1059. It is worth noting that this argument is used by Macneil in order to stress that one of the most important goal, which the Common Law Rules and Institutions should tend to promote, is not only the Economic Efficiency, as it has been pointed out by Richard Posner, but also the Restraint of Power.

organization – which, fictionally, can be located along the continuum running from Market to Hierarchy – insofar as the contracting parties do not live the govern of their long-term relationship to market forces but rather they plan it in advance, although in incomplete contractual terms and clauses, leaving to the unilateral power of one contracting party their precise definition at a later date.

In order to briefly analyze the position of firms or independent contractors embedded in such Hybrid Organizational Forms, firstly, it is worth noting that they can assent to enter into these kind of economic organizations for an initial inequality of bargaining power which places them into a status of Market Dependence similar to that of ordinary employees. Asset-specificity, asymmetry of information, asymmetry between supply and demand, are factors which may lower the market power of any economic agent and determine Market Failures, affecting the view of the Market as ideal place of perfect competition.

Secondly, it might be observed that certain commercial contractual relations, which differ in terms of extended duration, incompleteness, asset-specificity, existence of unilateral power, can be aligned with Quasi-Hierarchical modes of organization. This appears to happen, for instance, in the Franchising Relationship³², or in certain Supplier Partnerships³³, where firms seem to be embedded in a bureaucratic system of rules and placed under the control and the direction of another firm. Whenever it happens, it might be argued that the commercial contract appears to combine both a Market and Bureaucratic Dimension, as well as the Classical Employment Contract; whilst firms seem to be placed into a status of Bureaucratic Dependence similar to that of ordinary employees³⁴.

Finally, in the above mentioned situations, the large, specific and idiosyncratic investment made in the long-term agreement with another firm (*sunk-costs*), makes the relationship itself a fundamental commodity which provides independent contractors or entrepreneur with «subsistence», as well as the Employment Relationship provides Employees with subsistence. Particularly, in these cases, an unexpected termination of the contractual relation might determine the “economic-death” of the suppliers (firms or independent workers) or, at least, an economic loss, by depriving them of a large part of their output and making it difficult either to recover the initial investment or to come back to the Marketplace, of which they have been moved away for a long time.

³² See G. K. HADFIELD, *Problematic Relations: Franchising and the Law of Incomplete Contracts*, op. cit.

³³ One good instance is provided by Keith Blois who analyses the relationships between Marks and Spencer and their suppliers. See K. BLOIS, *B2B “relationships” – a social construction of reality? A study of Marks and Spencer and one of its major suppliers*, in *Marketing Theory*, 2003, vol. 3, 79; K. BLOIS, *“Is it commercially irresponsible to Trust?”*, in *Journal of Business Ethics*, 2003, vol. 45, 183-193.

³⁴ See section 1.

4. Labour Law and Commercial Law responses to the emergence of Intermediate Organizational Forms.

The previous arguments allow us to observe that every commercial contract, potentially, may combine both a Market and Bureaucratic dimension, as well as the Classical Employment Contract. This occurrence depends on how the terms of the contractual undertaking are defined. Whenever it happens, Commercial Law, with its idol of the freedom of contract, cannot longer supply the tools by which the productive relation can be understood and regulated.

Particularly, Commercial Law and its main principle, the freedom of contract, rely on an ideal of formal equality, rather than substantive equality, between the contracting parties³⁵. Therefore, insofar as the contracting parties are only apparently equal and free to contract, the principle of the freedom of contract, in practice, opens the doors to disparity, abuse, unjustifiable domination between them. The contract itself becomes a source of inequality: a tool by which the more powerful party in the Market can achieve power over others³⁶.

In this section I suggest to frame under a unitary perspective a twofold direction towards which both Labour Law and Commercial Law seem to have moved in the last years.

The first direction is represented by the general Labour Law debate concerning the extension of the scope of the Employment Regulation to those working contractual relations which, although they cannot be classified as Formal Employment contracts, in practice conceal the kind of authority structure that is typically involved in the employment relations, on the one hand³⁷; and the extension of a minimum threshold of Employment Rules to those Self-Employment Relations where, for certain features (namely extended duration of the contractual relation; the supply of services continuously, personally and according to the

³⁵ See H. COLLINS, *The Law of Contract*, 1997, op. cit., 30.

³⁶ See M. WEBER, *Law in Economy and Society*, cit., spec. 188-189; see also L. MENGONI, *Contratto di lavoro e impresa*, cit., 8: «Ma l'uguaglianza formale di fronte alla concorrenza, quando non sia sorretta da una certa uguaglianza di potere economico, non prepara le vie della giustizia, ma apre la strada alla vittoria del più forte».

³⁷ In U.K. and U.S. the debate concerning the distinction between dependent and independent contractors has led to stress the insufficiency of the traditional criterion of the "control test" and to move towards different criterion as "the integration test" and the "economic reality test". See O. KAHN FREUND, *Servants and Independent Contractors*, in *Modern Law Review*, 1951, vol. 14, 505; S. DEAKIN and G. MORRIS, *Labour Law*, Butterworths, London, 2001, cha. 3; P. DAVIES and M. FREEDLAND, *Labour Law: Text and Materials*, Weidenfeld and Nicolson, London, 1986, cha. 1; P. DAVIES and M. FREEDLAND, *Labor Markets, Welfare and the personal scope of Employment Law*, in *Comparative Labor Law and Policy Journal*, 1999, vol. 21, 231-248; M. LINDER, *Dependent and Independent Contractors in Recent U. S. Labor Law: An Ambiguous Dichotomy Rooted in Simulated Statutory Purposelessness*, in *Comparative Labor Law*, H. COLLINS, *The scope of the Employment Regulation*, cit.; H. COLLINS, *Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Laws*, op. cit.; M. FREEDLAND, *The Personal Employment Contract*, Oxford University Press, 2003, Introduction.

directives of solely one customer), the independent contractor is placed into a status of «Economic Dependence», on the other hand³⁸.

The crisis of the dichotomy Employee/Independent Contractor, as polar models which exhaustively frame working relationships, emerges as a legal response to the crisis of the dichotomy Hierarchy/Market, as Polar Models which exhaustively frame the Organizational Forms. In the same way, it stresses the exigency of revealing, visualizing and organizing the *continuum* existing between these two poles³⁹.

The second direction is represented by the shift of Commercial Law towards providing entrepreneurs, placed into a vulnerable position *vis-à-vis* another firm, with some protective mandatory rules. In Germany, France, Italy and Spain the debate about the conception of “Economic Dependence” and “Abuse of Position of Contractual Power” has flourished⁴⁰; whereas in the U.S. and U.K., the trend towards subcontracting and long-term cooperation among firms, has progressively led to point out the exigency of introducing in their legal framework values like good faith, trust, cooperation in long-term inter-firm relationships⁴¹.

Since 1998 in Italy it has been introduced a legal protective framework, applicable to supplier partnerships (l. n. 192/1998). The article 9 l. 18th of June 1998, n. 192, inserts the *status* of the “Economic Dependence” into the framework of supply contractual relations, providing it with a protective regulation: restraint of the power to terminate the relationship – in order to avoid that supplier, because of an unexpected withdrawal of the purchaser, suffers a serious economic loss, due to the impossibility of recovering the specific investment – ; the prohibition of abuse of the Supplier’s Economic Dependence (art. 9, d.lgs.

³⁸ See A. PERULLI, *Lavoro autonomo e dipendenza economica oggi*, Riv. giur. lav., 2003, 2003, 221 e ss.; A. PERULLI, *Il lavoro autonomo, Trattato di diritto civile e commerciale*, vol. XXVII, t. 1, A. CICU, F. MESSINEO, L. MENGONI, Milano, 1996. The concept of Independent Contractor’s “Economic Dependence” has been developed also in France, Germany and, to some extent, in U.K. See P. DAVIES and M. FREEDLAND, *Employees, workers and the autonomy of labour law*, op. cit.; H. COLLINS, *The scope of the Employment Regulation*, op. cit.; M. FREEDLAND, *The Personal Employment Contract*, Oxford University Press, 2003, Introduction.

³⁹ With regard to the role played by the «Dichotomy» in the *Theory of Law*, See N. BOBBIO, *Dell’uso delle grandi dicotomie nella teoria del diritto*, in N. BOBBIO, *Dalla Struttura alla Funzione. Nuovi studi di teoria del diritto*, Milano, 1977, 123-145.

⁴⁰ See L. CORAZZA, “Contractual Integration” e rapporti di lavoro. *Uno studio sulle tecniche di tutela del lavoratore*, Padova, 2004, 106; R. CASO, *Abuso di potere contrattuale e subfornitura industriale*, Trento 2000.

⁴¹ See S. DEAKIN, J. MICHIE, *Contracts, Co-operation, and Competition*, cit.; H COLLINS, *Regulating Contracts*, cit.; P. DAVIES and M. FREEDLAND, *Employees, workers, and the autonomy of labour law*, in H. COLLINS, P. DAVIES and R. RIDEOUT, *Legal Regulation of the Employment Relation*, Kluwer Law International, 2000, 267-286; H. COLLINS, *Long-Term Production and Distribution Relations: Intense Co-operation without Legal Enforceability*, *Paper for the Law and Economic Group*, 2005, 1; see also V. P. GOLDBERG, *Discretion in Long-term Open Quantity Contracts: Reining in Good Faith*, in *University of California, Davis law Review*, 2001-2002, vol. 35, 319 and ss.

192/1998); payments delays (d.lgs. 231/2002)⁴². The status of Economic Dependence, which seems to coincide with a status of Market Dependence⁴³, has to be appreciated by taking into consideration the possibility the customer has to determine an excessive imbalance of contractual rights and duties, on one hand – a kind of metering criterion of the asymmetry of market power between the parties – and the real possibility the supplier has to find more convenient alternatives in the Market, on the other hand (Art. 9, comma 1, l. n. 192/1998)⁴⁴.

It appears to be possible that the status of Economic (or Market) Dependence of Entrepreneur turns into a status of Bureaucratic Dependence whenever the inter-firm relationship represents a mode of organization of productive activities which can be located, along the fictional continuum, closer to Hierarchy than to Market (Quasi-Hierarchical Governance Structure). As it has been said, this is the case, for instance, of some Franchising Relationships or Supplier Partnerships where Entrepreneurs are placed under the control of another firm.

Actually, status of greater extent of dependence (what I call here “Bureaucratic Dependence”) have been regulated (in a few Countries) only by Company Law, in order to pursue its proper scopes. For instance, It might be taken into consideration German Company Law which acknowledges and regulates the hypothesis of the “Control Contract” (ss 291-310 AktG), by which a *Contractual Group of Companies (Vertragskonzernen)* can be constituted⁴⁵.

⁴² Recently, it has passed a new Act, l. n. 129/2004, applicable to Franchise Contracts. This Act mainly consists, on one hand, of disclosure’s rules (in order to reduce the problem of Asymmetric Information between the franchisor and the franchisee); on the other hand, it establishes that the contractual relation has to last for the time the franchisee needs in order to recover the initial specific investment made in the relationship (*sunk-costs*). Otherwise, it establishes a minimum duration of three years (art. 3, l. n. 129/2004).

⁴³ It is not a case in fact that, initially, the prohibition of abuse of the Economic Dependence was included in the Antitrust Law (l. n. 287/1990). The art. 9, comma 3 *bis*, l. n. 192/1998, constitutes nowadays the linkage between the Supplier Partnership’s Law and the Antitrust Law, by conferring on the Antitrust’s Authority the power of valuing whether the abuse of Economic Dependence is relevant to the preservation of Market’s order.

⁴⁴ It is worth pointing out that many scholars have stressed that the prohibition of abuse of the economic dependence (art. 9, l. n. 192/1998) is anyway applicable, on the bases of an analogy, to all long-term business production and distribution contractual relations which, in practice, may conceal a status of Economic Dependence of one party. See R. CASO, R. PARDOLESI, *La nuova disciplina del contratto di subfornitura (industriale): scampolo di fine millennio o prodromo di tempi migliori?*, in *Riv. dir. priv.*, 1998, 712 and ss.; F. PROSPERI, *Subfornitura industriale, abuso di dipendenza economica e tutela del contraente debole: i nuovi orizzonti della buona fede contrattuale*, in *Rass. Dir. civ.*, 1999, 639 e ss. R. CASO, *Subfornitura industriale: analisi giuseconomica delle situazioni di disparità del potere contrattuale*, in *Riv. crit. dir. priv.*, 1998, 243; R. VOZA, *Interessi collettivi, diritto sindacale e dipendenza economica*, Bari, 2004; O. CAGNASSO and G. COTTINO, *Contratti commerciali*, in *Trattato di diritto commerciale*, vol. IX, Padova, 2000, 356-380

⁴⁵ By drawing up a control contract, a Company voluntarily submits to the control and direction of another Company. In this case, the Regulation mainly provides that the controller has to compensate any loss incurred by the controlled during the duration of the control contractual relation (s 302 AktG); the controller has to compensate the creditors of the controlled directly, when it is obvious that the controlled company will not be able to pay; the controller has to provide

I suggest a first legal definition of “bureaucratic dependence” might rely on the concept of “Contractual Control”, defined in the Italian Company Law (art. 2359, comma 1, n. 3, c.c.). There is “Contractual Control” whenever a Company is controlled by another Company by virtue of any contracts which enable the latter to exercise a dominant influence on the former. By “Dominant Influence” is meant that, the Contractual Relation enables the Controller to determine the commercial and production strategy of the Controlled Company and to condition its choices to the extent that the latter cannot economically survive without the support of the former⁴⁶. Hence, the conception of “Contractual Control” appears to embody something more than the conception of “Economic Dependence”⁴⁷, the Controlled Company being placed into a real position of Bureaucratic Dependence (which might or might not be added to an initial position of Market Dependence) on the Controller⁴⁸.

5. An outline about the effects of the emergence of Intermediate Organizational Forms on the legal concept of “Employer”.

the minority shareholders of adequate annual compensation. It is worth pointing out, that the German Federal Court has established in 1990s that this legal regulation has to be applied, on the bases of an analogy, to all others contractual relations (namely Business Distribution and Production Relations) which de facto may conceal a “control contract” between two firms.

⁴⁶ See A. MUSSO, *Il controllo societario mediante «particolari vincoli contrattuali»*, in *Contr. e Impresa*, 1995, 35-36; G. MINERVINI, *La capogruppo e il «governo» del gruppo*, in *I Gruppi di Società, Atti del Convegno Internazionale di Studi Venezia, 16-17-18 novembre 1995*, vol. 2, Milano, 1996, 1565-1586; E. RIMINI, *Il controllo contrattuale: spunti per una riflessione*, in *I Gruppi di Società, Atti del Convegno Internazionale di Studi Venezia, 16-17-18 novembre 1995*, vol. 2, Milano, 1996, 1903-1919; M. NOTARI, *Il gruppo «contrattuale» nella disciplina antitrust*, in *I Gruppi di Società, Atti del Convegno Internazionale di Studi Venezia, 16-17-18 novembre 1995*, vol. 2, Milano, 1996, 1697-1715.

⁴⁷ See A. MUSSO, *La Subfornitura. Legge 18 giugno 1998, n. 192*, in *Commentario al codice civile SCIALOJA-BRANCA*, Iogna-Roma, 2003, 544 and ss. RIMINI 2002; F. CAFAGGI, *Il governo della rete: modelli organizzativi di coordinamento inter-imprenditoriale*, in F. CAFAGGI, *Reti di Imprese tra regolazione e norme sociali. Nuove sfide per diritto ed economica*, cit., 86 and ss.

⁴⁸ The Company Law Reform (D.lgs. n. 6/2003) has now provided the controlled Company with an important Liability Rule. It has officially acknowledged, for the first time, the legal existence of the Group of Company, by providing that «Companies which in managing or coordinating other companies acts in their own corporate Interest or in the interest of third parties in violation of rules on correct corporate management of controlled companies are directly liable to shareholders of such companies for damage caused to the profitability and value of their interest. They are also liable to creditors for damaging the integrity of company's assets.» (art. 2497 c.c.). Albeit the obscurity of this legal disposition, many scholars have stressed that by all means the first beneficiary of the Liability rule is the controlled company (See A. BADINI CONFALONIERI and R. VENTURA, *Capo IX. Direzione e coordinamento di società*, in *Il nuovo diritto societario. Commento al d.lgs. 17 gennaio 2003, n. 6, d.lgs. 17 gennaio 2003, n. 5, d.lgs. 11 aprile 2002, n. 61 (art. 1)*, by G. COTTINO, G. BONFANTE, O. CAGNASSO, P. MONTALENTI, Bologna, 2004, 2171-2175). It is worth observing on one hand, that the existence of a contractual control, in the article 2359, comma 1, n. 3, own meaning, constitutes a legal relative presumption that a Company has the power (*de facto*) of managing and coordinating other Companies acts (art. 2497 *sexies* c.c.); on the other hand, as such a power is conferred upon a Company by means of a contract, there is an absolute presumption that it actually exists and can be exercised (art. 2497 *septies* c.c.). Finally, the Company Law Reform has provided duties of disclosure and transparency (art. 2497 *bis* c.c.).

The acknowledgment that some commercial contractual relations may represent Intermediate Organizational Forms produces important effects also on the legal concept of “Employer”. Briefly referring to these effects seems to be relevant to this essay.

The boundaries of the legal concept of “Employer”, as the ideal space of ascription of Employer’s liabilities, usually coincide with the boundaries of the economic concept of the firm as the organizational context within which work is performed, the authority relation and the managerial control and direction can be identified and the business risk can be allocated⁴⁹.

Drawing the boundaries of the legal concept of Employer on the boundaries of the economic concept of the firm reflects, on the one hand, the traditional conception of the Employment Relationship as a bilateral and personal one. In the Twentieth Century, with the emergence of the Classical Vertical Firm, this conception has led to identify the person of the Employer with the Economic Entity (“Employing Entity”)⁵⁰. On the other, the fact that the Economic Organization of the Large Vertical Firm consisted of visible infrastructures, big machineries and considerable capitals enhanced the role of the Economic Entity itself as the ideal space within which the Business Risk and the Employer’s Liabilities could be allocated⁵¹.

The latter argument is well stressed by the traditional Italian technique of protective Employment regulation consisting of embedding the Employment Relationship in the Organizational Context within which work is performed⁵²

Nowadays, on one hand, the trend towards contracting out, subcontracting and outsourcing of most economic activities, has progressively enhanced the emergence of multilateral complex working relationships, where the Employer appears to be multi-segmented whereas the Employment is organized between different Economic Entities (Agency Work; labour supply). On the other hand, in front of economic changes, Economic

⁴⁹ See S. DEAKIN, *The changing Concept of “Employer” in Labour Law*, in *Industrial Law Journal*, 2001, vol. 30, no. 1, 72; S. DEAKIN, *“Enterprise Risk”: The juridical Nature of the Firm Revisited*, in *Industrial Law Journal*, 2003, vol. 32, no. 2, 97; L. CORAZZA, *“Contractual Integration” e rapporti di lavoro. Uno studio sulle tecniche di tutela del lavoratore*, op. cit., cha. 5.

⁵⁰ See M. R. FREEDLAND, *The Personal Employment Contract*, op. cit., 35.

⁵¹ See observations carried out by L. CORAZZA, *“Contractual Integration” e rapporti di lavoro. Uno studio sulle tecniche di tutela del lavoratore*, op. cit., in particular 51-60.

⁵² See L. MARIUCCI, *Il lavoro decentrato. Discipline legislative e contrattuali*, Milano, 1979; O. MAZZOTTA, *Rapporti interpositori e contratto di lavoro*, Milano, 1979; P. ICHINO, *Il diritto del lavoro e i confini dell’impresa*, in *Dir. Lav. Relazioni ind.*, 1999, 203 and ss; See M. GRANDI, *Il trasferimento d’azienda*, in M. GRANDI, *Le modificazioni del rapporto di lavoro. I. Le modificazioni soggettive*, Milano, 1972, 250-255; SUPPIEJ, *Il rapporto di lavoro*, in *Enc. Giur.lav.*, a cura di G. MAZZONI, IV, Padova, 1982, 295; S. LIEBMAN, *Individuale e collettivo nei rapporti di lavoro*, Milano, 1993, 218-219; F. SCARPELLI, *«Esternalizzazioni» e diritto del lavoro: il lavoratore non è una merce*, in *Dir. Rel. Ind.*, 1999, 361; L. CORAZZA, *“Contractual Integration” e rapporti di lavoro. Uno studio sulle tecniche di tutela del lavoratore*, op. cit., 1-61.

Organizations have experienced a process of dematerialization: especially in Labour and Knowledge Intensive Sectors, where Economic Organizations appear to be more and more deprived of visible infrastructures and considerable capitals (non human assets)⁵³. Therefore, it seems to be difficult relying longer on the Economic Entity in order to infer the capability of the Entrepreneur to support the business risk as well as to fulfill Employer's duties⁵⁴.

Within this framework, in order to refine the legal concept of Employer, some scholars have focused their attention on the role played by commercial contracts in Intermediate Organizational Forms⁵⁵. The commercial contract, insofar as it may represent the tool by which a more powerful firm shares or allocates the business risk on a less powerful firm, it seems also to represent the tool by which the Employer eliminates or splits liabilities and mandatory employment rules. In other words, by means of commercial contracts, the Entrepreneur can manipulate both the boundaries of the firm and the boundaries of the concept of Employer itself.

6. Conclusion

In the last years, the emergence of hybrid or intermediate organizational forms, that can be located along the continuum running from Market to Hierarchy, has emphasized lack of tools, available in both Labour Law and Commercial Law, by which productive relations can be understood and regulated. The absence of these tools is underscored by general Labour Law Debate concerning the extension of the scope of the Employment Regulation to certain independent contractors, on the one hand; and Commercial Law shift (in some

⁵³ See R. B. REICH, *The Work of Nations. Preparing ourselves for 21 Century*, op. cit. The knowledge intensive production is a feature of the Italian Industrial Districts, also known as Marshallian Industrial District. See E. RULLANI, *Distretti industriali ed economica globale*, in *Oltre il pronte*, 1995, 50; F. BELUSSI, G. GOTTARDI and E. RULLANI, *The Technological Evolution of Industrial Districts*. Kluwer Academic Publishers, 2003; G. BECATTINI, *Industrial Districts. A New Approach to Industrial Change*, Edward Elgar, Cheltenham, 2004; F. BELUSSI, *Il capitalismo delle reti. Stabilità e instabilità dei corporate network nel settore della sub-fornitura del tessile-abbigliamento veneto*, in S. BOLOGNA and A. FUMAGALLI, *Il lavoro autonomo di seconda generazione. Scenari del postfordismo in Italia*, cit., 205 and ss.

⁵⁴ See L. CORAZZA, "Contractual Integration" e rapporti di lavoro. *Uno studio sulle tecniche di tutela del lavoratore*, 51-64; see also P. ICHINO, *Il diritto del lavoro e i confini dell'impresa*, *Dir. lav. rel. ind.*, 1999, 203.

⁵⁵ See S. DEAKIN, *The changing Concept of "Employer" in Labour Law*, in *Industrial Law Journal*, 2001, vol. 30, no. 1, 72-84; H. COLLINS, *Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration*, in *The Modern Law Review*, 1990, vol. 53, no. 6, 731. For the Italian Debate See F. SCARPELLI, *Interposizione e appalto nel settore dei servizi informatici*, in O. MAZZOTTA, *Nuove tecnologie e rapporti fra imprese*, Milano, 1990, 85 and ss; L. CORAZZA, *Appalti "interni" all'azienda: inadeguatezza del criterio topografico alla luce delle tecniche di esternalizzazione dell'impresa*, in *Mass. Giur. Lav.*, 1998, 854; P. ICHINO, *Il diritto del lavoro e i confini dell'Impresa*, op. cit., 203 and ss.; P. ICHINO, *Somministrazione di lavoro, appalto di servizi e distacco*, in A.A.V.V., *Il nuovo mercato del lavoro. Commentario al d.lgs. n. 276 del 2003*, Bologna, 2004, 260; L. CORAZZA, "Contractual Integration" e rapporti di lavoro. *Uno studio sulle tecniche di tutela del lavoratore*, op. cit.

Countries) towards the insertion of the status of Economic Dependence within the framework of certain inter-firm relationships, on the other.

The main question I address in this paper is whether changes in Economic System require us to reconsider the way we draw the boundaries between Labour Law and Commercial Law.

The acknowledgment that certain self-employment relations may represent Intermediate Organizational Forms into which independent contractors might be placed in a status of Market and/or Bureaucratic Dependence, has progressively led to denounce the Employee/Independent Contractor Dichotomy as a false one. On the contrary, a few debate has concerned the extension of the scope of the employment regulation to entrepreneurs, being the «obligation of personal service a sine qua non for the application of Labour Law»⁵⁶ and a clear line drawn between Labour Law and Commercial Law.

Notwithstanding, I suggest two arguments for questioning the obligation of personal service as the line drawn between Labour Law and Commercial Law.

The first one, derives from the acknowledgement that certain inter-firm relationships (mainly franchising relations and supplier partnerships) may represent Quasi-Hierarchical Organizational Forms into which Entrepreneur might be placed in a status of Market and Bureaucratic Dependence, despite the fact he conducts an independent business. This occurrence depends on the verification of specific features in the contractual relation (namely incompleteness, extended duration, existence of unilateral power, asset-specificity). Therefore, the condition of inequality of bargaining power, that justified the provision of Employment Contract with a legal framework separated from the general commercial law, is now present in certain inter-firm relationships.

The second one, derives from the verification of the process of dematerialization in Economic Organizations: especially in Labour and Knowledge Intensive Sectors where Economic Organizations appear to be more and more deprived of non-human assets (namely infrastructures, machineries and capitals). Nowadays, conducting an independent business does not necessarily imply the ownership of big machineries, infrastructures and huge capitals. Hence, I suggest that the fact the entrepreneur conducts an independent business does not necessarily prove his economic bargaining power.

Therefore, there seem to be reasons for the extension of the scope of the Employment Regulation to certain inter-firm relationships. Some employment rules – mainly vicarious liabilities rules; duties of disclosures and transparency; prohibition of discrimination (direct or indirect); protection of income; restraint of the contractual power to terminate the relationship - appear to be extended, by analogy, to certain inter-firm relationships and

⁵⁶ See P. DAVIES and M. FREEDLAND, *Employees, workers, and the autonomy of labour law*, in *Legal Regulation of the Employment Relation*, op. cit., 282-283.

graduated according to the different degree of dependence (what I call here Market and Bureaucratic Dependence) into which Entrepreneur has been placed⁵⁷.

The latter argument does not leave out the importance of forms of self-regulation. Nevertheless, the role played by forms of self-regulation has to be balanced with the role played by the Law, in order to avoid the risk of hypertrophic legal protection which might determine Market Failures as well as an absence of a legal protection at all.

The graduated appliance of some Employment Rules to entrepreneurs (beyond independent contractors) might reveal itself as a legal tool by which supporting and regulating Production Regimes characterized by non-market modes of coordination, entailing alliance, interaction and cooperation among firms or other independent contractors⁵⁸ – namely Business Groups, Italian Industrial Districts⁵⁹, Production and Distribution Chains– . Particularly, it could provide these kind of production regimes of a legal framework which encourages less powerful firms to enter into inter-firm relationships, on the one hand, and discourages more powerful firms to enter into inter-firm relationships with entrepreneurs who are not economic reliable and represent only a tool by which

⁵⁷ A similar proposal has been advanced by Marcello Pedrazzoli, with regard to Independent Contractors. This scholar has mainly proposed to arrange and differently classify working contractual relations along a continuum with a minimum legal definition of work at one pole – the so-called *lavoro sans phrase*, which roughly coincides with the Contract for Service – and the Contract of Service at the opposite. Correspondently, Employment Rules should be modulated and graduated along the *continuum*. See M. PEDRAZZOLI, *Lavoro sans phrase e ordinamento dei lavori. Ipotesi sul lavoro autonomo*, in *Riv. It. Dir. Lav.*, 1998, I, 49; M. PEDRAZZOLI, *Dal lavoro autonomo al lavoro subordinato*, op. cit.

⁵⁸ It is worth referring to the Varieties of Capitalism Theory, which, which aims to show that, at the end of the 1980s and in the first half of the 1990s, the production regimes of most advanced economies fall into one or two main patterns: The Business Coordinated Market Economies (which include most Northern European Economies such as Germany and Switzerland) and the Liberal Market Economies (which includes U.K., U.S. and Ireland). See M. ALBERT, *Capitalism against Capitalism*, Whurr Publishers Ltd., London, 1993; AAVV, *Continuity and change in contemporary Capitalism*, Cambridge, University press, 1999; P.A. HALL and D. SOSKICE, *Varieties of Capitalism: The institutional foundations of competitiveness*, Oxford: Oxford University Press, 2001. The distinction the Varieties of Capitalism Theory draws between Coordinated and Liberal Market Economies, does not leave out the importance of market relationships and Hierarchies in the Coordinated Market Economies, on one hand, and the importance of non-market modes of coordination in the Liberal Market Economies, on the other hand. (See P.A. HALL, D. SOSKICE, *Introduction*, in *Varieties of Capitalism*, op. cit., 8).

⁵⁹ With regard to the development of Industrial Districts in Italy, See, E. RULLANI, *Distretti industriali ed economia globale*, in *Oltre il Ponte*, 1995, 50 and ss.; G. BECATTINI, *Industrial Districts. A New Approach to Industrial Change*, op. cit.; F. BELUSSI, *Il capitalismo delle reti. Stabilità e instabilità dei corporate network nel settore della sub-fornitura del tessile-abbigliamento veneto*, op. cit. For Data see for instance, the research about the small and medium firms in Italy, completed in 2003 by MEDIOBANCA and UNIONCAMERE, in particular see E. RULLANI, *Le medie imprese italiane nel Nord-Est*, 57; S. MICELLI and E. RULLANI, *Osservatorio TEDIS sui processi di Internazionalizzazione*, 2005. See also Osservatorio Subfornitura 2004, <http://www.subform.net>, which attests the existence in Italy of roughly 5000 supplier firms; M. RUSSO, E. PIRANI, *Concorrenza e cooperazione nell'industria metalmeccanica*, Temi della Ricerca METALnet *Struttura Industriale e dinamica dei cambiamenti nelle relazioni tra le imprese metalmeccaniche*, 2002.

achieving an efficient acquisition of labour, avoiding Employment Mandatory Rules, on the other.