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Monica Bolelli

Between Legality and Illegality

How Misclassification and Partial Enforcement Transformed the Italian Labour Market

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Abstract

This dissertation contributes to our understanding of the role of illegality in the organisation of modern regulated economies and their labour markets. Through the study of rule-breaking in the context of labour-intensive subcontracting practices, I show how illegality can become a structural feature of competition models based on cost containment, even inside institutional systems built on the premise of rule-abidance. Fraudulent subcontracting practices that entail high levels of exploitation are just the most extreme expression of cost containment practices that are widespread and tolerated. Besides being the outcome of employers' strategies based on the creation of hidden triangular employment relationships through misclassification and on the fostering of migrant workers' vulnerability, the expansion of illegal practices derives from state inaction and its active promotion of restructuring practices based on cost-containment. The state does not necessarily encourage extreme cases of rule-breaking, but it also fails at adequately regulating them because this would be an obstacle to predominant competitive strategies and business models. This conflict of interests generates contradictions in the design of labour market policies that prevent effective rule enforcement. Eventually, the outcome of employers' strategy and states' forbearance is the modification of the operation of labour markets through the hidden expansion of a market for intermediation services and the creation of new employment statuses that crystallise the outcomes of segmentation strategies.

What emerges from this study is that the struggle around the definition of institutional systems of industrial relations is not just a power-based debate over regulation but also a silent discussion over the amount of rule-breaking that can be tolerated. In this sense, rule-breaking is a fundamental part of institution-building processes in regulated labour markets, one which needs to be further explored to fully understand the dynamics of contemporary capitalism.

About the author

Monica Bolelli was a doctoral researcher at the IMPRS-SPCE from 2018 to 2023. She completed the program in conjunction with her PhD studies at the University of Duisburg-Essen, Faculty of Social Sciences.

Studies on the Social and Political Constitution of the Economy

Between Legality and Illegality: How Misclassification and Partial Enforcement Transformed the Italian Labour Market.

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Chapter 1: Introduction

As I was travelling between Milano and Sondrio on a fall day in 2022, a man got on the train and settled himself in the block of seats opposite mine. As soon as he sat down, he started to talk on the phone - loud enough for the whole carriage to hear his conversation. It quickly became clear that the man was the owner of a construction company and that he was talking business with a new partner. He was leading the conversation, trying to understand if the person on the other side of the phone was the right partner for a business endeavour. Before even illustrating his proposal to him, he made sure of one fundamental thing: that the man was the formal owner of a company. He rudely signalled that he was not interested in continuing the conversation if the person was a self-employed worker with a VAT number. He insisted that the interlocutor confirmed that there was actually some firm registered in his name. Once reassured, he then proceeded to make its proposal.

He said that he knew of a job opportunity - the contract for the construction of a residential building somewhere in the area. He said that he was going to sign the contract the next day, and then he could subcontract the job to his interlocutor. He reassured him that he had all the tools and infrastructures necessary for the task and knew the right workers for the job.

At this point, the man on the other side of the phone likely tried to object that he also knew some workers who could be employed. But the entrepreneur on the train immediately interjected, saying that he was the one who would pick the workers because it was a complex job and they needed to have the right skills. He was adamant about it. They then proceeded to discuss some additional details, which took long enough for me to reach my destination and leave the man on the train, still talking on the phone, still shouting about his business to a half-empty carriage.

I was thrilled. What I had just witnessed was the creation of the very business arrangements that I had been studying over the previous three years. The man on the phone was not just casually talking about business. He was arranging a *fraudulent subcontracting scheme,* the very technique of rule evasion that is the focus of this dissertation. I thought I would never have the opportunity to witness first-hand the creation of such an arrangement. I thought that the age-old problem of accessibility when studying illegal behaviour could not be overcome in the specific context of this research – a statement which nevertheless holds true. Yet the man on the phone gave me a glimpse into the world that I had been trying to study from the outside, through testimonies and documents. He was showing how comfortable he was in that world. He was organising something illegal, and he was doing it in a public space, unconcerned that someone would witness his behaviour.

Truth be told, I was probably the only person in that carriage with the necessary knowledge to understand what was happening. Yet, the assuredness with which he behaved was striking. It showed how accustomed he was to organising these schemes. How comfortable. It proved that he believed the chances of being caught were so slim that it was unnecessary to have that conversation privately. Most importantly, it was a confirmation of the pervasiveness of the phenomenon that I was studying, a physical testimony of all those data signalling how common the practice has become.

As I sat down to take notes about that episode, I was excited, once again assured about the relevance of discussing the spread of illegal business strategies in so-called "advanced" and regulated economies.

1.1 Problem Description

An increasing number of firms in advanced economies worldwide are resorting to illegal business practices based on the undermining of labour standards to gain competitive advantages (EUROFOUND, 2016a; Verité, 2017). More and more,

companies rely on strategies of labour subcontracting that are fraudulent or illicit and therefore criminalised by legal systems. These practices entail forms of labour exploitation ranging from severe economic exploitation to unfree labour[i] and trafficking (Crane, LeBaron, Allain, & Behbahani, 2019; LeBaron & Phillips, 2018; Neergard, 2015).

Although the phenomenon is difficult to quantify, many European policymakers recognise the fraudulent contracting of work as a relevant issue (EUROFOUND, 2016a). By fraudulent contracting, I mean "the fraudulent use of an employment or contractual relationship [...] whereby a specific employment or contractual arrangement is used to hire workers or to subcontract certain work activities [but] the factual circumstances of the specific employment or contractual relationship do not correspond to the legal, formal requirements for that specific form of contracting work." (EUROFOUND, 2016a, p. 1). These fraudulent contracting practices can also involve the creation of *sham companies,* which are created ad hoc to disguise the actual employer (EUROFOUND, 2017). But fraudulent or illicit practices can take other forms, like that of illegal labour intermediation. Illegal intermediation occurs when intermediaries infringe on employees' rights and guarantees, but also when they are not complying with regulations regarding the supply of personnel (EUROFOUND, 2016b). In the worst-case scenario, unauthorised intermediaries moving workers between and across borders lead, or are involved in, human trafficking for labour exploitation.

Unsurprisingly, activities and workers situated at the bottom or at the periphery of production chains emerge as the most vulnerable to illegal business practices. Although the use of illegal practices involves all sectors and occupations, it is especially

[i] Unfree labour is configured where "a person is deprived entirely of control over the conditions in which she sells her labour in the market place and consequently subject to the most extreme forms of exploitation" (Phillips, 2011).

relevant in low-end production activities characterised by an intensive use of labour: the sectors that are more exposed are construction (Sanz de Miguel, Mankki, Turlan, & Surdykowska, 2017) and tertiary services like logistics (Haidinger & Surdykowska, 2017) and the industrial cleaning sector (Adam, Mankki, & Sanz de Miguel, 2017). At the low end of the market, subcontracting practices become the primary locus of illegality. This is true in both export-oriented and domestic consumption-oriented production chains (Crane et al., 2019).

The cited reports defy the prevailing perception that certain forms of illegal behaviour or labour exploitation are principally situated at the end of global supply chains, in so-called 'developing economies', while representing a marginal issue for regulated economies like European ones. Although the impact of the reorganisation of product chains through the fragmentation of production has been a concern for political scientists and sociologists of work, not much attention has been devoted to the fact that the restructuring of production in advanced economies is – also - revolving around illicit and fraudulent business practices. This is important because it can impact the economy, and particularly the labour market, in relevant ways. The recourse to illegal practices can affect the structure of competition in the sectors that are most exposed to it and also contribute to the development of socio-economic inequality.

Following these considerations, this research was led by two main questions: *How do business strategies of illegality emerge and are sustained in low-end labour-intensive sectors in advanced and regulated economies? How do illegal business strategies shape labour market structures?*

1.2 State of the Art

There is an increasing concern within the social sciences with the theorisation of the role of illegality in modern capitalist economies: calls are multiplying to overcome the analytic distinction between the legal and illegal and understand the

systematic connections between these two faces of economic action (Beckert & Dewey, 2017; Beckert & Wehinger, 2013; Gregson & Crang, 2017; Whyte & Wiegraz, 2016). The problem is how to "think the illegal as part of economies" (Gregson & Crang, 2017), not simply as a parasitic phenomenon at the fringes but as a part of the capitalist process of accumulation (Beckert & Dewey, 2017).

This effort is especially relevant for institutionalist accounts of markets that consider rules and institutions as pillars supporting labour market exchanges. If we think of markets as ordering processes (Aspers, 2002, 2011) that rely on institutions to solve coordination problems (Beckert, 2009), the social order that they create should be fundamentally challenged by systematic decisions to opt out.

This holds especially true when it comes to labour markets, considering the distinctive character of the "object" traded. Since the commodification of labour power is a fiction necessary to support its marketisation (Polanyi, 1944), a certain level of stabilisation of the labour market through the creation of institutions should be essential for the stability of social life itself.

While the rights and obligations involved in the employment relationship are the very thing that makes repeated transactions possible (Streeck, 2005), they are also providing limits to the unfettered private authority that owners and employers can exercise after entering the contractual relationship. Unlike for other commodities, the exchange of labour is not completed at the time of the transaction. Instead, it requires a continuous renegotiation of the quantity and quality of labour expended inside the relation of production. Employment institutions can compensate for unequal bargaining power between the employer and the worker when entering a private contract that is, by nature, undetermined, by linking the workers to status rights that exist outside of the private contractual relationship (Streeck, 1992). Status "fills in the gaps", allowing for some level of consensuality in the expenditure of labour.

Modern capitalist democracies built industrial relations systems that turned the institutions of the employment relationship into vehicles of democratic participation. As conceived in the post-war era, industrial citizenship provided a particular democratic foundation for workers' consent (Streeck, 1992). Of course, not all workers were equally included in these systems. Dualisation and segmentation theories have shown how from the very beginning industrial citizenship rights were built along racialised and gendered criteria that excluded part of the working population from accessing the same level of power resources and equally participating in those democratic institutions. The Standard Employment Relationship (Vosko, 1997) provided levels of decommodification that were not accessible to all, and dualisation theories (Piore, 1970; Piore & Sabel, 1984) argued that it was the very existence of this division that supported the stabilisation of modern democratic capitalism itself.

The observation of the gradual erosion of the institutions of industrial citizenship and the shrinking of the size of the "core" of workers still covered by the SER (Emmeneger, 2009; Grimshaw & Rubery, 1998; Rubery, Keizer, & Grimshaw, 2016) brought some nuance to the argument and reintroduced the issue of the stabilisation of the labour market in the debate. Over the past three decades, in the constant process of renegotiation of the rules of the game, employers found themselves in the position to bargain in their favour. The expansion of the service sector and the development of technology opened new possibilities to organise work to ensure control while reducing opportunities for workers to sabotage the labour process (Dukes & Streeck, 2020). While the power of employers to influence law-making has indeed increased, it has become evident that this process was also supported by opting out practices that did not wait for institutional reform.

It was Castells and Portes (Portes & Castells, 1989) that famously raised the issue of the systematic interaction between formal and informal economic activities.

Already at the beginning of the 1990es, they centred their work around the slowing down of the process of institutionalisation of economic activities, arguing that the informal sector was growing at the expense of already formalised work relationships. *Informality* or the *informal economy,* they claimed, is a specific form of relationship of production, an income-generating process which is "unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated" (Portes & Castells, 1989, p. 12). Yet, despite the input given by informality studies, the spheres of formal and informal activities kept being separated at the analytical level, often still categorised through the conceptual frame of regulated cores and informal peripheries (Phillips, 2011).

A way through was opened by labour and comparative employment scholars analysing how employers increasingly started to rely on business models based on *rule avoidance or evasion* to gain a competitive advantage. Meanwhile, rule-breaking was included in new theories of institutional change. While theories of path dependency postulated that crystallised interests made change difficult and only possible in case of exogenous shocks, a new theory of gradual change emerged that took into consideration challenges to the norm that are more subtle but can have a profound impact nevertheless. It was recognised that in (labour) markets, the continuous probing of the boundary between the legal and the illegal begins as soon as a rule is laid down, and this action of reinterpretation can lead to radical change even without formal reform (Mahoney & Thelen, 2010; Streeck & Thelen, 2005). Indeed, entire industries exist that support opting-out strategies: finding loopholes in the law is a specific function of consultants and lawyers working for firms wishing to expand opportunities for profit-making (Pijpers & Van Der Velde, 2007).

Although these accounts offer a way to integrate rule-breaking into the analysis of contemporary capitalism, they still need to address the task of explaining how more

extreme forms of opting out become viable organisational decisions. The choice of the term *evasion* implies that the breach of legal rules or norms regulating labour conditions results mainly in administrative sanctions (Luz Vega & Robert, 2013). Yet, business strategies that are clearly *illegal* and can even configure a *criminal* offence or behaviour constitute a higher threat to market stability, and their sustainability is not necessarily self-evident.

First of all, a business model that includes outright illegal practices has its specific costs and risks that go beyond those involved in practices of exploitation of legal loopholes. By business model, I mean "the rationale of how an organisation creates, delivers, and captures value" (Osterwalder and Pigneur cited in Allain, Crane, LeBaron, & Behbahani, 2013, p. 24). In other words, in the case of the enactment of an illegal strategy, the illegal practice has to make sense when calculating costs vs. revenues. It requires factoring-in costs of enforcement and concealment of the practice and costs deriving from the risk of detection. When a third party is involved, it requires a coordination effort that cannot be supported through the formal sanctioning structures of the state (Beckert & Dewey, 2017). It can therefore involve more risks and potential costs than exploiting loopholes in the legislation. Moreover, when we consider the extensive process of deregulation undergone by most European labour markets, the enactment of business models that involve illegal practices relative to the management of labour appears specifically puzzling. When there are many available legal options to enrol cheap labour, the choice to face higher risks and shoulder possible costs is something that has to be explained.

Secondly, the decision to drastically opt out of the rules of the game of the labour market can be a significant source of distortion of competition in product and service markets. This is bound to create tensions with other market participants. The more

employers opt out, the more those who follow the rules will be penalised, potentially leading to a downward spiral of rule-breaking and high instability.

Finally, the expansion of illegality is puzzling because it challenges the interests of the State itself. The State has a fundamental role in supporting processes of market organisation because it is the third party that can act as the enforcer of the normative expectations set by the rules. It has the authority to formally sanction the exchange and contractual rules set by private actors and to reinforce status rights in the architecture of the employment relationship (Beckert, 2009; Streeck, 2005). Although different systems tolerate different levels of commodification, radical decisions to opt out of whatever existing social equilibrium can challenge social stability. Criminal endeavours in the exchange of labour can infringe basic moral norms, impoverish fiscal and tax systems, and, when organised crime is involved, challenge state authority. Theories of state failure to enforce have limited explanatory power (Holland, 2017), especially when it comes to strong state apparatuses, leaving the question of how illegality expands in regulated economies open to further inquiry.

This research applies the tools provided by the sociology of illegal labour markets to move forward in this inquiry. Relying on the theoretical tradition of the architecture of markets, the framework allows accounting for the interactions between structure and action. By framing the problem as one of "illegality," the focus is moved from the broader frame of *informal economic activity,* namely an activity which is not regulated or which is regulated but whose violation goes undetected (Mayntz, 2017) to the more specific concept of *Illegality* as "violation of a legal stipulation" (Beckert & Dewey, 2017).

1.3 Analytical Framework

Being my questions exploratory, I took a deductive approach to my research design and process. Although concepts are available in the existing literature to discuss

the specific social phenomenon under observation, like *intermediation* and *fraudulent subcontracting*, I took them as a starting point rather than a cage. I operated on the assumption that concepts are "open-ended, subject to debate and revision, accessible to empirical judgement" (Selznick as cited in Dukes & Streeck, 2020, p. 1), empirical generalisations that can be tested and defined through empirical research (Becker, 1998, p. 128). The study was designed with the aspiration of contributing to their development and the grounded (Glaser & Strauss, 2017(1967)) ambition of offering new conceptualisation where the existing one was found insufficient.

Therefore, although deductive, the design was theoretically informed. The following analytical framework represents, in Becker's terms (Becker, 1998), the *image* of the problem with which I approached the research. To build my research design conceptually, I drew on sociological studies of corporate malfeasance and on existing studies on the outcomes of outsourcing or subcontracting, and in particular, their impact on job quality.

1.3.1 *Organizational Characteristics and Market Structures*

Studies of subcontracting practices have shown how the achievement of so-called 'flexibility' in the management of labour is as much an attribute of inter-organisational arrangements as it is of the flexible organisation of firms themselves (Procter, 2005, p. 475). They have highlighted how subcontracting as an organisational strategy has been combined with specific labour market regulations to enact business models based on the mobilisation of precarious employment (Frade & Darmon, 2005). Fragmented production chains work as 'insecurity-and-risk transfer chains' (Frade & Darmon, 2005, p. 116). Client companies shift economic risks onto their contractors and sucontractors - who often operate under different labour regulations and are therefore able to pass flexibility demands, costs and risks on to their employees.

By influencing organisational processes, outsourcing practices can negatively impact on working conditions and job quality (Drahokoupil, 2015), and this negative result can be reinforced by a weakening of workers' representation structures (V. L. Doellgast & Greer, 2007; Flecker, 2009). Studies of outsourcing practices indicate that one of the main reasons for outsourcing is eluding employment relations institutions and labour market regulations (Drahokoupil, 2015). Moreover, it has been shown that the weakening of workers' representation structures can be facilitated by the territorial displacement of the intermediaries or subcontracting firms and/or by practices of segregation of workers in the workplace (Lillie & Wagner, 2015; Wagner & Lillie, 2014).

On the other side, there is a long-standing sociological tradition that shows how motivation and opportunities for rule-breaking are created by social structures (Baker & Faulkner, 1993; Tillman, 2009). The tradition of "criminogenic tiers" in economic criminology (Denzin, 1977; Farberman, 1975; Leonard & Weber, 1970) shows how organizational characteristics and structural features of the market matter for malfeasance and opportunistic behaviour in supply chains. The interdependency of industries in supply chains creates special pressures on firms to commit fraud. Structural relations between firms along global value chains are highly relevant for issues of work and employment (Flecker, 2010). However, in subcontracting of services or of scarcely automated phases of production the dynamic between the organisation and the market structure is different. The incentive of the subcontracting company to intensify practices of risk externalisation to workers derives from the dependency of the subcontractor to the client firm and high levels of competition in the sector (Frade & Darmon, 2005).

As we can expect that this kind of dynamic is also at play in the decisions to enact illegal business strategies, my guiding assumption in the design of the research

process was that the fragmentation of production increases the opportunities for, and profitability of, business practices of illegality pertaining to the management of labour.

1.3.2 Institutions and Enforcement

However, the opportunities created by structure alone do not eliminate the problem of the risk of detection and punishment. This risk is created at the point of interaction between legal institutions and enforcement practices. It is institutions and regulations that shape the borders of legal and illegal action. At the same time, they create the conditions to turn illegal business strategies into feasible 'management practices' (Crane, 2013).

Studies of subcontracting practices have shown how institutions matter for market outcomes. Chains of risk transfer work at the interplay of organizational restructuring, fragmented employment relations and the dynamics of national employment systems (Frade & Darmon, 2005). It is the possibility of cost reduction provided by deregulated labour market institutions that makes risk transfer possible. Labour-market regulation mediates both the calculus underlying restructuring (partly by offering incentives; partly by erecting barriers) and the consequences of restructuring for labour (Flecker, 2009, 2010). Shaping the boundaries of legality and illegality is a form of governance and the legal definition is a device in the hands of state institutions. It is the state that defines and gives shape to informality (Portes & Castells, 1989) and illegality (Beckert & Dewey, 2017). However, the significance of legal definitions depends on the concrete actions of the state to uphold them and from its rule-enforcement capacity. Intuitively, the propensity to engage in criminal activity increases when actors perceive that the probability of being caught or punished is low (Simpson, 2013). The variation in the perception of the feasibility, the risk of detection and the severity of punishment all increase the chances of actors opting out of the legal system (Benson & Simpson, 2015).

Based on these studies, as I set out to design my research, I expected the design and implementation of regulatory institutions to be one of the key determinants for generating opportunities for business practices of illegality pertaining to the management of labour.

1.3.3 The Triangular Employment Relationship

The sociology of work has gone further in the specification of the mechanisms through which the organisation of subcontracting activities impacts on job quality. It shows how the impact of the subcontracting relationship on working conditions is better understood when we consider the way in which these modes of articulation between business units shape the employment relationship. Subcontracting is characterized by the existence of a *triangular employment relationship* (Vosko, 1997) between the worker, the service provider and the client firm. This is true both for practices of subcontracting of labour through staffing agencies and for practices subcontracting of functions to a second company.

The structure of the triangular employment relationship tends to be much more self-evident when we look at practices of subcontracting of labour through staffing agencies. In the case of Temporary Agency work and of the subcontracting of labour through staffing agencies for the purpose of posting the agency takes handles the employment relationship administratively and handles hirings and dismissals, while the content of the tasks and their organization is left completely to the employer (Vosko, 1997). The agency is considered as a service provider and as an intermediary.

But research on the service sector has shown that also subcontracting is structured as a triangular employment relationship where the control of work is distributed between the employer and the client company (Bolton, Lopez, & Houlihan, 2010; Kirov & Ramioul, 2014; Korczynski, 2009; Korczynski, Shire, Frenkel, & Tam, 2000; Lopez, 2010; Ó Riain & Lopez, 2010): the employer company sets wages and

contractual conditions but operational aspects are determined to various degrees at the client's side.

This structure of control impacts on job quality and provides explanation for organizational variety (Kirov & Ramioul, 2014). On site, the client firm contributes to shaping the employment relationship. The commercial dimension of the triangular employment relationship impacts on the employment dimension. It is the business relations between companies that define various aspects of work and management control and therefore impact on employment relations and working conditions (Flecker, 2010). The more control the client firm exercises the less space is left for the provider to organize in order to be profitable. In low-end service markets, "providers most often have scarce control on the organisation and content of the service therefore little organizational autonomy" (Frade & Darmon, 2005, p. 112) but are rather left with one key variable of adjustment: labour management. This dynamic might create pressure to gain access to even cheaper pools of work.

I used these insights as an analytic tool and designed my research in order to look at practices and opportunities for illegal behaviour in both dimensions of the triangular employment relationship.

1.3.3.1 Illegality in the Commercial Relationship. Illegality in the commercial relationship might be configured when there is an abuse of the subcontracting contract that might configure a case of illegal intermediation of labour. The main company or client might engage in a relationship with subcontractors that are totally illegal or criminal or in relations with subcontractors that are in principle legal but who enact illegal practices. In this second case the client company might be or might not be aware of the illegal element of the contractual relationship.

In this dimension ambiguities are created around which actor has employer responsibilities (Vosko, 1997). In the case of offshoring, business strategies are based

on the fact that everything is outsourced, even legal responsibility. Offshoring can be seen as a practice of externalization of responsibility and of the risk of punishment (LeBaron, 2014). Is not just about externalizing business risk but also about externalizing illegal business risk. This kind of dynamic might be reproduced also in domestic chains.

One of the main things that formal staffing agencies do is relieving the employer from the legal responsibilities deriving from the direct recruiting and employment of staff (McCollum & Findlay, 2018). There is evidence that businesses have used externalisation as a cost-cutting strategy that allows them to avoid the responsibility mandated by the institutions regulating the employment relationship (Weil, 2009).

1.3.3.2 Illegality in the Employment Dimension. The work relationship might include elements of exploitation. "A person will be exploited where they have been taken unfair advantage of by another person acting unlawfully – be it by reference to criminal, human rights or employment law – for example by deducting unlawful charges from a payslip or demanding hours of work in excess of what is legally prescribed" (Allain et al., 2013, p. 11), or in the case when an intermediary makes money through ancillary services and theft of benefits. Forms of illegality in the commercial relationship, like the practice of illegal intermediation, can be accompanied by more or less extreme forms of exploitation, like in the case of intermediation for trafficking purposes (EUROFOUND, 2016b). Exploitation can range from decent work to severe exploitation, that can imply different levels of coercion (LeBaron & Ayers, 2013; Skrivankova, 2010).

This brings me to consider the importance of another key factor in practices of illegality. In the case of labour exploitation one of the main conditions for the illegal practice to be profitable is the availability of a vulnerable labour force (Phillips, 2011).

Vulnerability will make workers less likely to rebel and exit the labour relation (Xiang, 2017) and less unlikely to inform on their employers' illegal deeds (Allain et al., 2013).

As said, in the case of labour markets, the problem of *cooperation* (Beckert, 2009) is not solved at the moment of the exchange: since what is traded is not an object but labour effort, the problem of guaranteeing the expenditure of labour effort is expanded in time behind the exchange point, and it's normally overcome by the employer through a mixture of coercive and cooperative strategies (Burawoy, 1979, 1983). This problem is aggravated when the employment relation involves more intense forms of exploitation.

Studies of the role of intermediaries in labour markets show that in the case of transnational labour markets, organized intermediaries appear to be important actors in the solution of the value problem, providing the employer with skilled workers especially trained and tailored to his needs (Shire, 2020). In the case of workers destined to low-skilled jobs the solution of the value problem and the coordination problem partly overlap, since the main quality of the worker is that of being more easily controllable and less prone to exit from the labour relation. In general, in a labour market for low-end jobs, this last problem is normally handled through the selection phase itself, by selecting workers on the basis of their vulnerability profile. However, even then employers might need further insurance, and often end up selecting through networks on the basis of an 'homophily principle' (Lin, 1999). Migration studies show how this function can be successfully taken on by intermediaries in transnational labour markets and it can become even more relevant where the sending state is engaged in a general effort to its own citizens' workers' outmigration. Independently from the nature of the intermediary the problem of control and cooperation is still solved through a mixture of coercion and cooperation. Even in the case of the *caporali* (gangmasters) in Italian agriculture, violence is not necessarily the first means of

control, and trust building is an important strategy to maintain collaboration (Perrotta, 2014). This shows that vulnerability is not just a characteristic of the worker but also a condition that is created through labour management practices.

But vulnerability is also created by structural conditions (Phillips, 2017). Structural elements of the regulatory framework concur in creating vulnerability profiles. For example, Anderson (2010) observes that migration policies contribute to segmentation by creating vulnerability profiles that respond to employers' needs. In the case of posted work the institutional design at the European level is creating *spaces of exception* (Lillie, Wagner, & Berntsen, 2014) from national regulations involving especially migrant work (Wagner & Shire, 2020).

In conclusion, an analysis of the mechanisms of illegal business practices should not ignore the ways in which labour is made vulnerable. Therefore, I designed my study to focus on structural factors and management practices, as well as to the ways workers are allocated to jobs in the labour market.

1.3.4 Shaping Market Structures

Changes in organizational forms and value-chain restructuring potentially involve modifications in the forms of employment and in labour composition (Wills, 2009). Normally, there is an analytical distinction between practices of subcontracting of labour and practices of subcontracting of functions. The two are regulated by different laws and populated by different actors. In the case of the subcontracting of labour a special kind of service provider is created, the employment agency or staffing agency, whose main role is to provide labour force to a company for a specific need - in principle limited in time. On the other side, in the subcontracting of functions the subcontracting firm also takes on the responsibility to organize the work in order to meet the objectives set in the commercial relation.

The subcontracting of labour through a private market intermediary represents the flip side to the Standard Employment relationship because it has challenged the principle of the bilaterality of the employment relationship. This principle represented the cornerstone of the de-commodification of labour in post-war labour markets (Vosko, 2010). Early ILO documents established that commercial contracts for goods and services work on different principles than employment contracts for labour. The rejection of private intermediation was one of the main instruments to distinguish labour from other commodity markets. In the case of the subcontracting of labour this principle is further challenged in that not only the service of the matching of labour and employment is performed through a private actor but also the employment relationship itself is externalized to a third party. For this reason, in most European countries staffing agencies are regulated by specific laws and the performing of intermediation by unauthorized actors and organization constitutes an illegal practice.

As I set to design the research, I was driven by the observation that there are instances where the boundaries between the subcontracting of functions and the subcontracting of labour are blurred. This is an issue that can be observed in the case of posted work, where staffing agencies are not treated differently than other service providers and are allowed to participate in the market on similar terms. In the case of subcontracting of functions when the role of the subcontractor is confined to management and, in part, control of labour pools, it becomes comparable to that of a labour-market intermediary (Frade & Darmon, 2005).

1.4 Research Design

The fraudulent or illicit use of contracts or organizational forms in subcontracting practices falls under the categorization of the *5th type* of illegality theorized by Beckert and Dewey, where: “the production, exchange, and consumption of the products are in principle legal, but actors violate existing regulations during the

production or the exchange process" (Beckert & Dewey, 2017, p. 5). These kinds of violations can be performed directly by the "normally legally operating" firm or the violation can be mediated by actors that operate in the illegal economy at an interpenetration point between legality and illegality. These points are also defined as interfaces (Beckert & Wehinger, 2013). The term *interface*

> [...] can refer to phenomena (both actions and social systems) that are formally illegal, yet considered to be legitimate, or legal yet considered to be illegitimate; it also refers to phenomena whose legality and/or legitimacy is open to interpretation, and to actors participating with their actions in both legal and illegal system. Actors who move between two distinct social worlds serve as linking pins between them. Ambivalent phenomena force actors to make choices, blurring the hard edges of social categories. These kinds of interface bind together what is socially distinct, provide scope for innovative action, and permit flexible adaptation. (Mayntz, 2017, pp. 45-46)

Looking at interfaces between legality and illegality is theoretically and empirically relevant: it is crucial to the understanding of why 'market discipline' is not working and provides further explanations as to how illegality is integrated in legal markets.

In order to study how labour markets are now organised and how they came to be organised this way, I studied the interfaces of legal and illegal practices inside the employment and commercial sides of triangular employment relationships. The study of these interfaces was nested within that of the legal framework that defines the borders of legality and illegality in the subcontracting of employment. This approach allowed me to take into account the relationality of concepts (Becker, 1998), moving back and forth between definitions and practices to understand how the category of "illegal subcontracting" is built through rule enactment and interpretation by the actors involved.

However, the study does not limit itself to provide a picture of a specific point in time. Adopting an institutionalist approach calls to take temporal and contextual dimensions seriously. Theories of institutional path-dependency suggest that institutions only make sense in the context of the development of specific systems. As

the structure of labour market institutions is subject to continuous renegotiation, the study was designed to take time into consideration, exploring the evolution of the institutions regulating labour intermediation and subcontracting. In this way, the research opened several points of comparison, between the past and the present and between the formally legal and the formally illegal.

1.4.1 Commercial Relationship

As earlier stated, illegality in the commercial relationship might be configured when there is an abuse of the subcontracting contract, when the subcontractor involved has an illegal status, or when both parties are in principle legal but either one or both of them enact illegal practices.

In order for an illegal business practice to happen it is necessary for a commercial relationship to be established, and therefore, for two actors (two firms) to engage in an illegal practice in collaboration. A business relationship that includes an element of illegality still requires the relationship to be profitable for both parties and trust to be maintained. The client company evaluates the service on the basis of its cost and efficiency but also on the basis of the trustworthiness of the subcontracting company. In the case of illegal business practices, trustworthiness of the second party will be declined not just as its ability to provide the level of labour power necessary for the task but also as her willingness to engage in an illegal practice and from her presumed capability to maintain secrecy. I expect that in some cases, trustworthiness in the illegal practice might dump some efficiency considerations.

Therefore, in order to understand how a commercial relationship that supports business models of illegality becomes possible it is necessary to look at: 1) the nature of the subcontracting company; 2) the ways in which/the criteria that the client uses to choose the subcontracting company; 3) the content of the commercial contract; 4) who

exercises control and organizational power over the workers and 5) the ways in which trust between the client and the subcontractor is maintained.

1.4.2 Employment Dimension

The work relationship might also include elements of illegality regarding the ways value is extracted from labour. A person is exploited when they have been taken unfair advantage of by another person acting unlawfully by reference to the law (Allain et al., 2013). However, as I said, it is also possible to imagine a situation where the employer who is acting unlawfully is not exploiting his or her employee, but mostly relying on other forms of profit making, like the possibility for tax evasion. That said, it could be contended that most cases that involve illegal practices related to the management of workers also involve some level of exploitation, even if just in its economic form, deriving for example by the application of a contract with low pay and security standards.

The enactment of an illegal business model requires that workers cooperate both by expending labour effort and by not reporting the illegal activity. Therefore, one of the main problems for the company is to have access to workers who will most likely cooperate, and to make sure that they continue to do so. The exploration of the ways in which labour is selected, managed and controlled is, therefore, a necessary step to make sense of the spreading of business practices of illegality.

In my analysis I focused on 1) The characteristics of the labour force involved; 2) working conditions (e.g. pay, working hours, security standards) to detect possible exploitation; 3) management practices to understand how control is exercised.

1.4.3 Institutions and Enforcement

Connecting the analysis of the macro legal framework to that of actors' strategies allows to understand how these two social levels interact: more specifically, my preoccupation was to understand if and how the setup of policies and institutions

creates conditions and opportunities for illegal practices, and how in turn illegal practices affect the structure of the market.

Illegality is not a given and illegalization is better understood as a process, the outcome of moral debates, social demands and political power (Beckert & Dewey, 2017). Therefore, in order to understand the logic behind the illegalization of a certain practice, I traced the process of its development. This analysis was paired and paralleled with that of sanctions and enforcement in time. This entailed a detailed analysis of sanctions and of the organization, funding and operational priorities of enforcement agencies.

Finally, illegalization does not exist in isolation but rather in connection to the broader logics of organization of markets. Therefore, illegalization processes were analysed against the broader framework of the logics of regulation of competition and of the labour market. Framing the analysis in this way made it possible to understand if and how illegal practices defy these logics and affect market structures. It also opened an opportunity to understand how interests and politics are involved in the creation of categories of legality and illegality.

The state is a vital actor in the creation of markets, providing sanctioning and legitimacy. As the research progressed, however, it became clear that when it comes to processes of legalisation, *the state* should be taken into consideration as a composite entity, formed of different bodies that do not necessarily follow the same logics of action and can embody different interests. Different bodies like governments, parliaments, law enforcement and the judicial system all participate in processes of organisation of labour markets and in the mediation of the rules of the game. Therefore, attention should be paid to whether their behaviour reflects a coherent view on the matter of the legalisation of a specific behaviour or not.

1.5 Research Focus: Northern Italy

The amount of data collection necessary to carry out such an inductive design and the willingness go in depth led me to select only one case of study. Northern Italy emerges as an interesting and unique case in terms of the structure of vertical disintegration practices.

Over the last few years in Italy, more and more cases of labour exploitation through fraudulent subcontracting have been brought to the public attention through media coverage, and the quality of the cases and the firms involved provides an indication of how far the illegal practices have become relevant in processes of reorganization of firms based in the northern part of the country. In November 2021 two managers of Uber Eats Italy were found guilty of labour intermediation and workers' exploitation (Biondani & Sisti, 2022). The ruling was the final outcome of an investigation that had ascertained that the company had been subcontracting part of the deliveries to sham subcontractors who were systematically exploiting asylum-seekers. In the same year, a procedure was opened against DHL Supply Chain Italy for fiscal frauds committed through fraudulent subcontracting (Piol, 2021). In July 2021 the CEO of Grafica Veneta, the biggest book printer in Italy, was arrested following a one-year-long investigation that proved that the company was using a system of illegal subcontracting to exploit migrant workers (Il Post, 2022b).

It is extremely difficult to estimate the spread of fraudulent contracting, much like for other illegal activities - but with subcontracting it is especially hard since there is no attempt to collect data on the licit practices either. It is possible to make an assessment of the relevance of labour-intensive subcontracting – legal or not – by looking at other available data on the structure of labour markets and economic actors.

First of all, other externalisation options that are very common in other European countries in Italy are relatively contained. Initially, agency work had a

limited impact on the Italian labour market and while its incidence over total employees substantially increased after its liberalisation its penetration rate is still lower than the European average (CIETT, 2013; WEC Europe, 2020). The turnover of agencies operating in Italy remains, however, far from that of countries like Germany or France. The same can be said about posted work: for the time being, Italy remains a sending country, sending around 114,000 workers per year and receiving around 61,000 (data retrieved from http://www.europarl.europa.eu).

On the other side, the Italian case is peculiar because of the expansion in low-end service sectors of a specific entrepreneurial form, that of the cooperative. A unique case in the European context, in Italy cooperatives employ around 7% of the total working population - a share that increases to 20% when considering only northern regions (ISTAT, 2015). In time, cooperatives developed from a marginal reality to core players in wholesale, construction and services. In the service sector, some workers' cooperatives (cooperative di produzione e lavoro) have become the biggest market players: in 2020, two service cooperatives – Manutencoop and Coopservice – ranked amongst the 20 biggest Italian companies in terms of the number of workers employed (data from Mediobanca annual Report presented in https://italiaindati.com/le-piu-grandi-aziende-italiane/). Having lower margins to expand productivity, cooperatives compete through labour cost-containment, in principle compensating lower salary with high job stability (Bentivogli & Viviano, 2012), which, in time, has allowed them to occupy spaces at the end of production chains.

The presence of other channels and instruments for the flexible management of labour appears as a convincing explanation for the limited expansion of agency work in Italy in labour-intensive sectors like constructions, that in other countries is characterised by the intensive use of staffing, often for the purpose of social dumping (Wagner & Lillie, 2014).

The statistics on the development of the cooperative form together with the data of inspective activities on cooperatives themselves can be used to get a sense of the development of illegal subcontracting structures. Cooperatives were the only form of economic activity to grow in numbers during the crisis (+16,4%) and they are suspiciously getting "younger", as a growing number of cooperatives over the total population is less than 5 years old (ISTAT, 2015). This is especially the case in sectors like construction and services to enterprises (over 50%); as well as logistics (over 60%) (ISTAT, 2015). The latest report o inspecting activities of the Ministry of Labour relates that on the total of cooperatives controlled by authorities, more than 78% were irregular ones (INL, 2020). This data indicates that we are assisting to an interaction of legal actors (client companies) with illegal ones (fake cooperatives). However, the legal definition of 'true cooperative' appears to be open to interpretation and it is not clear how formally legal cooperatives are operating in certain sectors of the markets (Sacchetto & Semenzin, 2014).

If the regional focus was originally decided in order to justify the selection of Italy as an example of regulated economy, the empirical analysis confirmed the validity of the choice. Comparative capitalism studies have highlighted the strong regional divisions in the structure of the economy within the country (Colombo & Regini, 2016). There are profound and rooted differences between the north and the south of Italy, regarding productive structures, professional stratification and employment conditions (Avola, 2015). These differences translate into the biggest intra-national performance divide registered within advanced economies (Avola, 2017). While the north is still one of the European manufacturing cores, the so called *Mezzogiorno* is one of the least industrialised areas (Avola, 2018). This situation also means that centrally designed institutions of industrial citizenship and welfare policies are unevenly implemented (Colombo & Regini, 2016), leading to the structural relevance

of informality in the south (Viviani, 2010). As I will show, the data confirm that fraudulent subcontracting is a "strategy of regulated economies" concentrated especially in the northern regions, while in southern regions strategies relying on informality and grey or undeclared work (INL, 2020) prevail.

The structural relevance of fraudulent contracting in the north also emerges from literature looking at working conditions and organizational practices in different sectors, from meat industry to logistics (Caterina Benvegnù & Iannuzzi, 2018; Campanella & Dazzi, 2020; Dorigatti & Mori, 2016; Dorigatti, Mori, & Neri, 2020; Francesco E. Iannuzzi & Sacchetto, 2016, 2019; F. E. Iannuzzi & Sacchetto, 2020; Piro & Sacchetto, 2021). The officials of the national labour inspectorate that I interviewed confirmed that fraudulent subcontracting is a widespread practice that cuts across different sectors:

> Nowadays fraudulent subcontracting through sham companies invades almost all sectors. In northern Italy it is particularly relevant in logistics, in food production, in the meat industry, in agriculture, in manufacturing, in the textile sector but also in public services. (Labour Inspector, interview, 2021)[ii]

1.6 Data Collection and Analysis

The research was based on the collection of qualitative data and on the iterative analysis of institutions and practices, that proceeded parallelly to each other in a constant back and forth that allowed me to move into conceptualization.

Due to the concurrence of the start of the COVID-19 pandemic with that of my fieldwork, the original research design had to be re-thought. As the North of Italy was hit the earliest and the hardest by the first wave, the start of the research was delayed out of concerns for my health and safety and of ethical considerations relative to the appropriateness of contacting interview partners exposed to severe psychological stress and potentially affected directly.

[ii] Unless otherwise noted, all translations by the author.

Moreover, for a long time it was complicated to move between different areas of the country because of the frequent and rigid lockdowns, while the access to public buildings and libraries was severely restricted. While it was possible to compensate for the latter problem at a later stage of the research process, travel restrictions affected my plans to interview workers involved in subcontracting practices. After the first lockdown it became increasingly easier to organise online interviews with officers, unionists or experts - who in the meanwhile had grown accustomed to the use of digital means of communication as working tools – but building connections with workers exposed to illegal practices proved too difficult. This meant that, although I did not completely abandon the research on the practices, I decided to focus more on the institutional analysis.

The first step of the research process was to get an initial overview of the legislative framework regulating subcontracting and labour intermediation, and understand its underlying logic. In order to do this, I used legislative sources, interpretive documents of the labour inspectorates and analyses of labour law scholars.

Having this framework of reference in mind, I then proceed to collect other qualitative data to explore the practices of labour-intensive subcontracted arrangements. The illegal nature of the practices and the potential risks involved in direct observation led me to choose to rely on the indirect testimony of those institutional actors that are involved in the enforcement and maintenance of the rules. To increase reliability, I made sure that the material collected could be triangulated to support the validity of the findings.

I collected newspaper articles, union reports, inspecting reports of different enforcement bodies. In particular I focused on the work of the labour inspectorate and Guardia di Finanza (from now on GDF), which is a military Police Force reporting directly to the Minister of Economy and Finance, with general economic and financial

crime-fighting competences (GDF, 2016). Parallelly, I conducted targeted semi-structured interviews with relevant actors, selected for their experience and position. As a start, I interviewed a pool of five unionists working at the local level in the food and agricultural sector, logistics sector, service sector and public sector, plus one unionist working at the regional level at the development of confederal campaigns for the promotion of legality in the labour market. All unionist worked for one of the main Italian confederations, in one of the largest provinces in Emilia Romagna. The region of Emilia Romagna in general has been at the centre of the discussions on fraudulent subcontracting because of the concentration in the area of the largest meat processing facilities in the country. Meat processing has emerged as a sector intensely exposed to practices of labour exploitation through fraudulent subcontracting and the local unions have been particularly active in reporting the spread of the practice. Although this selection was planned from the beginning it also ended up responding to practical reasons: having worked in a union, it was easier for me to access those interviewees at a time when Northern Italy was struck by the first waves of the pandemic, and it was impossible to conduct in-person interviews. Having access to a large number of documents, to other actors at the national level and to sectoral studies conducted in other areas of the country, I was nevertheless able to obtain generalisable results. In particular, on the side of law enforcement, I managed to have conversations with members of law enforcement - of which two officially on the records - one with a former director of the Servizi Ispettivi Centrali at the National labour inspectorate (who also directed several local units) and one with an officer of the Direzione Centrale Coordinamento Giuridico, the central body of the National Labour inspectorate that is responsible for issuing interpretive documents and coordinates reporting activity. Finally, I interviewed a PR responsible of one of the multinational staffing agencies in the country.

Besides being important for the collection of information on the practical ways in which the subcontracting arrangements are organised, the interviews and the interpretive documents also provided data on how the actors frame the problem and conceive illegality in subcontracting practices. The written interviews and the transcriptions were coded using MaxQDA, with a special focus on practices of sense making and on the characterisation of the border between legality and illegality.

While I deepened my understanding of the practices and of legal interpretations, I also started to widen the temporal scope of the analysis, relying on historical studies and reports to trace the evolution of the practice and of the legislation through time. To reconstruct the progression of the process of negotiation and renegotiation of the regime of labour intermediation, I relied on transcript of the parliamentary debates around relevant reforms (in particular the labour reforms of 2002-3, 2015 and 2018, and the reform of the crime of Caporalato in 2011 and 2016), contributions of unions and employers' associations in the debates and in the press, and opinions of experts involved in the design of the reforms.

1.7. Structure of the Chapters

The analysis of the Italian case confirms that even in a regulated economy illegality can become fundamental to supporting competitive strategies. Fraudulent subcontracting practices that entail high levels of exploitation are just the most extreme expression of cost containment practices that are widespread and tolerated. Besides being the outcome of the strategies of powerful market actors capable of pressuring service companies into rule-breaking to stay in the market, the expansion of illegal practices derives from state inaction and its active promotion of restructuring practices based on labour-intensive subcontracting. The state does not necessarily encourage extreme cases of rule-breaking, but it also fails at adequately regulating them because this would obstacle predominant competitive strategies and business

models. This conflict of interests generates contradictions in the design of labour market policies that prevent effective rule enforcement.

In the first part of the dissertation, I argue that while challenging the institutions of the employment relationship, boundary-making strategies also fundamentally alter the operation of the labour market. The other side of the coin to vertical disintegration is the expansion of labour market intermediation hidden behind labour-intensive subcontracting. I get to this conclusion by systematically thinking about *what* is achieved through vertical disintegration and *how*. In particular, I look into what is achieved by breaking the rules while subcontracting and how this rule-breaking becomes a sustainable practice. Eventually, the juxtaposition between fraudulent subcontracting achieved by creating fictitious companies and the operation of other labour-intensive subcontracting arrangements confirms that fictitious companies are not a deviation from standard organisational practices but rather the most elaborate expression of a systematic social dumping strategy.

The chapter starts by conceptualising this strategy as *misclassification*. I derive the concept from the systematisation of the knowledge accumulated through previous studies of subcontracting and cross-border labour markets. I then move on to the analysis of how this illegal strategy is integrated into the operation of subcontracting arrangements in the Italian case. I single out a technique of misclassification that I define as *staging*, consisting of the performance of an organisational arrangement that hides labour intermediation in order to create external plausibility of rule abidance.

In the second chapter, I focus on the impact of the diffusion of misclassification through subcontracting on the labour market. I show how the use of border-making practices is supported by a market for intermediation services in which formal and informal intermediaries compete against each other. This market is not only composed of legally recognised actors - like staffing agencies – and intermediaries hiding behind

fictitious companies. It is also populated by service companies that adapt their service provision to the competitive pressures derived from the increased power of the client firms and the expansion of illegal practices. This adaptation consists of the realisation of subcontracting arrangements where the triangular employment relationship is organised like agency work - with the client firm exercising organisational power while the service provider is responsible for the provision of labour. Finally, I propose to expand the definition of intermediation to include *interposition* as part of the role of intermediaries operating in regulated labour markets. As the main goal of misclassification through subcontracting is severing the bond between the worker and the employer, the interposition of a third legal entity between the employer and the worker should be conceived as one of the services that the participants in the market for intermediation offer to employers looking to modify the boundaries of their firms.

Chapter three follows the development and expansion of misclassification through time, showing how the use of fictitious companies can be traced back to the early stages of Italian regulated capitalism. I show how fraudulent subcontracting is not a product of the current stage of capitalism but it is an old strategy that has been reactivated after a period of partial withdrawal. What is "new" about it is that it happens in the specific context of a modern labour market and of an employment system that in principle allows for very limited forms of labour intermediation.

Chapter four and chapter five deal with the institutional analysis of the regime of regulation of labour intermediation and with the role of the state in it. In fact, I argue, part of the process of market regulation involves defining how much rule breaking can be tolerated by the system. Chapter four shows that the greying of the definition of what is legal and illegal intermediation contributed to turn the regime of intermediation into an interface between legality and illegality. A mixture of illegality and institutional vulnerability contributes to the solidification of market segments

populated mainly by migrant workers and excluded to various degrees from status rights. The intersection between misclassification through illegal subcontracting and the greying of institutional guarantees realises a stratified zone of exception from employment protections that is partly sanctioned by the state through *forbearance*. In fact, what happened to the institutional regime of intermediation has both the character of *layering* and of a *drift*: the change was promoted politically by layering new norms on top of the existing ones; but it was also the outcome of the unwillingness to address the shortcomings in the implementation of the existing regulations. Lack of enforcement is, in this case, the result of a mix of deliberate strategy and failure, brought about by the contradictory nature of the interests of the market players and of the state itself.

Finally, in chapter five I look into these contradictions by analysing the political debate that followed the process of reform of the regime of intermediation in the last 20 years. As it emerges, different bodies of the state can intervene in this process according to different logics. Law enforcement and the Judiciary can act to promote the maintenance of labour market institutions even when governments regulate in the opposite direction. By doing this, and together with other market actors, they can support the return of the institutional setting to a certain equilibrium where the level of tolerated rule breaking is reduced.

Part I: Practices

Chapter 2: Misclassification

In July 2022 a Parliamentary Committee of inquiry "on working conditions in Italy, on exploitation and on safety at public and private workplaces" issued its final report (XVIII Legislatura, 2022). Amongst its findings was that

> "The massive use of digital technologies has encouraged the expansion of firms, especially in the logistics sector, where a process of profit extraction from labour has developed, that catalyses occupational precarity through illegal intermediation and the mechanism of fake cooperatives. A strategy used especially by multinational corporations, to which one should pay special attention considering its rapid expansion even in other sectors, like manufacturing and services". (XVIII Legislatura, 2022, p. 32)

This text contains a series of assumptions that I would proceed to specify and challenge throughout my dissertation. First of all, it presents the issue as a "new" trend, recently developing and dependent from technological innovation. Secondly, it presents it as a strategy of multinational corporations and dependent on their expansionist tendencies. Finally, it chooses to define the practice as a mechanism of fake cooperatives, focusing the attention on this specific feature of the issue of illegal intermediation. In other words, it defines the problem as special, situated in time and contingent on the development of some economic actors.

I argue that this is a misrepresentation of the matter at hand, that this behaviour is not "new" and that it belongs to a specific class of strategies that is extremely diffused - amongst all kinds of firm. What they define as the "mechanism of fake cooperatives" falls inside the spectrum of "fraudulent contracting" and is just one expression of it. In fact, as I will show, it belongs to a class of illegal behaviours that are systematically used to support processes of vertical disintegration and that I define as *misclassification*. Misclassification, I claim supports the reorganisation of the firm, and it is used so extensively that we could say that labour-intensive (sub)contracting primarily operates by breaking the rules.

2.1 Subcontracting as a Dumping Strategy

The rise of workplace fissuring (Weil, 2009) is one of the most discussed phenomena in industrial relations and employment relations studies. Fissuring can be understood as a process of redefinition of the firm's boundaries driven by the spread of *strategic outsourcing*. This organisational strategy entails externalising in-house primary-value-creating activities to suppliers (Drahokoupil, 2015, p. 10). The recourse to agency work, subsidiaries and subcontracting has modified the shape of the firm and created new organisational boundaries across the production chain. Single powerful customers now dominate new intermediate markets organised in networks mediated by market-based relations (V. L. Doellgast & Greer, 2007).

Outsourcing can offer various advantages to a company, like favouring higher specialisation and providing access to external expertise to improve quality. However, it has been shown that strategic outsourcing has been used systematically as a cost-containment strategy based on the possibility of avoiding the laces of the standard employment relationship (Kalleberg, 2013; Weil, 2009). Boundary decisions eventually depend on the cost differential between internal and external labour and the ease of exiting the internal employment relationship (V. Doellgast, Sarmiento-Mirwaldt, & Benassi, 2016).

Power differentials between primary and secondary markets support this cost-saving model based on social dumping. Studies of subcontracting practices have shown how the achievement of so-called 'flexibility' in the management of labour is as much an attribute of inter-organisational arrangements as it is of the flexible organisation of firms themselves (Procter, 2005, p. 475). They have highlighted how subcontracting as an organisational strategy has been used in combination with specific labour market regulations to enact business models based on the mobilisation of precarious employment (Frade & Darmon, 2005). Fragmented production chains work as

'insecurity-and-risk transfer chains' (Frade & Darmon, 2005, p. 116), in which companies shift the risk of capacity utilisation onto their suppliers and service providers - who often operate under different labour regulations and are therefore able to pass on flexibility demands, costs and risks to their employees. This leads to the unbalanced distribution of risks and insecurities towards workers, but also within them.

Subcontracting as a cost-containment strategy is supported by subcontracting as a 'divide-and-rule' strategy that allows employers to offset workers' power and tighten their control in the work process (Cuppini & Frapporti, 2010). Vertical disintegration through externalisation is one of the primary mechanisms that support the confinement of certain groups of workers into different 'segments' of the labour market (Gordon, Edwards, & Reich, 1982) characterised by various degrees of low wages, poor working conditions and unstable employment. The differences in regulations of working conditions in different sectors and the use of contingent work arrangements create power inequalities in the employment relationship (Hyman, 1994), exposing workers to the market price mechanism and allowing employers to use competition as a form of disciplining (Bosch, 2004). Outsourcing weakens representation structures (V. L. Doellgast & Greer, 2007; V. L. Doellgast, Lillie, & Pulignano, 2018; Flecker, 2009), making it more difficult for workers to organise and for unions to intervene to bargain for the regulation of working conditions. Practices of workplace segmentation hinder solidarity and maintain an available and flexible workforce. This 'divide-and-rule' strategy is often supported and reinforced by racialisation practices (Piro & Sacchetto, 2021).

2.2 Misclassification, Avoidance and Illegality

Over time, companies have developed specific regulatory avoidance capabilities that support them in their boundary-making activities (Meardi, Martin-Artiles, &

Lozano Riera, 2012). In particular, they have developed expertise in regulatory arbitrage, meaning the "manipulation of the structure of a deal to take advantage of a gap between the economic substance of a transaction and its regulatory treatment" (Fleischer, 2010). Arbitrage supports the creation of a layered organisational structure and the displacement of the standard employment relationship in favour of non-standard and indirect employment relationships. Companies can exploit the ambiguities created by the existence of an external "formal employer" to avoid employers' responsibilities and opt out of the bargaining system. The ambiguity can easily translate into the deliberate misclassification of workers (Benassi & Kornelakis, 2020).

Building on existing literature, I propose to single out *misclassification* as the primary mechanism that supports the redrawing of the firm's boundaries. If cost containment is dependent on the severing of the employment relationship through the redrawing of the boundary of the firm, it is the misclassification of the actors involved that supports vertical disintegration for social dumping. Already Wagner and Shire (Wagner & Shire, 2020) have identified "misclassification" as a strategy that can be enacted through various regulatory instruments and in different regulatory systems. Workers can be classified as atypical workers, autonomous workers or trainees, or, in the case of subcontracting, they can be directly classified as employees of another company. Misclassification overlaps to a certain extent with *fraudulent contracting,* as defined earlier. However, as a sociological concept, it offers the possibility to unveil the process that realises social dumping rather than putting the focus on the static legal outcome, and to focus systematically on structures and actors that intervene in this process.

Misclassification can only be achieved by breaking the rules and it is, in this sense, an *illegal* behaviour. Employment and industrial relations scholars commonly

describe behaviours that can be included under the umbrella of *misclassification* as *avoidance* or *evasion* rather than *illegality*. This also reflects the fact that the breach of most legal rules or norms regulating labour conditions results mainly in administrative sanctions (Luz Vega & Robert, 2013). Yet the concept of illegality does not necessarily imply a specific gravity of conduct measured through the intensity of the sanction potentially applied. Defining an action illegal because it violates a legal norm, does not imply any evaluation of the outcomes of the behaviour. Recognising the illegal nature of misclassification in any form enables us to analyse together business strategies that have graver or lighter implications regarding the effects on the workers and the sanctions potentially involved. It allows placing those behaviours that have broader implications on a continuum with other organisational decisions, rather than treating them as an exception. It also allows focusing on the fact that the decision to elude a norm is not necessarily self-sustaining only because the external conditions make it a viable solution. Illegality always requires an effort of concealment to become a sustainable business strategy (Beckert & Dewey, 2017). The focus is shifted from the motivation and the outcomes to the practical ways rule-breaking is achieved.

This is not, of course, a completely new question. Elements of the practical unfolding of rule-breaking strategies emerge from existing studies. In particular, studies on the development of posting have provided insight into the day-to-day, locally enacted strategies that support rule-breaking and the creation of the plausibility of rule abidance (Bagnardi, Sacchetto, & Vianello, 2022; Lillie & Wagner, 2015; Lillie et al., 2014; Wagner, 2015b; Wagner & Shire, 2020), from which emerges that posting can also be a used for fraudulent contracting (EUROFOUND, 2016a). Yet the sustainability of rule breaking is rarely the focus of inquiry and posting is often considered as a strategy in itself, as a technique, and not as one of the possible forms of misclassification.

2.3 Staging as a Technique of Misclassification

Misclassification in itself does not have to rely on the crossing of geographical borders, as it happens in the case of posting. It can also rely on the crossing of the borders between legality and illegality – which in the case of posting, is facilitated by geographical border crossing. This kind of crossing requires the utilisation of specific techniques, which in the case of subcontracting, help to conceal the bond between the worker and the leading firm and respond to a specific need: that of creating external plausibility.

I define *staging* as a technique of misclassification that describes organisational efforts to preclude the necessity of conformity, a way of achieving the concealment of "their disconformity from institutional rules and expectations" (Olivier, 1991, cited by Wagner, 2015b). Firms involved in fraudulent subcontracting engage - to a larger or smaller extent - in setting up a stage that allows them to disguise irregularity by creating a façade of regular behaviour, enacting a *fictitious* organisational form. Within these arrangements, the contract for the provision of services can be thought of as a performance that hides the factual circumstances of the employment and contractual relationship.

2.3.1 Staging Through a Fictitious Company

Staging does not necessarily require the creation of a fictitious company, yet it is in this case that this technique is pushed to its fullest potential. *Fictitious companies* are legal entities that disguise the actual employer and hide the nature of the commercial interaction between the economic actors involved. The fact that the form is fictitious does not imply that there is no actual organised economic activity behind the staged organisational structure. The primary role of the actors behind the fictitious companies is to bring the necessary workforce to the service or production process at lower prices than those of the legal labour market exchanges. In other words, their

primary function in the organisation is to intermediate cheap labour for the client company. *Fictitious companies,* therefore, can be defined as companies created ad hoc for hiding labour intermediation.

Fictitious companies sign contracts directly with the client or are positioned at the end of a subcontracting chain. Since the leading firm aims to reduce costs, the price of the service has to be kept to a minimum, which means that revenues from the intermediation activity derive from workers' exploitation and tax evasion. Contracts with *fictitious* companies are usually short-lived and the turnover of fictitious companies is high - on average, they last for one or two years. During their short life span, fictitious companies accumulate debts towards the state by not paying taxes and social security provisions, underpaying workers, and faking pay sheets. Eventually, when the risk of detection increases, the company declares bankruptcy. Meanwhile, the place in the contract is taken by another fictitious s.r.l or cooperative, either organised by the same intermediary or a new one. Workers are then repeatedly "moved" from employer to employer.

Workers hired through fictitious companies are usually exposed to various degrees of economic exploitation and to equally exploitative working arrangements. Pay levels are low, working times are not fixed and not reflected in the paysheet, working conditions are usually poor, and health and safety measures are lacking or directly not applied. The chains of sub-contracts help shield the client company from legal responsibilities for the treatment of workers. The longest the chain, the easier it is for the company to protect itself. A report of the CGIL of Treviso (IRES & FILT Treviso, 2013) offers a clear example of how the chain can be built and exploited: the leading company outsources internal logistics to a secondary one, which then outsources to a consortium, which in turn allocates the task to several smaller cooperatives or s.r.ls. When problems arise, the leading company shifts the blame to

the secondary company, which puts it on the consortium in turn (in the case in the report, by temporarily interrupting the agreement). The consortium then re-allocates the contract from the cooperative under scrutiny to another, to signal that it has solved the problem and the main contract can continue.

Fictitious companies come in the form of s.r.l.s or cooperatives without assets – also known as "mailbox companies" - or *cooperatives of convenience,* which are business-oriented, hierarchically managed and created ad hoc for outsourcing activities (F. E. Iannuzzi & Sacchetto, 2020). In both these cases, cooperatives are registered as *cooperative di produzione e lavoro* (cooperatives of production and work), a kind of cooperative whose aim should be the mutualistic redistribution of labour amongst its members. Cooperatives of production and work are widespread in Italy - especially in specific sectors like logistics, cleaning services and vigilance – and because of their mutualistic nature, they are subject to a lighter fiscal regime. This makes them a convenient organisational form to hide an activity of labour intermediation.

The distinction between these two kinds of *fictitious* companies is partly artificial, as the level of assets owned by the cooperatives of convenience is usually also very low, and, in both cases, the companies are created ad hoc for outsourcing. However, it allows for bringing out the varied constellation of actors and interests behind this practice. Some of these companies are registered directly by a single intermediary and represent their primary activity. On the other side, companies without assets can also be registered directly by the "client" company owner through a figurehead, who then relies on workers' networks to find vulnerable workers for the outsourced activity. For company owners, this is a strategy to increase their revenues, while small independent intermediaries are often migrants who make their livelihood from labour intermediation.

Next to owners and smaller independent intermediaries, some actors specialise in making money by building these commercial frauds. Often these actors are linked, directly or indirectly, to organised crime. They manage multiple contracts and refine rule-breaking strategies. To coordinate the scam, they build fictitious higher-level organisational structures, like *consorzi* - formally cooperative groups that distribute work to the affiliated members. What these *consorzi* coordinate is, in fact, a network of appointed middlemen or independent smaller intermediaries. A few actors even created holdings whose main activity on paper is to offer the know-how for externalisation, which devote themselves to creating chains of subcontracting structures. They usually register as companies offering "personnel management" or "business services" and cater to big and small businesses alike. In these cases, the primary revenue for the upper-level intermediaries is the elaborate tax evasion schemes that entail the reinvestment of money formally invoiced as services into real estate properties or luxury goods. The earning potential of the fraud emerges from one of the investigative operations that became public: authorities contested 300.000 euros of tax evasion to a holding that coordinated 32 societies, which, in turn, controlled service companies and some staffing agencies that employed a total of 17.000 workers in different parts of the country and other sectors (CGIL Modena, 2019; Il Resto del Carlino Modena, 2018).

2.3.2 Scenic Designs and Stage Props

The metaphor of the stage aptly describes the realisation of the commercial scam. The relationship between the leading firm and the subcontractor can be thought of as the scenic design of the performance of this organisational arrangement. All the documents, like the formal registration of the *fictitious* companies, can be conceived as stage props. The workers' contracts serve as props to realise the illusion, creating the plausibility of rule abidance. This explains why even in cases that entail intensive

labour exploitation, the actors involved do not resort to completely submerged labour but rather play around with the accounted time and the wages paid. When the fictitious companies change, workers are even asked to resign formally. However, this does not mean that there are no instances of completely undeclared work hidden amongst registered workers (GDF Modena, 2014). A large number of registered workers creates plausibility and allows for hiding informal relationships. The same kind of mixing between formality and informality can be found when looking at the legal status of migrant workers: the report of the CGIL Treviso shows that while some of the intermediaries take great care of excluding migrants who do not have a residence permit, eventually the latter enter the mix anyways as submerged labour (IRES & FILT Treviso, 2013).

2.3.3 Cooperatives

When it comes to cooperatives, workers are often forced to become members when they sign the contract. This is necessary to account for the legal amount of "soci" (associates) that a cooperative has to register over the total of its workforce. Although bookkeeping is not always precise, the practice responds to the need of creating plausibility.

There is a certain ambiguity about whether the cooperative form is a "prop" or whether it is the cooperative in itself that enables the practice and makes it profitable. Indeed, an advantage of the cooperative form is that workers who are registered as associates do not have the status of employees and can be easily put on and off work assignments depending on workload variations. However, it is also true that most of these exploitation practices are based on the fact that the workers do not know or understand the legal system or are not in a position to challenge this kind of organisation. Also, exploitation is supported by segmentation strategies that exploit ethnic divides - the presence of multiple intermediaries or middlemen catering to

different ethnic groups also serves this purpose. If it is true that cooperatives are subject to a lighter fiscal regime, the profitability of the practice is largely based on tax avoidance, which can be potentially achieved also with other forms of entrepreneurial activities. Interviewees both in the unions and at the labour inspectorate told me that, following an increased attention for cooperatives in inspecting activities, the schemes are now more and more frequently based on the creation of S.R.Ls. (Limited liability companies). This points to the fact that the main preoccupation of these actors is to take on the form that allows them to better camouflage into the system.

2.3.4 Figureheads, Pirate Contracts and Certifications

The staging is not always elaborate or well executed. Registering a company does not require significant capital, and, since it is so easy, many actors engage in the practice, from small company owners to consultants themselves. These actors do not necessarily possess the know-how to stage a contract properly, and, like the entrepreneur sitting next to me on the train, they do not think that the probability of detection is extremely high. However, the necessity for secrecy increases when it comes to more prominent companies under public scrutiny.

The extra step intermediaries take to hide their identity is the appointment of a figurehead. Figureheads are frequently other migrant workers or destitute elderly people. It is easy to find figureheads, even outside the firm: a law enforcement officer explained that the scammers could contact them informally at local town bars or places of gathering and propose to them to sign a contract in exchange for some compensation. Figureheads often rotate and preferably do not have a criminal record, to avoid attracting unwanted attention from law enforcement.

The more organised and experienced the actors are, the more the scenic design is convincing, as they can produce more stage props. Actors interact with, or even create, fictitious unions that would sign a “pirate” bargaining contract to apply to the

subcontracted workers. “Pirate contracts” are collective bargaining contracts signed by scarcely representative unions and employers’ associations or by fictitious ones. These contracts agree to lower standards for workers in terms of salary and working conditions. Currently, there are around 900 registered collective agreements (Pedersini & Dorigatti, 2021) that are frequently used in subcontracting arrangements.

Besides bargaining agreements, the other staging element often used is certifications. Since the state now incentivises the practice of certifying the regularity of contracts, a market for complacent certifiers also opened up. Some of them are bilateral bodies emerging from the organisations that sign the pirate contracts. According to the inspectorate, a variety of actors act as complacent certifiers. Their services are in high demand and quite expensive, up to 500 euros. A member of the central body of the national Labour Inspectorate recounts in a meeting that.

> No later than a year ago […] I intercepted the request of a subject for 1.980 certifications to a single certification committee, a committee which was to emit these certifications in seven days. In seven days, it was supposed to certify more than a thousand contracts to a subject already under observation by the labour inspectorate. (Papa, 2019, min 16:10)

and that

> There are subjects that certify contracts without having the proper requirements, subjects that are born overnight – “my name is bilateral body Joe-Schmoe, and since I am bilateral body, I can certify”. Then, when you verify who this subject is, you find out that its headquarters are in a basement where none is to be found. I remember one, in a basement. It was empty. The commission did not exist, yet it was emitting certifications flat out. (Papa, 2019, min 17:04)

2.3.5 Clothing, Partitioning Lines and Tools

Besides producing documentation that supports the illusion of a specific organisational arrangement, the *staging* also entails a modification of physical spaces inside the firm. To keep the illusion of a functional separation between the workers employed by the leading firm and those hired by the subcontractor, groups of workers are physically marked to show that they belong to one or the other group. Many of my interviews have mentioned the practice of drawing lines on the shop floor to create a

physical demarcation inside the same working place. Research on the meat industry has shown that also clothing can be used to mark the worker's belonging to a specific group (Piro & Sacchetto, 2021). In this context, task allocation is the outcome of racialised selection into particular tasks, making distinctions between groups of workers meaningful. But according to the interviewees, the actual workspace arrangement can be volatile and does not reflect the artificial lines drawn by the company for the benefit of being prepared for potential controls. The reality of the everyday organisation of the firm changes, and the occupation of the space becomes more blurred.

There are exceptions to the necessity for ad hoc arrangements in the organisation of fraudulent subcontracting. In the case of services like cleaning, for example, where all the service is outsourced, and no internal worker is performing a similar task. But also, in the case of transport and delivery services, where the job is on the move and there is no allocated space for task performance. Next to physical allocation, other elements become more important for staging, like allocating the tools necessary for task performance. The ownership of the physical tools associated with the task (the truck for the delivery, the forklift for the movement of goods in the warehouse, the industrial cleaning machine, and the scaffolding in a construction site) is variously allocated in the performance of fraudulent subcontracting. When it comes to production, the tools and machinery are often owned by the leading company, and space arrangement strategies prevail. When it comes to services, however, arrangements vary. For example, a union officer explains that when big transport companies subcontract to micro enterprises on the territory, they sometimes even provide the trucks. However, ownership of some tools increases the quality of the *staging*. As a member of law enforcement explains, actors with more experience in fraudulent subcontracting - but also more resources - tend to acquire some tools to

support the credibility of their performance, such as a forklift or a management program.

2.4 Fraudulent Subcontracting Without the Use of a Fictitious Company

When labour-intensive outsourcing becomes the predominant cost-saving organizational strategy, companies offering labour-intensive services compete on their ability to provide a lower price rather than a better service. As Frede and Darmond (Frade & Darmon, 2005) point out, the incentive of the subcontracting company to intensify practices of risk externalisation to workers derives from the dependence of the subcontractor on the client firm and from heightened competition in the sector. Competition is in turn enhanced by the spread of informal intermediaries hiding behind fictitious companies, which offer exceptional cost-reduction opportunities and an arrangement that allows the client to keep tighter control of the labour process. Under these conditions, it becomes more convenient for service companies to focus on the administration and coordination of the work supply and to abandon the ambition to organise the service, limiting themselves to executing the directives of the client firm. This can be the case also in situations that do not entail high levels of workers exploitation and where the primary employer is the state and not a private company.

When this is the reality of the employment relationship, a situation is created where, much like in the case of the creation of fictitious companies, the commercial contract misrepresents the relationship between the commercial partners and between the companies and the worker. The worker is misclassified in the sense that the triangular nature of his employment relationship is not recognised. However, service companies cannot be conceived as fictitious companies. The distinction between fictitious and non-fictitious companies is partly artificial, as there are borderline situations that would be difficult to assign to one group. Service companies that have completely adapted their business models to the mere provision of cheap labour could

also be thought of as fictitious companies in the sense defined earlier of "legal entities that disguise the real employer and hide the nature of the commercial interaction between the economic actors involved". A union officer gave me an example of this continuum while describing the organisation of logistics in its area:

> We have two big realities [...] two big companies, they are cooperatives, that – with all the problems that they may have, considering that the perfect company doesn't exist – are the main players in the sector, and they apply [the collective agreements that] should be applied. Then around these two – which are those who work with the companies that are the most visible, even in the media, and that therefore clearly need regular formal relationships with more or less regular companies – there is the first layer of an underworld composed of some companies – who also collaborate with the two main players to grant them margins of flexibility – that instead are more unscrupulous and where one starts to see the outcomes of what I call 'giving the nod to profit maximisation' through the classic use of the Trasferta Italia etc. [*paying part of the wage as reimbursements]. This is fiscal evasion - so strategies that allow you to cost a bit less, while also appeasing the worker, that sees 50/100 euros more in his paysheet – so everyone is "eating" from this. Here the regularity of the system starts to get compressed. Then, even more underneath, some use even more unscrupulous strategies, often assisted by consultants and/or consorzi that coordinate many companies and create the mechanisms, provide the instruments, for the continuous birth and premature death of firms that are never real firms. (Union Officer, interview, 2021)

Within this continuum, different actors will be more or less prone to deviate from the norms. Distinguishing between fictitious and non-fictitious companies in this mix of actors shows that misclassification is not just the outcome of elaborate fiscal scams but also the everyday operation of subcontracting agreements. Service companies adapt to competitive pressures for cost containment, engaging in various degrees of rule-breaking for misclassification. This means that there is a significant variation in the exploitation levels and cost-containment margins.

Despite the ambiguity, in this scale of variation of intensity of deviance from the norm, *staging* remains the basic technique. When the practice does not entail the creation of a fictitious company, the *stage* is still necessary to uphold misclassification strategies.

Of course, when the company is not created ad hoc, the legal registration of the company cannot be thought of as a stage prop serving the primary purpose of

camouflaging illegal activity. Since the form of the company is not flexible, in the case of service companies, the exploitation of the legal advantages provided by the cooperative form becomes the primary cost-saving strategy. Inside cooperatives, it is possible to exploit the fact that the workers registered as cooperative members can be taken off and on work assignments much more quickly than regular employees, making it simpler to adapt the labour volumes offered to those required.

Yet other strategies of cost containment applied by fictitious companies are also variously used. Creative payroll writing is widespread. Part of the wages are paid in the form of reimbursement for travel expenses, which makes them non-taxable. Another trick is keeping the pay low and not counting the extra hours. In those situations where the worker is less vulnerable, and it is necessary to keep the worker's goodwill, the payrolls can be faked in a way that looks advantageous from both sides. A unionist explained that, to hide the low hourly wages, some employers distribute the extra elements of pay (13th and 14th months' salary) throughout the yearly paysheets, to give the impression that the monthly amount is higher. Moreover, the use of travel reimbursement can be done in a way that gives the worker the impression that he is earning something extra and that he can also benefit from minor tax evasion. In reality, this is not necessarily an advantage since there are hidden long-term disadvantages deriving from the fact that the amount registered as transfers does not count for the accrual of credits for social security contributions. This is true even in working situations that are considered to be mostly regular, like in the case of the outsourcing of cleaning services in public buildings. As a unionist explains:

> It is difficult to find cases of blatant illegality, especially with those [companies] that work with the public sector. However, we always had the suspicion that they play around a bit with the wages. In the sense that, in the cleaning sector, the average worker is a worker with a low education level, and with a share of migrants that has steadily increased, so they have a hard time reading their pay slips. Therefore, we find many cases of hours not paid correctly – for example, 3 or 5 hours of overtime missing – there is always something to fix. They do get fixed! I mean that the

> companies do not protest when we signal something; they fix it. The problem is that we do not reach all the employees, so we suspect that there are frequent mistakes and that they are made on purpose… it's a suspicion we have […]. (Union Officer, interview, 2021)

Besides creative accounting, some service companies also resort to pirate contracts. However, some prefer to play into the more subtle strategy of applying the *Multiservizi* contract, which is the standard collective agreement associated with lowest levels of wages and protection. Applying this contract often realises a second misclassification inside the main one. The contract should cover mainly cleaning personnel, but it is applied to various working arrangements, from logistics to production. The Multiservizi agreement has taken the place once occupied by the logistics contract, which used to be the contract of choice for social dumping practices during the 1990s and the first decade of the 2000s. This was because the wages set by the agreement were extremely low and because there was a mechanism that allowed cooperatives to reach the full contract application gradually. This meant that logistics cooperatives only had to pay the full wages after four years of activity. However, this kind of advantage was reduced through various rounds of collective bargaining that removed this graduality. Conversely, the Multiservizi contract was never renegotiated between 2011 and 2019, becoming de facto the most convenient of the two. The *Multiservizi* is often applied in situations under public scrutiny and where a mix of service companies and fictitious companies work on the same site.

In some cases, its misapplication is blatant, while in others, it is under dispute. A unionist explains that some big service cooperatives in the cleaning sector are trying to argue that the contract applies to all of their workers, independently of their tasks. This kind of strategy emerges especially at the time when the big service cooperatives obtain a new contract over an activity that is being externalised for the first time or over an already existing agreement: when hiring the workers that were previously classified – for example – as the maintenance they apply the Multiservizi contract,

claiming that the classification of the firm is more relevant that the task performed by the worker for establishing the proper contractual application.

But even where the infractions over the working conditions are minor, and the subcontractor only takes advantage of the lower working conditions that are legally exploitable, service companies under competitive pressure often end up realising contractual arrangements that de facto consist in the mere provision of labour to an employer.

This shows how illegality, in the form of misclassification, is a structural feature of vertical disintegration. When it comes to labour-intensive tasks, borders are re-drawn through rule breaking hidden by efforts to stage plausibility. The practices that the parliamentary commission described in its report are not an exception to the system but just one of the expressions of these reorganizational strategy – although for sure, they tend to be the ones with the deepest impact on working conditions. Even in their most elaborate form they are not a distortion created exclusively by multinationals. Also, they are not necessarily dependent to the introduction of technological changes. In fact, some of the firms using fictious labour-intensive subcontracting tend reduce their investments in technological innovation, relying completely on labour cost reduction as a source of profit.

It is however true the case the diffusion of misclassification through fictitious companies challenges the institutions of the Italian labour market. The spread of the practice changes the structure of competition and pushes service companies to adapt. In the next chapter I will explore the implications of this change for the actors involved and the labour market.

Chapter 3: Labour-Intensive Subcontracting as Intermediation

"If it looks like a duck and quacks like a duck, we have at least to consider the possibility that we have a small aquatic bird of the family Anatidae on our hands." Douglas Adams

If we do not treat illegality as an exception but as systematic feature of processes of reorganisation then it also possible to see its structural outcomes on the market. The spread of misclassification, I argue, challenges and re-shapes the role of market players.

While it is clear that processes of border marking based on misclassification challenge the institutions of the employment relationship, the diffusion of externalisations has also brought about profound and partly unobserved changes to the operation of the labour market. In this chapter I claim that the expansion of misclassification through labour-intensive subcontracting can be understood as part of a process of re-privatisation of labour intermediation that supports radical segmentation. This process led to the creation of a veritable market for intermediation services catering to the demand for cheap and vulnerable labour and populated by formal and informal actors. In this market, actors with a state sanctioned authorisation - like staffing agencies - compete with informal intermediaries and with service companies. In their drive to redefine the company's borders, firms chose alternatively between these service providers, factoring in the costs and risks involved.

3.1 Intermediation and Interposition

The primary function of intermediaries in a labour market is to match workers to the job. Although we can think of this task as the brokering of single individual employment relationships, when it comes to labour-intensive jobs, the service often

consists of matching labour supply to business volumes – in which the labour supply consists of the sum of the individual worker supplied. As migration scholars have shown, the main attractiveness of labour market intermediaries is that they can meet the needs for 'numerical flexibility', providing labour "as a commodity in a fashion akin to a tap which can be turned on and off easily and frequently" (McCollum & Findlay, 2018, p. 564). In this exchange, intermediaries are not just relationship facilitators but intervene to solve some of the labour market's fundamental coordination problems (Shire, 2020): their role extends beyond recruitment and allocation to guaranteeing the expenditure of labour under poor working conditions. High levels of control are achieved by selecting workers with a vulnerability profile and, when necessary, by reinforcing this vulnerable status through various dis-empowerment techniques that, in the most extreme cases, include forms of debt bondage, documents deprivation, and the concentration of the workers in communal and secluded living spaces that divide them from the rest of society and ensure high levels of supervision (Lindquist, 2017; Ortiga, 2018; Sporton, 2013).

The level of freedom that the workers experience in this exchange varies depending on their characteristics and the conditions of market competition, leading to different levels of commodification. In migration markets, intermediaries directly conclude contracts on behalf of migrants themselves in an exchange where the lack of power of the worker makes him less of a client of the intermediary and more of a commodity to be sold on the market (Shire, 2022). Indeed, where there is competition between intermediaries, this commodification is mitigated by the necessity to provide the worker with conditions decent enough for workers to come back, which means that intermediaries can act to a certain extent in support of the workers' well-being. However, the more the worker has to rely on intermediaries to get a job opportunity, the less he will be able to walk out on certain arrangements.

Following these considerations, the previous definition of intermediation can be elaborated further to say that the role of intermediaries in labour markets of labour-intensive industries and services is the flexible provision of a vulnerable workforce to match fluctuating business volumes.

Yet, the analysis of the Italian case suggests that in regulated economies, the role of intermediaries extends beyond this task to offer companies another service, that of *interposition*. The term, borrowed from legal langue, suggests the physical apposition of an obstacle between two elements. In this case, it entails introducing a second employer within the employment relationship that severs the bond between the company and the worker and creates a *triangular employment relationship* (Vosko, 1997) that allows the transfer of costs and responsibilities.

If we think of subcontracting as a way of "regulating labour within production through the terms of a commercial contract" (Martínez & MacKenzie, 2004), then the main problem of the company that engages in subcontracting for social dumping is how to exercise control over the supply of labour when the responsibility for it is formally moved to another actor. Client companies actively create a competitive field in which the subcontractors are recruited in a way that pressures them to reduce labour costs. Creating new structures and systems is one of the main ways of increasing control (Lillie et al., 2014). In a subcontracting arrangement, regulation becomes shared between the leading firm and several contractors, creating a situation that can challenge the predominance of the client firm. Fraudulent subcontracting offers the realisation of an arrangement where control over the production process is predominantly in the hands of the client. In this sense, creating a *triangular employment relationship* is not just the outcome of the working arrangement but the service product offered by intermediaries.

Some intermediaries like staffing agencies are formally allowed to offer this service but are also bound by rules protecting working conditions, whose intensity varies from state to state and whose actual implementation depends on the control exercised by the state and the unions. Informal intermediaries providing the service by breaking the rules offer the conditions for higher levels of exploitation but bring about higher uncertainty. Finally, service companies can be pushed by market pressures to provide intermediation as a service when they accept their role to be reduced to the administration of labour and the execution of the directives coming from the leading firm. In all of these cases, what intermediaries offer besides the selection and allocation of cheap labour to the firm is their interposition as legal entities between the company and the worker.

3.2 Informal Intermediaries

Fictitious companies are more intuitively identifiable as participants in this market. As said, fictitious companies are not actors but only the shell of intermediating activities performed by informal intermediaries. Informal intermediaries have become so numerically relevant that they cannot be understood as a disruption to the operation of the labour market. Their presence is an essential part of the mechanism generating pressures for downwards cost containment.

The process of institutional diffusion that led to the expansion of fraudulent subcontracting through fictitious companies provided the incentive to and was later supported by the spreading of informal labour market intermediaries. In the early stages of the resurfacing of the practice, companies were creating the subcontracting scheme themselves, finding the figurehead among relatives or their employees. However, with the spreading of the practice the relevance of informal intermediaries increased. On the one side, the more companies externalise labour-intensive tasks, the higher the volumes of vulnerable labour they need. On the other side, supporting

complex illegal outsourcing practices requires the coordination of a large number of actors. Big intermediaries can support the intermediation of labour and the structural interposition needed to hide the actual employer. They provide the know-how to create and manage more efficient outsourcing schemes and offer the structure to detach legal responsibility from the company itself.

Holdings represent the latest stage and the highest level of organisation of these intermediaries. In many ways, the way they operate can be compared with staffing agencies. The holdings are structured much like agencies, with inbound and outbound activities, which means that they actively look for new clients among every kind of firm. They operate and scout for clients over the entire country. Holdings build contracts with big companies and medium to small firms alike, which they approach by offering labour cost-containment opportunities. According to one of the labour inspectors I interviewed, they use various means to contact potential clients. When it comes to attracting new smaller firms, they can resort to informal strategies, like leaving leaflets in small bars and restaurants. However, when it comes to more prominent clients, the main bridge between the companies and their partners in the fraud is usually a consultant.

But whether in the form of holdings or *consorzi*, informal intermediaries have accumulated the know how to support their illegal activities over time. The resources available to more prominent actors make them more resilient to sanctions. A law enforcement officer has already observed a few instances where the same actors could reorganise after sanctions and come back under a different name or shape. In particular, some of these intermediaries are currently experimenting with a new form of externalisation, the creation of corporate networks (in Italian *contratti di rete*). Within these corporate networks, workers can be easily dispatched from company to company or be formally registered as employees of both companies (the so-called *co-*

datorialità regime, where two companies share the employers' responsibilities). This is still a minoritarian trend, although it shows that companies and intermediaries are continuously exploring options for border-making by singling out less regulated forms of externalisation and experimenting with them.

The specialisation also led to the creation of hierarchies of intermediaries inside the same subcontracting schemes. As said, *consorzi* take care of coordinating the rotation of smaller fictitious companies over a specific job, coordinating middlemen and independent intermediaries. This hierarchy is racialised as well: while at the bottom of the chain, one can find Italian and migrants alike, the biggest actors are usually Italians. This speaks to the relevance of organised crime in this market [as discussed in ch.1]. In this scheme, the actors behind the coordination effort have the highest return, while those at the bottom can also lose from the arrangement. One of the unions' reports gives a rare testimony of what can happen to a small intermediary after he loses the contract. In this case, the intermediary, who had a migrant background and whose fictitious company was registered in his name, could not disappear after the fact and was followed by creditors (IRES & FILT Treviso, 2013).

In these hierarchies, the tasks also become divided, with the organisers at the top handling the interposition and the ones at the bottom taking care of the actual selection and management of the workers. The latter is a task that requires the organisation of the large number of migrants already living on the territory, but it also situates itself at the end of migration chains. The composition of the migrant population that emerges from the existing studies and my interviews is varied, divided between migrants that are in the country for more extended periods and that sometimes were joined by their families, migrants without documents, asylum seekers, and migrants whose arrival was organised by the intermediary itself to work in the fictitious companies.

Middlemen and small intermediaries are the ones who activate the resources to find and control the workforce. As shown by previous research on intermediaries, they gain from the intermediation activity by withholding amounts from wages. Sums are withheld for accommodation and/or as admission fees to the fictitious cooperatives. The practice of deducting admission fees is widespread and usually applies to every worker who gets to the job. But sums can also be withheld as a fine for some misdemeanours on the job. Another typical practice is to pay workers a piece rate or on the basis of the volume of work the fictitious subcontractor receives and not based on the hours worked.

Middlemen transmit orders and directions from the leading company to the workers. Sometimes the middleman is a complacent worker of the client company that gets formally re-hired by the sham company, but very often, is also a fellow migrant worker that gets promoted to this new role. Middlemen can exercise control with violence or indirectly with the promise of better working conditions. Workers who are on the good side of middlemen - because they are in the right network of people or because they provide services to them - can get more hours of work and better tasks (IRES & FILT Treviso, 2013). This mix of violence and conditional rewards contributes to the reproduction of vulnerability and supports exploitation.

3.2.1. A Matter of Organised Crime?

Despite the clear relevance of the involvement of organised crime in the market for intermediation services, informal intermediaries are not all linked to organised crime. It is a complex task to determine how far mafia and crime organisations are involved in illegal subcontracting practices and structures, yet fraudulent subcontracting through fictitious companies cannot be described as a problem of organised crime *per se*. It is true, however, that organised crime found in the demand of Italian capitalists for intermediated labour a business opportunity. The image

returned from the analysis of documents and interviews is that of an economic system where illegal practices are enacted by legal and illicit entrepreneurs not necessarily linked to mafia-type organisations. However, in this space of illegality, mafia-type organised crime often finds investment opportunities and tends to occupy more and more space, especially under favourable contextual conditions, like in the case of the pandemic crisis (UIF, 2021).

Over the last decade, rich evidence has emerged testifying to the stable presence of Italian mafia organisations in the north of the country. For example, in Emilia Romagna in 2015, the biggest northern mafia trial in the history of the north of the country took place, exposing the infiltration of the mafia organisation 'Ndrangheta in various sectors of the local economy/society. But the process aimed at expanding their reach over the more prosperous northern economy started in the 1970s.

It is part of the modus operandi of mafia-type criminal organisations willing to infiltrate a territory by setting up a network of small activities, often entering through subcontracts of modest dimensions in fields like road transport, cleaning and logistics and public building (Dalla Chiesa, 2016). According to Dalla Chiesa, the way to infiltrate new economies passes mainly through the legal economy rather than the illegal one. Especially fiscal evasion activities seem to provide a bridge, a "place of intersection" between the legal economy and criminal actors. "False invoices are a perfect place of intersection between legal enterprises and crime specialists, making the former and the latter participate in the advantages of illegality and uniting them in the rejection of the State and its rules." (Dalla Chiesa, 2016, p. 119). In general, there is an interest in expanding activities in the legal economy deriving from the competition on the illegal activities (e.g., drug deals, trafficking…) coming from organised crime from other countries.

Investing in illegal subcontracting strategies fits into the modus operandi of mafia-type organisations in the North of the country. However, infiltration strategies focus more on specific sectors than others (Ciconte, 2016; Meli, 2016). The second report from the Osservatiorio sulla Criminalità Organizzata (CROSS, 2015) reports that, in general, the primary sectors that are the object of the strategy of mafia infiltration in the north are construction in the private and public sector and road transport (especially connected to construction), restaurants and pizzerias, tourism, big and small retail, gambling and – more recently – health, sports and garbage disposal. In other sectors, the investment of mafia-type organisations seems more sporadic/opportunistic, which is also consistent with a strategy that focuses on accessing those areas that give not just the most remunerative investment opportunities but also the most strategic ones in terms of power gain in the local social structure - while also taking advantage of other small but relevant opportunities in adjacent sectors (Dalla Chiesa, 2016). The sectors highlighted by the observatory emerge as the most relevant also in Ciconte (Ciconte, 2016). The report of the Anti-Mafia Unit of the Ministry of Interior Affairs of 2019 reports an increase in money laundering activities "favoured by the availability of entrepreneurs, especially in the construction sector and transport, to make connections with mafia families" (DIA, 2019, p. 397).

The other relevant factor to be considered when evaluating the level of involvement of mafia-type organisations in illegal subcontracting schemes is the performance of *Caporalato*. Gangmastering is a traditional practice of mafia-type organisations in the south (Dalla Chiesa, 2016), considered a "reato spia" (alert crime) (DNA, 2014) for the presence of mafia-type organisations in a territory. As said, Gangmastering is expanding in the agricultural industry of the North of the country but also in cities, again, especially in construction but also related to other sectors. It is

difficult, however, to define how far these practices are connected exclusively to mafia-type organised crime or independent criminal organisations in those sectors that are not traditionally the most exposed. Therefore, even the observatory report has to rely on the press to make examples of connections, reporting some known cases where mafia-type organised crime was providing workers for different sectors. Moreover, regarding the expansion of Caporalato in agriculture in the north, the Report of 2014 of the National Anti-Mafia Unit states that "The criminal organisations behind [these practices], although not typically mafia-type organisations, use their methods and often act as their intermediaries" (DNA, 2014, p. 471).

Despite the evident relevance of organised crime in this kind of business, the picture that emerges from the data I have collected is still that of a practice that is not the prerogative of criminal organisations. Organised crime is one of the actors that exploit these opportunities the most, yet all kind of subjects are involved in the creation of fictitious companies. From migrant entrepreneurs that make a living out of fraudulent intermediation to local entrepreneurs that build the outsourcing structures themselves, a wide range of actors participates in this market.

3.3 Service Companies, Labour-Intensive Subcontracting and Intermediation

From a theoretical point of view, it is not necessarily intuitive that service companies can be classified as intermediaries. I, however, argue that they can become one when they are pushed to modify the nature of the service that they offer to remain competitive.

This becomes clearer when we think of subcontracting as a triangular employment relationship and look into how this mode of articulation between business units shapes the commercial relationship between the firm and the subcontractor and the employment relation between the worker and the two commercial actors involved.

What emerges is that more and more subcontracting companies are offering to match workers to business volumes rather than a service in itself, making the commercial relationship and the employment relationship similar to those that can be observed in staffing agencies.

When the control of the service's organisation is in the hands of the client companies, some elements of the contract end up having a mere representational function. The workplace managers appointed by the service company eventually act only as middlemen between the company and the firm and partition lines only indicate an ideal distinction that, in practice, is not realised.

Service companies, including the big cooperatives, often do not invest in the organisation of the service but instead focus only on the selection and allocation of the workforce.

> Plus, very often in these appalti, especially the bigger ones, the appointed middle managers are a member of the cleaning personnel that received a promotion and became responsible for a specific work site. These people are not capable of managing the personnel [...] There is a problem at the top of the pyramid, in the sense that in an industry, 130 or 140 workers would be handled by someone [...] specialised, with high managing skills, that has experience. In this case, we have instead janitors that, after years, get promoted. This also makes the organisation of work really complicated. (Union Officer, Interview, 2021)

Where this is the practical unfolding of the arrangement, the only power left to the contractor is to regulate the amount of labour provided according to the requests of the client company. This is the reality of the service sector, where fluctuations in the contract are met with the cut of working hours.

> Eventually [the labour cost] is the only element on which the cooperative can work because all the rest is marginal, the rationalisation of costs or an innovative project, for some services they just do not exist, because...I give an example: the educators in schools, which are the educators that go into schools as a support to disabled pupils... it's labour intermediation; the cooperative has no project for this service. Moreover, the educator works with the school, so the only thing the cooperative does is provide the educator, so the only margin is labour cost. [...] The educator finds himself in a very ambiguous situation because three subjects are involved. The client is the municipality that subcontracts the service [...] to the cooperative. Therefore, the worker is an employee of the cooperative. Yet, he is sent to work in public schools for the majority owned by the state and not by the municipality. Therefore, this

> worker [...] is de facto dependent on the school director because he works in the school. He interacts with the teachers. [...] But his formal employer is the cooperative that only writes the contract, provides little training, and interfaces with the municipality. [...] The schools do not even recognise the cooperative as a partner. [...] [The cooperative has no power over the working hours] Even if I already have a contract for 36 hours with a cooperative [...] the service hours are decided by the municipality and the school. Therefore, the cooperative can say: "if the municipality and the school only give me 30 hours, where do I find the other six hours?" [...] The same happens in cleaning, the other situation where we are always struggling. (Labour Officer, Interview, 2021)

Meanwhile, although the parts are, in principle, careful to transmit orders and directions through the middle managers of the contractor, in practice, the orders' transmission chain is blurred. Unionists in the service sector explain that interference is frequent and the lines between the roles are blurred. The client company's managers often transmit orders and requests directly, and it is often the case that the disciplining is done by a middle manager of the leading company rather than by the contractor.

3.3.1 Cooperatives

The reality of competition in the service sector challenges the nature of the cooperative as an institution. In principle, cooperatives are differentiated from other private economic actors by their mutualistic nature. When it comes to workers' cooperatives, this nature is expressed mainly through the collegiate and democratic management of the coop, aimed at distributing work opportunities amongst its members (Tatarano, 2011, p. 378). However, as the power of service providers in the market deteriorates, the mutualistic nature of the cooperative is gradually "displaced" (Streeck & Thelen, 2005) in favour of profit-seeking organisational strategies.

Part of this process of gradual institutional change is due to internal pressures developing from the growth of the cooperative in size. As the cooperative became the predominant organisational form in service sectors, growing cooperatives gradually replaced mutuality organizational principles and practices with organization of productions and functional structures similar to those of capitalist companies (Borghi,

2014; Sacchetto & Semenzin, 2014). While established cooperatives do not fall under the definition of "*cooperative of convenience*", it is clear that their status becomes increasingly ambiguous as workers are less and less involved in the co-determination of the organisation of the production process.

As Sacchetto and Semezin (2014) explain, the growth of the cooperative was accompanied by its functional segmentation and by the centralisation of strategic decisions through the hiring of external managers. This process slowly eroded the participation of the members to the actual managing of the cooperative and gradually transformed democratic institutions into rituals devoid of directive power. It was the combination of these trends with the development of competition dynamics in service sectors, that brought about the conditions for the compression of working conditions. To push the expansion of the cooperative external management turned the concept of cooperation on its head, defining economic outcomes as the main indicator of the success of the cooperative rather than the means to achieve the redistribution of work amongst its members. This new hierarchy of priorities brings with it competition strategies that adapt to market requests rather than challenging them.

We could place cooperatives on a continuum between the ideal definition of a 'genuine' cooperative and that of a COC. Somewhere in the middle, there are cooperatives that stick to the letter of the definition of cooperatives and mostly abide by fiscal rules but whose workers are not partaking in the organisation of the cooperative and are subject to various degrees of dumping.

> These cooperatives, unlike the fictitious ones, do not force you to become an associate when they hire you. However, the push you [to do it]. They push you because in order to keep the status of cooperative you have to have a number of associates that is higher than the total number of the workers. […] they do go shopping for members, because that's what they need. And the worker almost never realises what it means to be a member. […] They are cooperatives that behave like cooperatives but they are not so authentic because the associate does not share the purpose of the cooperative, he becomes an associate because he gets persuaded into it. They do not attend the meetings, workers do not really know the Statute, the

> Statute is often penalising for the worker. For example, associates do not get paid for the first 3 days of sick leave. Why would I want to lose a right that I have according to collective bargaining agreements? But they often do not know, they don't know the statute. So, the authenticity gets lost. (Union Officer, Interview, 2021)

Working conditions in established cooperatives are still substantially better than those who are found in fictitious ones, and there are attempts by management to offset the side effects of market conditions. The flexibility required by the subcontracted arrangements can get partly cushioned in the contracts:

> Almost all the workers in these sectors, in private or public structures, enter at a lower level of scheduled hours than what they will end up actually working. This allows the companies to keep the official hours lower and avoid overflow when they want to cut on the service, or when they change contractors […]. The worker can benefit from this, because the extra hours – since they are all formally working part-time - get paid a bit more […]. (Union Officer, Interview, 2021)

However, when the profit-margin is further compressed - as shown - the costs get dumped on the workers, who then not only lose their working hours but also the extras artificially put on the wages. As cooperatives adapt to the requests of the market, they also gradually give up part of their organisational power in favour of client firms, realising organisational arrangements that equate intermediation.

The gradual transformation of cooperatives is an underplayed element of the liberalisation of the Italian economy. Historically, cooperatives have played important economic and social function, allowing to include marginalised workers into the labour market at better working conditions than the market ones. As they grew in dimension, they also turned into core market players and became fundamental in the provision of public services. Yet, their new hybrid nature, divided between service provider and intermediary for the lower end of the labour market, is not properly reflected in the policies and institutions designed to regulate them. Their participation in the market for intermediation services is obscured by the lack of recognition of the nature of the triangular employment relationship that is realised in most labour-intensive subcontracting agreements.

3.4 Agencies

The only officially recognised actor in this market for intermediation services, Agencies are also the most regulated. Agencies need to be formally registered and obtain a licence to operate. Most importantly, the triangular nature of the employment relationship is recognised by law, which entails better protection for the workers, including a parity of treatment clause that makes it difficult for them to offer radical cost-containment. This does not mean that agencies never resort to illicit cost-containment techniques, like creative paysheet writing. However, they have far less room for manoeuvre. Large agencies are often under public scrutiny thanks to the periodic inspections, which makes it riskier to engage in illegal practices. In this sense, it is hard for them to compete directly with service companies to provide low-skilled labour for social dumping.

Their primary strategy to gain competitive advantages in this market for the provision of intermediation services is to lobby for the relaxation of the norms that regulate agencies, including advancing the request to abolish licencing or to reduce the requirements for obtaining and keeping it. However, they have also attempted to adapt to the market. Big multinational agencies, including Randstad, Adecco, Synergie, and Gi Group, have registered parallel service companies through which they offer outsourcing services. Usually, they only work with large accounts: according to a spokesperson at Randstad, they have managed to secure some important contracts, for example with large couriers. Staffing agencies cater explicitly to non-core tasks, including facility management, logistics, packaging and what they define as office and hospitality - reception, front & back office, customer care, promoting, and personal management for museums, events and retail. What they offer, besides the management of the service, is “utmost attention to workplace safety and to the norms that regulate a contract of service to guarantee the authenticity of the contract, and complete legal

support" and "the direct management of labour relations" (https://www.randstad.it/azienda/servizi-per-le-aziende/outsourcing/). In practice, agencies compete with service companies offering to realise an interposition that formally matches legal standards. By outsourcing, they can offer the workers at lower prices through the application of more convenient bargaining agreements but in a less risky arrangement because it promises to provide a non-contestable presumption of rule abidance.

In other words, agencies also offer to interpose themselves between the employer and the workers. All in all, informal intermediaries, service companies and agencies offer the opportunity to realise the same organisational arrangement yet with higher or lower cost saving margins depending on the intensity of rule breaking – which has different implications in terms of labour exploitation and gains from fiscal evasion.

3.5 Making the Market for Intermediation Services Possible: The Role of Consultants

If the function of intermediaries is to offer solutions to some of the coordination problems of the labour market, the market for intermediation services also needs to be coordinated. When we consider the provision of labour-intensive externalisations as part of a market for labour intermediation services, consultants are a fundamental element of the architecture of this market and support its social organisation.

It is well established that consultants provide the necessary knowledge and expertise for pushing the boundaries of legality in border-making (Pijpers & Van Der Velde, 2007). Consultants help transfer knowledge from one firm to the other, advising on staging practices to support the illusion of conformity better. The more complex the system becomes, the more consultants become necessary for employers wishing to modify the borders of their firms by challenging the rules, to the point where those

companies offering the creation of externalisations as a service tend to internalise consultants, whose knowledge and support become an integral part of the service provided.

However, the task of consultants can extend further to creating and supporting the connection between the actors involved in the subcontracting agreements. They assist actors moving between the boundaries between legality and illegality and are the quintessential "interface" - considered in the narrower sense of a "boundary spanning institution" mediating "between two parties of the system, belonging to neither of them" (Mayntz, 2017, p. 44). Since the market functions by breaking the rules and boundaries, consultants answer coordination problems typical of illegal markets (Beckert & Dewey, 2017). If the relationship between the parts with recognised legal status can be supported by state-promoted regulations and institutionalised dispute resolution processes, those exchanges that break the rules cannot rely on the same institutional structure. Moreover, while formal intermediaries can be evaluated by their standing on the market, informal ones cannot easily be compared against each other. Consultants represent a viable solution to these problems. In particular, they help to overcome the problem of lack of transparency deriving from the necessity of keeping agreements secret or camouflaging them. Consultants can broker the connection between firms wanting to cut costs through externalisations and actors providing the means for creating the externalisation. In the case of fraudulent subcontracting, this activity of brokering new connections also offers the fundamental support needed for the creation of a certain amount of trust to support the transaction: consultants reduce the uncertainty of the interaction between actors that do not know each other by providing information and vouching on the trustworthiness of the partners. The more the practice challenges the law, the more this bond becomes

necessary to support the relationship in a situation where the state-mandated legal infrastructure cannot be enforced.

The brokering of the connections does not necessarily happen through consultants. When it comes to smaller endeavours and self-created subcontracting arrangements, firms' owners seem to have access to other sources of connection, like trusted acquaintances. The entrepreneur on the train preferred to handle the deal directly. But the more the practice spreads and the biggest the companies involved, the more critical the role of consultants seems to become.

As criminological studies have shown, this second function is fundamental to the spread of the business of organised crime. Information on the practice of organised crime emerging from investigations gives a peak into how consultants broker these connections acting as a bridgehead for the organisation that wants to infiltrate the legal economy. The responsible for the observatory on organised crime at the union speaks of an "inevitable and increasingly structured role of consultants" that, besides brokering the connection, sometimes broker the entrance of external supporters into ownership shares.

But this brokering function is not limited to cases in which organised crime is involved. The knowledge of whether a service company is more or less prone to offer low prices and bend the rules on the organisation of its workers is also valuable information that is not necessarily publicly available. Where organisational practices are at the border between legality and illegality, a certain level of informal knowledge exchange is always needed, and consultants can situate themselves at this juncture. Providing the know-how for the staging and brokering connections, consultants become a fundamental element of the market for externalisations. Placed in this particular intermediate position, they can also influence the extent to which the boundaries are challenged. If they can be understood as boundary-smashing tools,

their understanding of what is a good and successful strategy can mediate the final decisions of the employers.

3.6 Labour Market Segmentation Through Misclassification

It is the creation of a system based on illegality that ensures that vertical disintegration can be used to depress wages. The presence of informal intermediaries distorts market competition forcing service companies to offer lower prices and adapt their service provision to the request of powerful costumers. Not all players in the market for services offer to realise the same level of rule breaking but they all promise to realise the same kind of organisational configuration: they offer to interpose themselves as an obstacle between the employer and the worker in the employer relationship. Through intermediation the employer can "organise work in a manner that ensures managerial control" (Dukes & Streeck, 2020, p. 2) while opting out of the institutions of industrial citizenship. In this system illegality is not an exception but it is fundamental to support an economic model based on cost-containment.

Reframing the issue of fraudulent subcontracting into one of misclassification and labour intermediation also allows to refine the terms to describe the impact of the reorganisation on the market and on the employment relationship.

Misclassification and the creation of a market for intermediation emerge as important driver of labour market segmentation in the Italian economy. The covert spread of intermediation has created specific channels through which a large segment of the labour force can access work opportunities, directing vulnerable workers into lower-quality and exploitative jobs. Inside this group a stratification emerges between those workers who can access established service companies and those who find their job opportunities through intermediaries hiding behind fictitious companies. While the latter give mostly access to highly exploitative jobs, the former can provide decent working conditions although coupled with varying levels of economic exploitation and

insecurity. Just like in other European countries, the incidence of migrant work in the sectors affected is high, but while migrant workers are the predominant category mobilised by informal intermediaries, the composition of those who find jobs through service companies is more mixed.

Segmentation is supported through the reproduction of worker's vulnerability inside the employment relationship. The higher the vulnerability the more the worker depends on the intermediaries and the lesser the need of the employer to secure workers' good will. This is why changes in the vulnerability profile can support the improvement of working conditions and the move from one segment to the other. In fact, after the shock of the pandemic some interviewees noticed an increase in the number of Italians in lower quality job positions.

The fact that the majority of the workers involved are migrant workers might support the idea that this kind of organisational practice is new, a product of the more recent phase of capitalism. Yet, as I will show in the next chapter, misclassification is not a new invention, but it is a strategy that has expanded or receded throughout different phases of development of Italian capitalism and its industrial relations system.

Chapter 4: Subcontracting in Italian Capitalism

The exploitation of migrant labour in the context of *appalti illegali* (illegal subcontracting) through *false cooperative* (lit. fake cooperatives) is commonly described – in the press and by activists and unionists - as "nuovo (new) Caporalato"[iii]. *Caporalato* is a common term used to indicate an indirect form of utilisation of the workforce bypassing the creation of an employment relationship between the worker and those who benefit from his labour expenditure, through the interposition of a third party, the so-called *caporale* (Corazza, 2011, p. 71). Widely used in the '50 and '60 to describe labour market exchanges in agriculture and construction, the Italian term defining intermediation through gangmasters made a comeback in the public discourse. But the expression "nuovo Caporalato" does not refer to what happens in the fields of the southern regions or their construction sites. What is "new" about it is that it occurs in the "productive north" in every kind of sector, and, especially, that the intermediaries hide behind the façade of *fictitious companies,* which are companies without assets created *ad hoc* to disguise the actual employer. Through these companies, intermediaries and their clients realise a scam that allows the latter to access a vast pool of cheap, vulnerable – most often migrant - labour.

Yet, the practice of creating fake subcontracting structures to hide labour intermediation is not really new to Italian capitalism. On the contrary, it was a systematic practice during the years of its early industrialisation. It seems "new" because the practice had significantly receded during the years of the consolidation of the modern welfare state and of the institution of the employment relations that supported it. However, the return of fraudulent subcontracting has been at least thirty years in the making, in a process of diffusion of this organisational strategy that was

[iii] See, for example, the website www.nuovocaporalato.it that collects documentation on instances of fraudulent subcontracting.

re-activated in some key sectors and then spread across the whole economy. The chapter shows how hiding intermediation behind fictitious subcontracting arrangements is a strategy that has its roots in the early stages of Italian industrialisation and market building, that although it had receded it has been re-activated starting from the late 1980es/early 1990es and then spread across the economy in a process of diffusion (Rogers, 1995).

4.1 From the Second World War to the "Economic Boom."

> These "cooperatives" [...] are a demonstration, sometimes tragic, sometimes grotesque, of certain strategies of the industrialists of Turin. That was probably the most serious phenomenon that ever had to be eradicated in the complex history of the integration of migrants into the local economy of Turin. What were "cooperatives"? Born in the years following the second world war (and initially limited to a small number of sectors), they had an intense development in northern industrial cities. Two or three people give birth to companies that exercise their activity, not in the sector of production [...] but to find workers to send to those firms (operating in the industry, in construction...) which requested them. In this way, these firms avoid referring to the employment centre. The worker [...] is immediately integrated into the productive organisation of the firm, like any other employee that is regularly hired. Sometimes he is allocated to maintenance and cleaning, but sometimes, very often, he is integrated into production units like the permanent employees. The company pays the "cooperative" a price for each hour of work of its labourers, the "cooperative" then uses [part of] it to pay the latter. [...] It is obvious how not always, actually seldom, those which we call cooperatives embody the legal form of this typology. The "cooperatives" give to the recruited workers the title of "member", imposing the payment of minimal or even nominal participation fees, and sometimes an admission fee. Others [however] are born as limited liability companies [...]. Others are individual enterprises who exercise labour intermediation as their sole activity or together with other productive activities. This is the case of the cooperatives created directly from Turin's big and medium industries, which are all directed by trusted people. (Fofi, 1975, pp. 121-123)

The words of Goffredo Fofi describing the working conditions of southern migrants in the Torino of the 50es and 60es reveal that the use of fictitious companies to mask labour intermediation is not really "new". Intermediation through the interposition of a fictitious company developed as an organisational strategy in the years leading to the economic boom (1957-1963), which was a fundamental phase in the transformation of Italy into a modern industrial country. Labour intermediation,

of course, existed well before that and still constituted the main instrument of labour allocation in agriculture, construction and seasonal work. The control of labour placement was the primary fight around which the Italian trade union movement developed towards the end of the 19th century, as workers' associations tried to consolidate themselves in a labour market characterised by the systematic excess of the labour offer over its demand (Musso, 2004). And it was indeed the high availability of cheap labour that supported the economic expansion of the 1950es: unemployment was extremely high, and those workers who did not decide to migrate abroad started to move towards northern urban areas. This allowed employers to keep wages down so that while production and productivity increased, salaries stagnated and even slightly decreased (Ginsborg, 1989, p. 289). Governments made several plans to govern this transition but the process eventually developed mostly spontaneously following market logics (Ginsborg, 1989, p. 291). With the institutionalisation of public placement following the second world war, rigid rules were put in place for the allocation of workers to enterprises, which were officially only allowed to hire from the lists of employment centres. Meanwhile, plans were implemented to regulate internal migration to govern the urbanisation process. However, employment centres were not correctly implemented, and both norms were loosely applied to favour the creation of new firms (Ginsborg, 1989, p. 318; Musso, 2004). In this scenario, smaller firms intensively resorted to informal channels for hiring. In practice, the regulation of internal migration was left to private intermediaries hiding behind cooperatives that would allocate southern migrants to construction and seasonal work to integrate them into the local economy. Prominent firms in the main industrial cities (Milano, Torino, Genova) also saw an opportunity in this trend and started to rely on subcontracting to access high volumes of cheap labour. Since other employment channels did not work properly or even hindered movement, migrants ended up relying on intermediaries to

escape extreme poverty (Musso, 2004). Indeed, the cumbersome public system incentivised more prominent companies to tap into a more efficient allocation system. However, informality also gave them access to an opportunity for labour cost saving which led to the creation of a system of intense exploitation (Fofi, 1975). Despite numerous union complaints and parliamentary questions, governments tended to underplay the gravity of the working and living conditions of the workers hired by the fictitious cooperatives. As a result, the practice flourished for almost a decade (Musso, 2004). The political initiative to deal with the problems of labour exploitation stemmed instead from the parliament, where, towards the middle of the 1950s, the communist and the catholic components converged on the promotion of a parliamentary investigation of the working conditions in the country (Commissione parlamentare d'inchiesta sulle condizioni di lavoro in Italia) (Betti, 2019). The report came out in 1959, and it confirmed that the abuse of subcontracting had become a structural feature of the Italian labour market:

> "Through labour subcontracting, often masked by fictitious cooperatives, a system of fraudulent labour intermediation is created that translates into the creation of an actual market for men hired without [the certainty of] any continuity and at terrible conditions, taking advantage both of their unemployment status and their special situation, like in the case of the migration of southern workers to the north." (Commissione Parlamentare d'inchiesta sulle condizioni di lavoro in Italia, cit. in Betti, 2019, p. 65)

As political consensus over the improvement of working conditions was consolidating, the favourable economic conjuncture of the economic "boom" gave the final push to the approval of a series of laws that were the first steps to the consolidation of a modern labour regime built around the *Standard Employment Relationship* (SER) (Vosko, 1997). Among these was the ban on labour intermediation that was finally approved in 1960 and included intermediation realised through fictitious cooperatives or companies[iv].

iv L. 1369/1960

After the ban was approved, the practice significantly receded. Although placement practices remained highly informal and reliant on personal networks, especially in small companies outside of the unions' reach, more prominent firms saw a period of consolidation and internalisation favoured by the opening up of the economy inside a process of European economic integration. While at the beginning of the 1950s, there were only a few big companies surrounded by a sea of micro companies (with less than ten registered employees), during the sixties, employment in the bigger companies increased, micro companies decreased, and more medium-sized companies were born (Brusco & Paba, 2010).

4.2 After the Crisis: The 1970s

This tendency remained stable throughout the 1960s. In the middle of the 1970s, following the economic crisis, the situation started to change and informality in the northern areas expanded again. The season of protests and factory upheavals known as the *hot autumn* (1968-1973) led to the strengthening of the labour movement and the final approval of a charter of workers' rights (Statuto dei Lavoratori).[v] As a counter-reaction, bigger Italian firms started a reorganisation process that began a long phase of gradual vertical disintegration. In this phase, described as productive decentralisation, piece mail work at home came back, and companies started to outsource parts of their production processes to small firms strategically located in economically depressed areas (Betti, 2019). Employment in small and medium firms began to increase again, as did micro-companies importance (Brusco & Paba, 2010). While it was only in the 1980s that discussions on flexible reorganisation began to emerge, in the 19070s, companies had already started a "silent research" (Betti, 2019, p. 130) for "informal flexibility" (Gallino, 2007). This was true even in those regions of

v L. 300/1970 "NORME SULLA TUTELA DELLA LIBERTÀ E DIGNITÀ DEI LAVORATORI, DELLA LIBERTÀ SINDACALE E DELL'ATTIVITÀ SINDACALE NEL LUOGHI DI LAVORO E NORME SUL COLLOCAMENTO"

the “third Italy” (Bagnasco, 1977) that Sable and Piore have described as the cradle of “flexible specialisation” (Piore & Sabel, 1984). Already at the time, critics had shown how all sorts of activities were subcontracted to small and medium firms, which were not necessarily highly specialised production tasks (Murray, 1987). These tasks were reserved for middle-aged male workers. On the other side, companies exploited gender and territorial divisions to realise strategic segmentation. Small artisanal firms were not always spontaneous creations but were sometimes guided by more prominent firms who would fire workers and force their re-qualification as artisans (Sechi, 1977). In these firms, the workforce was composed mainly of younger and older workers from economically depressed areas and women, at least those who were not pushed back into the home doing piece mail work after being expelled from industries *en masse* (Betti, 2020). Two significant inquiries conducted by the trade unions in the metalworking sector and the textile industry (FLM Bergamo, 1975; FLM Bologna, 1975) confirmed that if small companies were not necessarily technologically backward and dependent on the bigger ones, working conditions in these companies were systematically worse.

4.3 From the Second Economic Boom to Today

This kind of setup lays the foundation for future developments. The restructuring of the economy started in the 1970s favoured a shift in the balance of power in favour of employers. In the 1980s, the first steps were taken towards the liberalisation of industrial relations and the labour market. This is, however, a very long process that takes a more decisive turn only after 2000 and especially after 2010 (Baccaro & Howell, 2017).

The long process of de-regulation of the Italian labour market can be thought of, in many respects, as a process controlled by the state because every step of the introduction of so-called atypical contracts has been regulated by law (Betti, 2019). Yet,

the informal source of flexibility offered by subcontracting was never abandoned, and it represented the cornerstone around which the newly expanding service sector was organised, favoured by the new influx of migrant labour from abroad. Fictitious cooperatives made a comeback. In labour-intensive services - and especially cleaning, logistics and security services, but also care and education - the cooperative became the predominant form of organisation, but this did not necessarily prevent cost-competition pressures from getting transferred to workers. The spread of the cooperative as a form of organisation in these sectors also meant, to a certain extent, that growing cooperatives gradually replaced mutuality organisational principles and practices with an organisation of production and functional structures similar to those of capitalist companies (Borghi, 2014; Sacchetto & Semenzin, 2014). It was this switch that allowed cooperatives to grow to the dimensions of medium/big companies - so much that by now, their average size is larger than that of other companies (Bentivogli & Viviano, 2012).

Although the use of fraudulent subcontracting is structural also to the cleaning sector (F. E. Iannuzzi & Sacchetto, 2020), the making of the logistics sector was the ground in which this kind of social dumping strategy was tested. Much like elsewhere, logistics services providers in Italy were structured as a pyramid of subcontractors (Cuppini & Frapporti, 2010). Extreme forms of vertical disintegration led to an organisational model where the leading firm takes direct care of administrative functions and a small part of the productive activities, outsourcing everything else to chains of companies (Haidinger, 2015). These actors are disciplined through competition and the price mechanism to keep labour prices low (Bologna & Curi, 2019). The expansion of logistics was accompanied by the gradual resurfacing of fraudulent subcontracting, which became the cornerstone of profit-making strategies in the organisation of road transport, warehousing and logistics and delivery services

(Bellavista, 2020; Dorigatti & Mori, 2020). Although when it comes to road transport companies strongly rely on the European market and make extensive use of rule avoidance through posting (Allamprese, 2018), in most other cases, it is fictitious companies created within the national borders that are the protagonists of vertical disintegration in logistics, supporting cost-reduction strategies based on high levels of workers' exploitation (Carlotta Benvegnù, Haidinger, & Sacchetto, 2018).

Companies in other productive sectors followed logistics by example. In particular, it was the meat industry that, to adapt to international competition, started to systematically outsource core tasks to fictitious subcontractors (Campanella & Dazzi, 2020; Dorigatti & Mori, 2016; Piro & Sacchetto, 2021). The bigger national players, faced with the impossibility of reaching the same production levels of German companies, tried to at least match their low labour prices. Besides externalising logistics and cleaning, leading meat producers decided to externalise the heaviest and most labour-intensive tasks, like evisceration, while at the same time keeping them physically inside the company. Much like in warehousing and parcel delivery, meat producers relied on subcontracting to realise a form of "in-house delocalisation" (Ceccagno, 2017). And much like in logistics, the whole model relies on the exploitation of vulnerable migrant labour, which was provided in abundance by the opening of in-migration routes.

Although the meat industry was the initiator of this trend, the same model spread across the food industry in general (see the Case of Italpizza as reported by Camilli, 2019). Companies across the economy learned and adapted their business strategies to this model of competition based on low investment in productivity and innovation and heavy reliance on labour exploitation.

While the "new" sectors learned how to apply fictitious subcontracting, agriculture and construction never really forgot about it. It has become clear that

Caporalato is still alive in northern Italian regions, preferring to hide behind fictitious companies rather than relying on completely submerged labour like in the south (FLAI, 2022). And although we are now observing a tendency in construction to increasingly rely on posting (Bagnardi et al., 2022; Dorigatti, Pallini, & Pedersini, 2022), subcontracting has always been structural to its organisation.

Finally, the process of marketisation of Italian public services (Dorigatti et al., 2020; Mori, 2019) was also partly supported by fraudulent subcontracting. Although outsourcing *per se* provides an opportunity for cost-cutting, and although subcontracting in the public sector is more monitored than in the private sector, fictitious companies also managed to make their way in public calls for tenders. This is also true in regions like Emilia Romagna, where long-standing services companies are the most prominent players in the market. As one of the unionists that I interviewed explained, new actors manage to enter these markets in subtle ways. First, they participate in minor calls for tenders – for services in small municipalities, for example – offering an extremely low price, which is hard to beat. This allows them to participate in bigger calls for tenders, where prior experience is a requirement. Usually, they do not expect to win the first round, but they aim to access the documents of the application of the winner, which are made publicly available. This allows them to learn how to write a winning application and enter the next call for tender, again with a lower price, ensuring they are selected. Meanwhile, all the costs of the low-price bidding are put on the workers. At this point, the chances for thriving are opened: municipalities and local public actors can contest the winner of a call for tender if they detect unlawful behaviour; however, at this point, the contestation becomes a matter of local administrative culture and political opportunity. Not only call for tenders are sensitive to forms of corruption. Pressed by funding shortages, municipalities can decide to turn

a blind eye to the situation to ensure some form of service provision and political support.

As stated in the introduction the diffusion of fraudulent subcontracting through fictitious companies seems to suggest that Northern Italy is a unique case in the European framework. Yet, as argued, misclassification is not such a unique strategy in labour markets. When it comes to social dumping fictitious companies occupy the place that in other European countries is taken by posting or agency work. Moreover, there is evidence that misclassification has been used in other, non-European regulated labour markets, to hide intermediation, like for example in Japan (Imai, 2011).

Why, however, misclassification has taken this specific form in (northern) Italy? In the next chapter, I show this has something to do with different institutional opportunities rather than a loosely defined propensity to rule-breaking. As comparative employment scholars have shown, the form of rule evasion depends on the institutional opportunities available to companies operating in a specific market (V. Doellgast, Batt, & Sørensen, 2009; Jaehrling & Méhaut, 2013). In the European context, more of these opportunities have been created at the supranational level by European market integration, which influenced labour market reforms across Europe and introduced posting. Although it is assumed that it is the introduction of posting that weakened European industrial relations institutions the most by disembedding labour market transactions from national labour regulation (Wagner & Lillie, 2014), the Italian case shows that similar structural opportunities for social dumping can also be built inside the national boundaries of regulated employment systems. Instead of exploiting the opportunities created by crossing geographic borders, Italian companies relied on crossing the border between legality and illegality. Instead of using transnational externalisation, Italian employers opted for re-activating an old strategy.

While the first part of this dissertation has focused on the practical ways in which business strategies based on illegality became feasible choices for firms in a regulated economy, the next part will focus on how the state deals with misclassification and the expansion of intermediation.

Part II: Institutions

Chapter 5: Forbearance and Labour Intermediation

In the first part of this dissertation, I have explored how employers and other market actors transform rule breaking into a sustainable organisational strategy, by adopting techniques that communicate plausibility of rule abidance. This suggests that actors do take into account the possibility of rule enforcement and that they recognise the presence of the state as the guarantor of social stability. On the other hand, the expansion of misclassification and the stabilisation of informal intermediation as a form of private labour market governance also suggests that there is an expectation that the State will not enforce all of the regulations. Whether this is the outcome of the State's inability to enforce the law or a politically designed strategy is the focus of the second part of this work.

5.1 The Role of the State

When it comes to the regulated economies and role enforcement, the generic assumption in political economy, is that it is in the state interest to uphold market institutions. In fact, studies of lack of enforcement predominantly focus on developing countries, because it is assumed that lack of enforcement derives from the failure to develop adequate capacities or from the capture of the state apparatus through bribing and corruption (Brinks, Levitsky, & Murillo, 2019; Della Porta & Vannucci, 1999; Dimitrov, 2009; Migdal, 1988; Sun, 2015). Sociological institutionalist accounts of system building offer a more nuanced view on the matter. Rather than being synonym of failure, boundary setting and selective enforcement are a source of power for the state (Beckert & Dewey, 2017). In fact, the selective lack of implementation of market regulations is a form of governance that has been variously used to exercise power over marginalised populations (Radaev, 2017). *Zones of exception* are not just the outcome of the behaviour of employers, but they are governing strategies politically cultivated (Ong, 2006). When rule breaking is incorporated in the organisation of the economic

system, the regulatory equilibrium of the market can be set at a different point than what the formal institutional set-up might suggest.

More recently, deliberate partial enforcement has become the core of an increasing amount of scholarship (Dewey, Woll, & Ronconi, 2021) showing how non-enforcement can be used as a tool to respond to increasing competitive pressures (Ronconi, 2012) or to extract resources from economic activities (Dewey, 2017, 2018). Political scientists have proposed to think of purposeful partial law enforcement as *forbearance,* meaning the political decision to not enforce a rule (Holland, 2016, 2017; Sanford & Hafer, 2013). And while these works still look at developing countries and predominantly focus on electoral dynamics, the latest studies have shifted the focus to advanced economies showing how incomplete rule enforcement can be used as an instrument of economic governance (Dewey & Di Carlo, 2022). By fostering selective non-compliance with costly regulation, forbearance can be used to favour specific economic groups.

As we said, rule-breaking as a fundamental role in bringing about change in heavily regulated economic systems (Streeck & Thelen, 2005). Assuming that we take institutional incentives and constraints seriously (Hall, 2010) and accept that path-dependency can obstacle radical change, rule breaking provides a tool to explain change even in the absence of shocks in the system. So does forbearance. Forbearance is a way to overcome constraints that does not depend on legal and institutional change.

In their work Dewey and Di Carlo (2022) single out Italy as a case where forbearance has been used to support the economic system where alternative industrial policies were not available. They argue that the historical lack of effort in enforcing tax law in the country was not just an outcome of the electoral dynamics but also a way of supporting the productive structure of southern regions - a system composed almost

exclusively of SME's and self-employed and lacking industrial infrastructures. Forbearance allowed those entrepreneurial activities to survive that, although less efficient and less innovative, represented the backbone of the productive structure of the south. In this study Italy is thought of as a polity with weak bureaucratic capacity as opposed to the strong bureaucratic capacity of Germany, where selective enforcement is used to overcome the rigidities of a strong institutional system.

Yet, I argue, Italy can also be thought of as an example of regulated economy where institutions were resilient enough to resist radical change through liberalisation and where forbearance was used to obtain flexibility that could not be openly bargained. As shown, fraudulent subcontracting is mainly an issue of those northern regions where characterised by high levels of industrial development, and around which the institutions of industrial citizenship were built.

It is realistic to think that a certain level of forbearance was involved in the model of economic development implemented in northern Italy over the past 30 years. Following international economic and political developments, at the middle of the 1990s the Italian productive model was put under pressure. Up to that point, the manufacturing sector had developed mostly around the export of medium quality products, whose prices were kept low by the advantages of the agglomeration of small and medium firms in industrial districts and by the weakness of the Lira. This equilibrium was challenged by the intensification of international competition, by the adhesion of Italy to the Monetary Union and by a market crisis involving consumption goods in which the country specialised (Burroni, 2020). This crisis was then followed by the financial one in 2007. In reaction to these challenges Italy took a "low road" to competitiveness, which contributed to stagnant economic growth and low productivity. Like other Mediterranean countries, it went down a path that turned labour cost compression into the core of its strategy to support competitiveness (Burroni, 2020;

Burroni, Gherardini, & Scalise, 2019; Burroni, Pavolini, & Regini, 2020). Italian governments intervened to de-regulate the labour market but this de-regulation was not accompanied by high levels of investment in innovation or active labour market policies that would have allowed to upgrade competitive strategies. In other words, the adjustment of labour market supply to the requirements of the market was not followed by investments in employment quality, leading to a general downgrading of employment. These results were intensified by the crisis, which impacted negatively on investment in public and private innovation, and by the internal dynamics of the eurozone, which locked-in these policy outcomes by pushing southern European countries to structural reforms based on the containment of public spending.

Yet, the extent of labour market deregulation, although comparatively intense, might seem even modest to support a strategy completely based on cost-containment. Mostly characterised as dualistic, the flexibilization of the Italian labour market started at the margins, through the introduction of non-standard contractual arrangements. It was only at a later stage that dismissal protection was loosened; however, this move was partly compensated by the strengthening of protective measures against unemployment and new social risks, moving towards a model of "embedded flexibilization" (Picot & Tassinari, 2016). The partial resilience of labour market institutions has been explained as the outcome of electoral strategies (Bulfone & Tassinari, 2020) but also by the fact that the system of industrial relations in Italy, although being challenged, has remained comparatively strong and entrenched in the economy (Bulfone & Afonso, 2020; Regalia & Regini, 2018) as opposed to what happened in other southern European countries.

Yet, what these accounts do not take into consideration is that labour market institutions can also be eroded by the spread of rule-breaking, especially when this opting-out involves marginalised parts of the working population, like migrant

workers. Formal indicators might not be able to portray the extent of institutional erosion achieved through indirect means. In fact "Italy and Greece have levels of non-standard employment that are lower than Sweden; however, these data do not consider hidden forms of atypical contracts – such as bogus self-employment – nor irregular forms of flexibility such as the shadow economy" (Burroni et al., 2020, p. 98). Although political economists tend to forget this, the "low-road strategy" was supported by the massive arrival of migrant workers and by the racialisation of labour market segments (Ambrosini & Panichella, 2016; Avola, 2015, 2018; Fellini, 2015; Pastore, Salis, & Villosio, 2013). In fact, the growth of migrant employment was instrumental to the low-productivity model.

As I will show, Italian governments, at least at the beginning, did not do much to control what was happening at the lower end of productive activities. In fact, I argue, they even partially encouraged the self-regulation of this part of the market. There is evidence to suggest that the spread of misclassification was favoured by policies aimed at giving employers more leeway for cost-containment practices, policies that were pursued indirectly through the creation of opting-out spaces between institutions. In particular, the (northern) Italian case emerges as a mix of the three techniques of forbearance isolated by Dewey and Di Carlo (2022): *Manipulation through legal sabotage*, where rule makers design inconsistent, inappropriate, or unclear legislation, which creates opportunities for rule takers for opting out, or where sanctions are purposefully weakened; *Manipulation through organizational sabotage* where the capacity of independent enforcement agencies are hindered; and *Manipulation through shirking,* where necessary efforts at re-regulation are not undertaken. In the case of the regime of intermediation, forbearance was realised through the de-regulation of the regime of labour intermediation, through the weakening of the enforcement system and through incomplete efforts at re-regulation.

While I argue that forbearance towards violations of labour-intensive subcontracting is a strategy that was consistently applied over the last 20 years, it is also true that its intensity varied in time. Even though thrust to favour externalisations never faded, at some point the necessity emerged to try to contain the worst degenerations from the norm created by the spread of externalisations, namely fraudulent subcontracting through fictitious companies.

That this practice damages the Italian state in many ways is without question. Besides being a vehicle for mafia infiltration, as explained in the previous chapter, the spread of fraudulent subcontracting contributes to one of the main voices of the estimated Italian tax gap, that of the evasion of the Value Added Tax (in Italian IVA). When fictitious companies are involved the evasion of the VAT is double: one the one hand, since the intermediation of the workers is packaged as a "service", the client firm can deduct the amount paid from the calculation of its due VAT; on the other hand, the intermediaries evade the full import of their due VAT by not declaring the invoices. Moreover, to the evasion of the VAT one can add that of the IRAP, which is a Regional Tax on Productive Activities, a tax on production that finances part of the national health expenditure (around 90% of this tax is allocated to the Regions, to finance local health systems). The taxable amount of the IRAP is calculated as the difference between revenues and costs, where the "costs" do not include costs for the directly employed personnel, but they do include external contracts. Therefore, by externalizing part of the workforce employers manage to deduct its cost from the taxable amount of IRAP. Finally, evasion can come in the form of omitted social contributions, which impoverish the National Social Insurance Agency (INPS – Istituto Nazionale della Previdenza Sociale).

It is estimated that, in 2019, the tax gap due to the evasion of the VAT amounted to 27 billion euros and that of the IRAP to 5 billion, while that on contributions

amounted to 12,7 billion euros (Ministero dell'Economia e delle Finanze, 2021, 2022). Although there are various ways of achieving VAT evasion, undeclared profits and irregular work are the two main components of the Non-Observed Economy in the country (Ministero dell'Economia e delle Finanze, 2022). And while southern regions seem to be the one with a highest *propension* to the evasion of the VAT, the highest total amounts are still evaded in the North, where the economic value generated is higher (Ministero dell'Economia e delle Finanze, 2022). Amongst other efforts to tackle VAT evasion and irregular work the deterrence of frauds to fraudulent intermediation has been identified as one of the main goals of the of the military police force tasked with tackling tax crimes, the Guardia di Finanza (GDF, 2016) and of the National Labour Inspectorate (INL, 2021b).

In the rest of the chapter, I show that the Italian state did try to intervene against this trend via partial reregulation and the reinforcement of employment agencies, but with modest results. However, I also show Italy is not simply failing at enforcing the rules. Partial enforcement is the outcome of a contradiction inherent to partly opposed policy goals. The problem with re-regulating to contain fraudulent intermediation is that of not curtailing opportunities for cost containment too much. For this reason, eventually, a policy equilibrium is pursued that tries to disincentivise extreme practices while also allowing for some room of manoeuvre for companies relying on low-end competitive strategies.

5.2 (De)Regulating Intermediation

Actors' strategies do not happen in a void, but in a continuous interaction with labour market institutions and with the agencies responsible for their implementation. Indeed, legality and illegality are created through the law.

As explained in the introduction, the design and implementation of regulatory institutions are key determinants for generating opportunities for business practices of

illegality in the management of labour. Through institutions, the state defines and gives shape to informality (Portes & Castells, 1989) and illegality (Beckert & Dewey, 2017). Institutional frameworks set the conditions in which illegal business practices become feasible and coherent 'management practices' (Crane, 2013) and sectoral regulatory differentials make risk-transfer through subcontracting possible. Labour-market regulation mediates the calculus underlying restructuring (partly by offering incentives, partly by erecting barriers) and the consequences of restructuring for labour (Flecker, 2010).

Comparative employment scholars have shown how national institutional settings offer different opportunity structures for strategic organisational choices based on rule evasion (V. Doellgast et al., 2009; Jaehrling & Méhaut, 2013). Boundary decisions depend on the cost differentials and on the availability of viable options to exit internal employment relationships (V. Doellgast et al., 2016). As regulatory non-compliance becomes the system (Meardi et al., 2012), the study of the institutions governing inclusions or exclusion from organisations becomes of central concern. Bordering practices (Wagner, 2015a) are at the core of an increasing body of literature studying the expansion of posting in Europe. The rules governing agency work, self-employment and other "atypical" contracts have been widely explored. However, the regulation of subcontracting inside national borders remains on the side-lines of these analyses since the limitations to what is possible to outsource are rare or weak, and the connection to labour law is, in this case, often overlooked.

The sociology of illegal markets offers some conceptual tools to explain how the labour market arrangements described in chapter two become sustainable in a regulated market economy. In particular, it provides the conceptual tools to explain how loopholes and uncertainty work.

One of the possible limitations to these arrangements derives from the definition of what labour intermediation is and what it is not and of what subcontracting is and what it is not. This definition requires placing some arrangements in the realm of employment law and others in that of private contract law and creating a structure of enforcement that supports the boundaries that have been erected. In this classification process, loopholes and uncertainty contribute to creating grey zones (Mackenzie & Yates, 2017) inside institutional spaces, which economic actors exploit to opt-out from the institutions of the industrial relation system. Also, the creation of loopholes and uncertainty can be used by policymakers to support covert change and to indirectly legitimise some forms of illegal behaviour through non-enforcement and tolerance.

The Italian case is an example of this dynamic. The reform of the Italian labour market was accompanied by a set of minor reforms hidden in the folds of a more overt process of liberalisation that included the legalisation of private intermediation through agency work. Far from being a linear strategy, the transformation of the Italian labour market was marked by a high level of volatility as multiple governments repeatedly intervened to modify the decisions of the previous ones. After a first phase of stronger deregulation, one can observe the creation of a specific policy equilibrium regarding intermediation through subcontracting, where "softer" cases of fraudulent intermediation become implicitly tolerated or normalised, and the role of labour-intensive subcontracting is tacitly accepted. This equilibrium, I argue, was the outcome of institutional sabotage strategies first and of weak re-regulation attempts later.

5.2.1 "Greying" the Concept of Intermediation

Manipulation through sabotage was achieved through the greying of the regime of intermediation. Grey zones can be defined as "liminal or hard-to-assess zones between two poles" (Mackenzie & Yates, 2017, p. 2). When it comes to illegal practices,

the term “grey” suggests the difficulty of defining a practice as such. This difficulty is brought about by the practical mixing of licit and illicit behaviour in supply chains and by the uncertainty in the normative construction of the issue. This kind of problem also presents itself in relation to the labour market.

The sociology of illegal markets has shown that grey zones are created through practices of contestation around whether the object of the exchange and its modalities are to be considered legal or not. The case of illegal subcontracting shows that contestation can also concern the classification of the object of the exchange and, therefore, its allocation to a specific regulatory regime. It is not just about deciding whether intermediation is legal but also classifying certain behaviours as intermediation. Classification is a domain in which the dimension of legality/illegality meets that of legitimacy/illegitimacy. The boundaries between legality and illegality can shift depending on the willingness to classify a specific behaviour as belonging to a class of behaviour that is defined as illegal. This change can be supported or hindered by understanding such behaviour as legitimate or illegitimate.

That subcontracting falls under the domain of labour law is less self-evident than other forms of outsourcing, like agency work. Conceptually and legally, agency work and subcontracting are treated as different entities, the first describing a modality to externalise labour, and the second the organisational choice to interrupt the in-house performance of activities and start to buy them in the form of services performed by another company. However, as discussed in the first chapter, when labour-intensive tasks are involved, there is a continuity of practices between subcontracting and agency work, and the boundaries between the two institutions are not as neat as expected. In the case of staffing, the employment relationship is externalised to a third party, the agency, that performs administrative duties and takes care of limited employment-related responsibilities such as hiring and dismissal (Vosko, 2010). At the same time,

the content of the tasks and their organisation is left entirely to the user of the labour effort, while the disciplining and sanctioning powers are shared between the two employers. As shown in the second chapter, subcontracting can also be structured as a triangular employment relationship where the control of work is distributed between the employer and the client company (Bolton et al., 2010; Korczynski, 2009; Korczynski et al., 2000; Lopez, 2010; Ó Riain & Lopez, 2010): the employer company sets wages and contractual conditions, but operational issues are determined to various degrees at the client's side. When the control of the labour force is predominantly in the hands of the client firm, the practical outcomes of the two organisational arrangements are comparable, so much so that we can say that we are facing two forms of labour intermediation that end up being covered by different regulatory regimes, where the service contract obfuscates the employment relationship.

This continuity has historically been clear to the Italian legislator, that included the regulation of subcontracting in the general regulatory regime of labour intermediation, and that currently defines it "by difference" from agency work, explaining in what way a contract for services should work to be distinguished from a contract for the provision of labour. Despite this, what can be observed over the years is a gradual weakening of the principles supporting the normative model of the standard employment relationship around which the Italian *social regime* (Streeck & Thelen, 2005) of labour regulation was built in the 1950s and 1960s.

5.2.2 Between Practices and the Law

As explained in the first part, legally speaking, the practice of creating subcontracting structures to conceal the actual employer falls under the definition of *fraudulent contracting,* meaning, 'the fraudulent use of an employment or contractual relationship [...] whereby a specific employment or contractual arrangement is used to hire workers or to subcontract certain work activities [but] the factual circumstances

of the specific employment or contractual relationship do not correspond to the legal, formal requirements for that specific form of contracting work' (EUROFOUND, 2016a). Fraudulent contracting can be pursued through the creation of fictitious companies, but the use of fictitious companies is not the defining element of fraudulent contracting. In this sense, all those arrangements that hide the nature of the employment relationship, even in a subcontracting agreement between a client and an established service company, can be defined as illegal when they are created to break the rules.

In Italy, this practice was first sanctioned by the law in the 1960s and is still codified as fraudulent. Although the Italian legislation stemmed from the necessity to respond to the expansion of commercial frauds, the original text already contained elements that allowed for a broader interpretation of the law that would cover any situation where the worker would find himself, in practice, under the organisational control of the client firm (Salento, 2003). Law n.1369/1960 not only intervened against the specific practice of creating *ad hoc* cooperatives but also forbade any form of "supply of mere labour provisions" (*fornitura di mere prestazioni di lavoro*). The ban on *intermediazione ed interposizione nelle prestazioni di lavoro* (labour intermediation and interposition) established the principle of the necessary correspondence between the formal employer and the actual user of the labour effort (Ballestrero & De Simone, 2019, p. 494). While this total ban was later lifted to allow for the introduction of agency work, this principle of correspondence has survived in the legislation, meaning that *fraudulent subcontracting and intermediation* in its broader sense is still defined as an illegal practice (Ballestrero & De Simone, 2019, p. 505; Salento, 2006).

Looking more closely into the legal definition, an *appalto* (or contract for work and services) is considered an illegitimate practice in every case where the client

company is the actual employer of the workers involved in the contract. The *employer* is the subject who exercises executive and organisational powers over the workers. A contract is *genuino* (authentic) when the contractor organises all the necessary means for the performance of the work or service (including labour) and shoulders the entrepreneurial risk (*rischio d'impresa*) connected to it. Therefore, companies without assets created ad hoc don't qualify to be legitimate partners for a contract of work and are automatically assumed not to qualify as the employer – as their purpose is to create an artificial interposition between the employer and the worker.

Figure 2 – Subcontracting according to the Italian legislation

	Subcontractor without assets	**Subcontractor with assets**
The client company organises and manages work.	Fraudolent intermediation	Fraudolent intermediation/illicit subcontracting
The subcontractor organises and manages work.	✖	Licit (Sub)contracting

Notwithstanding the letter of the law, the interpretation of the concept of fraudulent subcontracting has always been contested, shifting between an essentialist reading of the law and an extensive one (Salento, 2003). While the essentialist reading argues for the freedom of contract and the application of the law only to the cases involving fictitious companies, the extensive one supports its implementation to the

full potential, understanding outsourcing as a strategy with the ability to hinder the institutions of the industrial relation system and therefore in need to be limited. The original text itself represented a compromise between these two preoccupations. The parliament voted to insert an "exception" to the ban by introducing a special regulation for certain labour-intensive activities that could legitimately be externalised. This included cleaning, porterage and manutention. Despite creating this exception, the special regime aimed at some form of prevention of social dumping, as it established – at least on paper – a right to parity of treatment for the workers employed in the *appalto*. The preoccupation of a part of the parliament was that the ban could be interpreted extensively to prevent any form of externalisation. The special regime for this kind of service represented the final political compromise (Salento, 2003, pp. 178-179).

The extensive interpretation corresponds to the understanding of the ban as the affirmation of the principle of the correspondence between the employer and the subject exploiting the labour effort. As said, this principle survived the reform of 2003 in the letter of the law. Yet, the new policy equilibrium created through that reform not only hindered its full implementation but also thwarted the efforts to limit the expansion of fictitious companies.

5.2.3 The Introduction of Private Placement

Although the principle of the necessary correspondence between the formal employer and the actual user of the labour effort and the public monopoly of placement are at the core of the *normative* model of the standard employment relationship emerging in international treaties in the post-WWII period, not all countries accepted or coherently applied the ban on private placement (Vosko, 2010). Still, it is understood that for those that did, the introduction of agency work as a triangular employment relationship represented one of the main turning points in the

redefinition their labour market regimes (Vosko, 1997). In Italy, labour intermediation through agencies was legalised quite late compared to northern European countries and was initially highly restricted. In 1997 agency work was codified (Law 196/1997) as an exception to the ban on labour intermediation (Law 1369/1960), and agencies were allowed to work on the national territory only if they obtained a special licence and adhered to specific structural criteria. In this first phase, unions maintained a certain degree of control over the terms of this introduction. In particular, unions had pushed for the application of standards that would make sure that only medium to big-size companies could enter the market, obtaining that certified agencies should have an exclusive business purpose, and should be present in more than one region with multiple branches, that a fixed company capital should be available and that security should be sizeable (Consiglio & Moschera, 2016). In addition to these structural requirements, in this initial phase, the scope of Agencies was limited by law to the management of agency work. Detailed restrictions were in place as to when a company could make use of staffed personnel - one example is the prohibition of using staffed personnel to replace workers on strike, but also a ban on replacing workers in firms that had proceeded to mass redundancies in the former six months and in firms undergoing downsizings. The law also established the principle of equal economic treatment of staffed workers, making it more difficult than in other countries to use staffing as a strategy for economic dumping. Agencies were forced to pay into a fund covering workers' training activities (Formatemp, effectively operational since 2000). In 1998 the sector was already covered by a specific collective agreement, and a bilateral body (Ebitemp) was founded to provide additional welfare to temporary agency workers. The two funds are still operational and jointly directed by union representatives and agencies.

In 2003, the liberalisation of the Italian labour market started to intensify, and the regulation of labour intermediation was profoundly transformed. Decree 276/2003 legalised *staff leasing* and repealed the obligation of the single business purpose, allowing agencies to diversify their services. The law was the first step in the gradual deregulation of the rules of renewal and extension of contracts, whose motivations have become more generic over time and whose definition has been removed from the control of unions. Despite the fact that this drive to liberalisation continued over time -at least until 2018-, a certain level of standards of workers' protection was always maintained, starting from the principle of equality of treatment and that of the liability of the client firm for the payment of the wages in case of the default of the agency. The same was true for the ban on substituting workers on strike and the obligation to pay into the training fund. What changed instead was the regulation of working conditions in subcontracting agreements.

5.2.4 The Re-Definition of Illicit Intermediation

The re-regulating of labour intermediation also paved the way for the normalisation and legitimisation of labour-intensive subcontracting as a restructuring strategy. With the re-organization of the public and private placement regime, Law 1939/1960 was repealed. Limits to labour intermediation were re-written in the new discipline of agency work, and the crime of illegal labour intermediation and interposition was substituted by that of "somministrazione fraudolenta" (fraudulent staffing). This new regime was meant to cover more cases than the former one, like the creation of agencies operating without a licence. The ban on labour intermediation through fraudulent subcontracting survived in the new formulation of the law (Ballestrero & De Simone, 2019; Salento, 2006). However, other, more or less subtle, interventions modified the equilibrium of this regime.

First, the 1960s law stated that when the subcontractor did not utilise his physical tools and means to perform the service, it could be automatically assumed that the contract was a case of fraudulent intermediation. This automatism was removed in 2003, following considerations over the fact that with the earlier formulation, knowledge-intensive services could be unfairly included in the ban. Although technically, this did not mean a legitimation of intermediation through subcontracting (Salento, 2006), this move opened up the first loophole in the interpretation of the regulation providing an opportunity for firms to challenge the spirit of the law. Subcontracting consisting only in the provision of labour is now, on paper, a legitimate option for the internal re-organisation of the firm, applicable to any kind of task – knowledge-intensive or not - and its irregularity has to be demonstrated ex-post and case by case.

The second significant modification was the removal of the special regime for labour-intensive low-skilled services. On the one side, this harmonisation helped overcome the segmentation deriving from the earlier regulation. On the other, however, it further supported the interpretation that any task or activity can be externalised under the new regime, therefore favouring the extension of labour-intensive subcontracting to parts of the production process rather than its containment and regulation.

The idea that the legitimisation of labour-intensive subcontracting was the logic behind the reform is supported by the fact that with the special regime, the parity of treatment clause was dropped to be substituted by a general solidarity clause imposing shared liability for workers´ wages. As a partial corrective, the new regime of solidarity was applied to the whole chain of contracts and subcontracts rather than being limited to subcontracting on the premises, as was the case in the earlier formulation. Eventually, this meant that the protection of the workers' incomes along the chain

potentially increased but that of the level of wages decreased. This move, coupled with the fact that a parity-of-treatment clause still covers agency work and posting, made labour-intensive subcontracting an even better candidate for cost-containment strategies.

Finally, Decree 276/2003 modified the discipline of cases of change of contractor by excluding it from the general discipline of transfer of undertakings (Civil Code, art. 2112), which was meant to protect the employment conditions of workers involved in these transfers. However, this opened up the possibility for the new employer to redefine any aspect of the employment relationship, including economic treatment.

The discipline of the change of contractor was modified in 2016 (Law 122/2016) following the opening of a procedure of pre-infraction by the European Commission that considered the exclusion, not in line with Directive 2001/23/CE that protects workers' rights in all cases of transfers of undertakings, businesses or parts of undertakings or businesses. However, the new discipline also contains elements of ambiguity. The new law establishes an exception to the applicability of the regime of transfer of undertakings in the cases where there are elements of discontinuity in the company's identity (Decree 276/2003, new art. 29, c.3: "siano presenti elementi di discontinuità che determinano una specifica identità d´impresa"). In other words, the new contractor has to continue the same activity performed by the old one – which is the essential requirement of the definition of a transfer of undertakings. In a sense, the law re-states a condition that was already implied in the discipline. However, the vagueness of the definition opens for contrasting interpretations of the law and fosters creative behaviour. For example, a unionist explains that firms engaging in fraudulent contracting change their economic classification in order not to be covered by the regime of protection of employment conditions.

All these elements come together to create a general ambiguity in the interpretation of what is legal to subcontract or not, arguably favouring vertical disintegration through labour-intensive subcontracting and, by extension, creating a favourable environment for commercial frauds. This dynamic is also reflected in the reform of the sanctioning system connected to the discipline of labour intermediation. By looking at sanctions, it also becomes clearer how, after the first round of deregulation, the general policy focus was gradually shifted towards the containment of extreme cases of exploitation while becoming lenient towards purely labour-intensive intermediation.

5.2.5 Changing the Sanctioning Regime

Among the reasons cited in the interviews for the diffusion of fraudulent subcontracting is: "a sanctioning system that, on paper, appears to be particularly punitive, but that in substance is not" (Labour Inspector, Interview, 2021).

Since the reform of 2003, the cases of fraudulent subcontracting can configure two types of offence: "appalto illecito" (illicit subcontracting), and "somministrazione fraudolenta" (fraudulent staffing), which, as already mentioned, covers a broader range of cases than fraudulent subcontracting. An "appalto illecito" can also configure a "somministrazione fraudolenta" when it has "the specific aim of eluding mandatory laws or collective bargain agreements applicable to the worker" (Decree 276/2003, art. 28). In this case, sanctions for "somministrazione fraudolenta" add up to those for the "appalto illecito".

When the law was approved, both cases were classified as criminal offences with pecuniary sanctions – except for the cases where minors are involved, which are punishable with incarceration. However, "somministrazione fraudolenta" already proved difficult to apply because it required heavy probatory support. In 2011, a law was approved with the declared aim to tackle the issue of *caporalato* (Law 148/2011).

The new law defined and criminalises “labour intermediation and workers exploitation”, punishing the exploitation of workers who are vulnerable because they find themselves in a state of need. However, the law was designed in a way that extremely limited its applicability.

In 2016 the government removed “somministrazione fraudolenta” and transformed “appalto illecito” into a civil offence (Decree 8/2016), motivated by the argument that criminal sanctions were not creating the right disincentive to the practice, while financial penalties would. As the Inspectorate explains, the problem with criminal sanction is, on the one hand, that in the case of criminal offences in the field of labour prison sentences are often waived unless the conduct is especially damaging (for example, in the case of the exploitation of minors). On the other hand, criminal sanctions are procedurally complicated to enforce, and the length of the trials – that in some cases might even pass the statute of limitations - can undermine their potential for deterrence. These observations could support the idea that the disincentive should instead come in a monetary form. Currently, however, the entity of the economic sanction linked to the civil offence is arguably not sufficient to be a deterrent. The shift of 2015 meant a drastic reduction of the potential sanction for fraudulent subcontracting because the limit for the highest applicable civil sanctions is lower than that for a criminal one, and the sanction can be reduced by one-third in the case of a conciliation procedure. Since the sanction is calculated as 50 euros per day and per worker, and with a max of 50.000, if it gets reduced by a third, it amounts to less than 17.000 for an unlimited number of days and workers, which arguably does not create a sufficient disincentive for bigger companies externalising a large number of workers. Moreover, in the case of the ascertainment of the existence of a case of “somministrazione fraudolenta” the law prescribed the obligation for the client

company to employ the workers, while in the case of "appalto illecito" the conversion is conditional on the employers' initiative.

It is however true that, this time, parallelly to the interventions that weakened the sanctioning regime, there were others that attempted partial re-regulation. While abolishing "somministrazione fraudolenta" in 2016 the government strengthened the law on Caporalato (Law 199/2016), by extending the legal responsibility to the employer (and not just to the intermediary), and by making it easier to pursue the offence. Arguably, as of today, part of the cases of intermediation that are not covered by "somministrazione fraudolenta" can be pursued through this law.

The re-regulation trend continued and, in 2018, "somministrazione fraudolenta" was reinstated as a crime but with the same heavy probatory obligations of the old law (Law 96/2018). In particular, one of the requirements is for the investigating body to prove that the company is in (at least partial) economic hardship and not able to support the cost of the extra personnel that it acquired through illicit contracting – which means that if the company is in good economic conditions, it is unlikely that the criminal offence can be applied.

With these parallel reforms, the legislator created a hierarchy of gravity of the practice of fraudulent contracting depending on how far-reaching the implications are for the worker and society. In this new sanctioning regime, the focus is put on the containment of extreme cases of exploitation rather than on the general regulation of labour intermediation, and the disincentives for strategies of labour-intensive intermediation are arguably weakened.

5.2.6 The Strange Case of Posting

The logic of the reform of the regulation of subcontracting emerges more clearly when contrasted with that of posting. Besides agency work, the regulation of posting represents another fundamental piece of the puzzle in evaluating a national regime of

intermediation as influenced by the European integration process. Subcontracting and staffing that cross borders are one of the primary loci of social dumping in Europe, facilitated by weak regulations that combined with the transnational nature of posting favour abuses and fraudulent behaviour (Wagner & Lillie, 2014), including forms of fraudulent subcontracting through the creation of fictitious companies registered in another country (EUROFOUND, 2016a). Because of the similarity of the problems linked to fraudulent posting and fraudulent subcontracting, one would expect to see similar trajectories in their regulation. However, while the formal guarantees for workers involved in intra-national subcontracting have been arguably weakened, those for forms of externalisations that cross borders have been comparatively strengthened over time.

The first norm officially regulating *distacco internazionale* (transnational posting) was approved in 2000 following the adoption of directive 97/71/EC (Legislative Decree 72/200). In this first round of regulation, Italy is amongst the countries that exploit the possibility of extending the whole legislative and collectively agreed set of national norms to posted workers (EUROFOUND, 2010). The decree states that the assigned workers deployed in Italy are entitled to *the same working conditions as laid down by law, by collective agreements concluded by nationally representative trade unions and employer associations, applicable to the workers supplying the same services in the place in which the (posted) workers are in service* (english translation by Pallini, 2006). This regulation is in line with the protective provisions of the general regime of subcontracting and staffing valid at the time (Ballestrero & De Simone, 2019; Nadalet, 2008) and reaffirms the principles of equality of treatment and the discipline of joint liability. However, the law suffered from the same limitations of the directive itself when it came to efficacy, needing more provisions in terms of monitoring and implementation.

When, in 2003, any reference to the principle of equality of treatment disappeared from the set of rules regulating intra-national subcontracting, the regime of posting remained untouched. With the following round of regulation in 2016 (Legislative Decree 136/2016), the principle of equality is refined through the re-wording of part of the norm and the detailed listing of the working and employment conditions (Legislative Decree 136/2016, art. 4, c.1: "Condizioni di lavoro e di occupazione") that apply to the posted worker. The new formulation reiterates that the concept of "equality of treatment" includes broader elements of pay and working conditions. However, as said, the norm of 2000 already contained a definition that was broader than the "minimum rates of pay". If anything, the preoccupation at the time was that this definition was too extensive compared to Directive 97/71/EC and that it could be interpreted as an illicit limitation to competition (Nadalet, 2008; Pallini, 2006).

Meanwhile, the joint liability regime is also improved since it received the modifications made to the general liability regime of the *appalto* in 2003. Regarding efficacy, Italy introduced the mandatory notification of postings and established a National Observatory, as requested by social partners (Cillo, 2021). The implementation of the observatory proceeded slowly, but it eventually became operational in May 2019. Finally, in 2020 a new reform was approved (Legislative Decree 122/2020), which received the text of Directive 2018/257/EU, including the extension of the discipline of the former provisions on posting chains and the introduction of a special regime of protection for cases of long-term posting.

Parallelly to the regulatory regime, a sanctioning regime is developed that is comparatively stronger than those of other European countries (EUROFOUND, 2016a). In particular, most of the responsibility and of the sanctioning weight is put on final local users, pragmatically choosing to focus on those actors that are easier to reach

and, therefore, arguably increasing the deterrence of the measure (Dorigatti et al., 2022; Pallini, 2021). The Italian legislation goes beyond mere economic sanctions, in principle applicable to all the companies involved, and introduces a mechanism of automatic conversion of the contract in case of non-genuine posting, creating the obligation for the final user to hire the worker directly.

Despite its strengths, the current regime has various limitations. First of all, Italy did not take the opportunity to improve on the weak spots of the directive itself: the decree of 2020 does not punctually list the reasons that would justify the extension of the maximum period of posting from 12 to 18 months and it does not provide criteria to evaluate which periods of work can be summed to reached this maximum (Pallini, 2021). Besides this lack of initiative, legal scholars are also concerned by the fact that the new legislation does not tackle some problems of dubious compliance of the national regulation with the European framework, leaving a crack in the regulation that could be used to reduce the extent of the applicability of the parity of treatment clause (Dorigatti et al., 2022). This refers to the characteristics of the Italian industrial relation system, namely the fact that there is no law mandating the universal applicability of collective bargaining and at the same time there is no binding minimum wage. The universality of collective bargaining has been realised *de facto* through a consolidated jurisprudence and generalised praxis, but there is a worry that a European court could challenge the extensive application of this principle claiming that Italy is not legitimated to impose stricter conditions on positing companies than those that are *formally* applicable to national ones. In this scenario, only a smaller core of rights to the same remuneration closer to the "minimum conditions" might apply. This pairs with the problem of the proliferation of collective agreements, which complicates the identification of the rules that apply to the individual posting contract. However, for the moment and to the best of the author's knowledge, no challenge in this sense

has ever been raised against Italian regulations. The labour inspectorate has clarified again that the definition or remuneration that applies to posted workers is encompassing and should comply also with pay-scales criteria and incorporate other extra elements of pay (INL, 2017), upholding the substantive equalisation of working conditions of local and posted workers. On the other side, the creation of the Observatory should have provided a partial response to both problems through the creation of a website for communications which should also indicate the relevant collective agreements for each sector of activity (see https://distaccoue.lavoro.gov.it/it-it/Aree-Tematiche/AreaTematica/id/3/Contratti-collettivi-nazionali), an opportunity that has been partially exploited. At the moment of writing, only the pay rates of certain sectoral agreements have been published on the website - namely metalworking, logistics and construction, which are nonetheless the sectors that are affected the most by posting.

Despite these potential weaknesses, it is noticeable that the legislator has opted for supporting an extended interpretation of the principle of equality of treatment when at the same time he decided to remove it from the discipline of subcontracting. This creates a situation in which national and transnational staffing and transnational subcontracting are formally covered by a stronger regime of guarantees than intra-national *appalti*. A case which could also be interpreted as a more substantial obstacle to competition and the free circulation of services than the problems linked to the applicability of collective agreements (Nadalet, 2008). For a while, this disparity had even been reinforced by the reforms of the sanctioning regimes of the two institutions (Carosielli, 2016). When the mechanism of the automatic conversion of contracts in the case of fraudulent posting was introduced in 2016, conversion became conditional on the workers' initiative for the cases of fraudulent intra-national *appalti*. This disparity seems to have been rectified on paper with the re-introduction of the crime

of *somministrazione fraudolenta* – covering the cases of *non-genuine* subcontracting with fraudulent intent, which is ideally comparable to the cases of *non-genuine* posting, also assumed to be motivated by fraud.

Surprisingly enough, this unequal regime of regulations has yet to be challenged, and posting still does not feature prominently in the national political debate. Nor it represented a particularly controversial issue in the parliamentary debates preceding the implementation of the decrees (ISA Project, 2021). This is a reflection of the residuality of this organisational solution in the Italian case that made its regulation a surprisingly marginal political issue, at least until now. An instance that should not be attributed to a particularly virtuous nature of the Italian economic actors but rather confirms how local firms have been heavily resorting to alternative action repertoires in their search for cost containment.

This discussion on the political salience of the various forms of externalisation will be explored in more detail in the next chapter. At this point, it instead necessary to point out a further and possible even more salient difference between the institution of *appalto* and that of posting. While both sanctioning regimes suffer from implementation problems, only posting is covered by an (imperfect) monitoring system.

5.3 A Weak Implementation System

Where calculative non-compliance becomes the system, difficulties in the enforcement of the law are the result of the systematic development of capabilities and strategies necessary to make rule evasion a stable and viable option (Meardi et al., 2012). This is the case of posting, where the crossing of borders and jurisdictions challenges enforcement systems built around national boundaries, but it is also the case of fraudulent subcontracting where it is the crossing of the border between legality and illegality that favours elusion. The practices of "staging" that were described in the

first chapter make it hard to spot violations among a sea of medium to small companies and subcontracting arrangements. And much like in the case of posting, the workers involved tend to be in a vulnerable position that makes it harder to report an irregular situation. Therefore, when the reports come, they are often delayed, which gives time to the responsible people to hide the evidence of the violation or to take all the necessary precautions not to be held responsible for it – it is, indeed, extremely hard to assess the factual circumstances of an employment relationship when that relationship is not ongoing anymore.

Even when considering the hardships involved in the detection of the practice, it was a common opinion amongst all my interviewees that Italian employers breaking the rules are supported by "the certainty that the inspecting bodies have hard times sanctioning all the irregular activities" (Labour Inspector, Interview, 2021).

The weaknesses of the enforcement system are a major obstacle to the prevention of irregular behaviour. The lack of resources of the Italian Labour Inspectorate surely is a major reason for this weakness and is deemed to have contributed to increasing the expectation of impunity for those engaging in the practice.

While the shrinking of public spending imposed by external pressures contributes to enforcement failures, there are reasons to believe that this weakness, is at least in part, purposefully implemented. On the one side, while inefficiency has been a chronic problem of inspectorates, government still had some room of manoeuvre when it came to budget allocation and they have consistently decided to re-direct it to other voices, and especially pensions, rather than enforcement (or active labour market policies) (Burroni, 2020). Moreover, what emerges from the interviews is that it is not the lack of resources alone that has contributed to the expansion of fraudulent subcontracting. It is the combination of the hollowing out of the resources devoted to

inspections with the modification of the rules, that makes attempts at deterring the practice extremely hard and partly unfruitful. The inspectors that I interviewed lament that the current set of rules intervenes to make their work even more complicated – sometimes denouncing the existence of obstacles to their activities that are set *by law*. It is in the definition of enforcement rules and strategies that the contradictions in the logic of reform of the past years emerge more clearly.

5.3.1 A Lack of Resources

The difficulties of the Italian inspectorate are well known: the institution has been suffering for years from being understaffed and underfunded. Starting from 2008, the inspectorate was subject to a hiring freeze, that implied not only the interdiction of new hires on top of the existing personnel but also the impossibility to replace the retiring staff. This meant that the number of inspectors fell from a total of 6,463 in 2007 to 4,027 at the end of 2021, and that of inspection declined steeply, from 209,326 in 2006 to 103,857 in 2020 (Dorigatti et al., 2022).

The other concern besides personnel reduction was always that of an inefficient organisation of the inspecting bodies. Controls in the matters of contractual relations, social security contributions, and health insurance were assigned to different agencies, which had trouble communicating and that would sometimes act in a contradictory manner. Attempts to tackle this problem lagged until 2015 when the system was reformed with the hopes that the centralisation of the inspecting activities would improve effectiveness, especially in terms of credit recovery from tax evasion (Legislative Decree 149/2015). However, the reorganisation of the agency was set to happen at zero additional costs over planned spending and the set-up of the new central inspecting authority (the National Labour Inspectorate) was slow and chaotic (Francesco E. Iannuzzi & Sacchetto, 2019), and the handover between the other agencies and the new one was (mostly) completed only at the end of 2021 (INL, 2021c).

Because of this delay, it is too soon to evaluate the impact of this re-organisation. However, the Inspectorate considers the modest increase in the inspections carried out in 2021 compared to 2020 a positive sign (from 103,856 in 2020 to 117,608 in 2021) (INL, 2021c).

The labour inspectorate is not alone in the task of containing fraudulent subcontracting. The Guardia di Finanza (GdF) - a military police body responsible for vigilance on financial crimes - has played a significant role over the years. Fraudulent subcontracting falls under the responsibilities of the GdF because it is a tax evasion scheme. The local actors that I interviewed, especially the unionist, seem to consider the activities of the GdF to be a stronger deterrent to the practice than those of the inspectorates. For example, one of the unionists that I have interviewed claims that as a result of the investigations of the GdF he has seen a partial change in the dynamics of the local meat industry, where more companies have started to apply the appropriate collective bargaining agreements. This is of course a partial view that might be influenced by local specificities, but the prevention of fiscal evasion through fraudulent subcontracting has been a long-stranding concern of the GdF (GDF, 2016; GDF Modena, 2014).

In an attempt to overcome the obstacles derived from the multiplication of the newly registered subjects, the labour inspectorates and the GdF have recently tried to intensify the efforts at collaboration by more systematically sharing their data. The exceptional influx of money in the state coffers following the pandemic might intervene to support this positive trend. Recently, the Italian recovery plan (Piano Nazionale di Ripresa e Resilienza, PNRR) intervened to finally finance new hirings at the INL. The government unblocked the procedures to select and hire 2555 personnel units by the second half of 2022 (Ministero del Lavoro e delle Politiche Sociali, 2021), which would bring personnel levels back to those of 2006. The final aim is to increase the number

of inspections by at least 20% by the end of 2024. Although this was welcomed news, some of my interviewees expressed worries that the new hires might be insufficient to deal with the high levels of irregularities. At the moment, new personnel only cover the gaps left from the previous era of underfunding. In the meantime, new necessities have arisen, deriving from the centralisation of the tasks and the attribution, in 2021, of wider responsibilities in the matter of the prevention of workplace accidents and occupational diseases (previously shouldered mostly by the local sanitary authorities). Finally, this intensified workload is further aggravated by some contingent needs, like those deriving from the recent multiplication of the construction sites following the extremely generous building bonuses granted by the government in 2021 (Il Post, 2022a).

This configuration of the inspecting activities has resulted in a specific logic of implementation of the rules that reinforces a set-up where the focus is on the containment of extreme situations. Despite the activity of the GdF having positive spill overs on workers, its main focus is on the protection of the interests of the state through the prevention of big tax evasion. Meanwhile, in the effort of deploying scarce resources more effectively, inspecting activities focus on sectors and companies known to be affected by higher rates of irregularities, or on cases signalled directly by workers or unions. If the lack of random checks means that other issues – like posting – might be overlooked or underestimated (Francesco E. Iannuzzi & Sacchetto, 2019), it also means that the vigilance on softer forms of irregular labour intermediation is reduced. When coupled with the softening of the sanctions, lack of inspection coverage reinforces the concept that forms of softer fraudulent labour intermediation are currently tolerated by the system and framed as minor deviations.

5.3.2 The Lack of a Monitoring Strategy and the Problem of Certifications

If the problem of fraudulent intermediation is emerging as a matter of concern in the media and even in the inspecting addresses, no serious attempt has emerged to evaluate precisely its reach and to act on the problem ex-ante and not just ex-post. The lack of monitoring and prevention policies is the big elephant in the room when talking about the new course of regulation of labour intermediation. Provided that the lack of resources for enforcement activities is an obstacle to implementation, it is also true that other actions could be taken to facilitate inspections and close some windows of opportunity for certain behaviours to emerge.

First of all, there is no serious attempt to collect statistical data on the use and extent of private subcontracting in the country, neither for study (ISFOL, 2011) nor monitoring purposes. The lack of tracking makes it more difficult to plan inspections (Papa, 2019). The easiest way to monitor the number of subcontracts and the number of workers involved in subcontracting agreements would be to impose compulsory communication at the time of the activation of new contracts for externalisation. This is normally done for Agency Work and, since 2016, for all forms of posting, and it is considered a fundamental strategy to keep the situation under control and overcome the structural facilitators of rule evasion.

The imposition of new bureaucratic procedures is not self-evident since companies tend to resist it and frame it as an unnecessary obstacle to their economic activity, and the case of posting is an example of this trend. While recent studies argue that the improvements in the effectiveness of controls would largely depend on having access to more and better information (Bagnardi et al., 2022), inspectors report that employers are already putting pressure on them to reduce what they claim is an unnecessary bureaucratic burden (Dorigatti et al., 2022). Yet, the introduction of compulsory communication was one of the main turning points in the regulation of

posting, allowing for new data to emerge and for the first attempts at reporting and analysis. If in the case of staffing and transnational posting the necessity to protect the workers involved was considered reason enough to justify the imposition of this obligation the same did not happen for intra-national subcontracting. The option is not yet on the table, despite the ever-growing awareness of how labour-intensive subcontracting has been used for social dumping.

On the other side, there is a specific condition that facilitates the creation of a fictitious company: the fact that registering a new company is extremely easy. The registration requires an initial capital of 10.000 euros and there is no background check imposed at the moment of the registration. This is completely different from what happens for staffing, where the agencies are even required to have an official licence to operate - a precaution taken with the exact aim of avoiding the uncontrolled proliferation of private intermediators. So, if the preoccupation with the abuse of staffing pushed the legislator to introduce the same preventive obstacles to fraudulent behaviour, the same didn't happen for subcontracting.

The principle of facilitating entrepreneurship also led to the development of the instrument of the certification. The legislative decree of 2003, while modifying the regime of labour intermediation, also introduced the possibility for employers to ask a commission to certify that their commercial arrangement respects the conditions of licit subcontracting. Certification, it is claimed, reduces litigations and helps employers to avoid contestation based on technicalities. Yet, there are elements of its regulation that turn certification in a potential obstacle for inspecting activities (Papa, 2019). First of all, the identification of those subjects who are allowed to certify a contract is considered ambiguous, which leads to the proliferation of certifying commissions and the spread of fictitious certifications, as described in chapter 1. Secondly, if a certification has been emitted, the labour inspectorate has to actively challenge the

validity of the certification in a tribunal before being able to proceed to apply any sanction for illicit subcontracting. This makes the efficacy of the inspective activities dependent on an external procedure. The obligation to challenge the certification does not apply in the cases where criminal offences are verified, yet as we said, it is complicated for the inspectorate to enact criminal law on fraudulent subcontracting. Finally, the decree of 2003 also introduced the retroactivity of the certification in relation to a contract which is being verified at a later point in time from its star, which risks of providing a blanket cover for past misbehaviour.

All in all, together with the greying of the norms, the shortcomings of re-regulation and the creation of hurdles to inspections contributed to weaken the enforcement of the regime of labour intermediation.

5.4 Industrial Relations Institutions and Cooperatives

This shift in the equilibrium of the institutions governing subcontracting is nested inside, and interacts with other sets of institutions regulating the Italian labour market. In particular, the effects of the re-regulation of subcontracting interact with the norms regulating the industrial relations system with its wage setting mechanisms.

The Italian industrial relations system has a voluntaristic nature, as its regulation is left to the mutual recognition of unions and employers associations. The voluntaristic nature of the system potentially interacts with the regulation of outsourcing in the same way it does with posting (Dorigatti et al., 2022). The lack of rules on representativeness is a premise to the system but also supports the beforementioned proliferation of collective bargaining agreements signed by "independent" actors – unions and employers' associations - that undercut labour standards and wages and can be used to support cost-cutting outsourcing strategies. The application of a specific contract in case of litigation is then left to the courts and

on their willingness to consistently apply the current interpretation of the applicability of the bargaining signed by the actors that are the most representative.

However, the scarcity of statutory regulation does not mean that the system is necessarily weak, and, in fact, the principle of the generalised applicability of minimum wages set by collective contracts is by now stabilised (Regini & Regalia, 1997). It is true that the weakening of the relative power of workers over the past decades has meant a gradual shift in the regulation of employment and of collective bargaining, leaning towards partial deregulation and decentralisation (Baccaro & Howell, 2017; Pulignano, Carrieri, & Baccaro, 2018). However, there are signs that even during the crisis these tendencies have been partly contained, especially thanks to a renewed willingness of employers' associations to engage in centralised and collective bargaining (Regalia & Regini, 2018). In particular, bargaining coverage remains high and affects almost all companies with more than 10 employees (Pedersini & Dorigatti, 2021). If there is evidence that "pirate" agreements can have a significant negative impact on wages (Lucifora & Vigani, 2020), there is also evidence that most Italian employers still formally apply the most representative collective agreements (Pedersini & Dorigatti, 2021).

This is where rule-breaking come backs in. In a recent study, Garnero (2018) estimates that 10 per cent of workers receive 20 per cent less than the minimum established in their reference collective agreement and that underpayment is primarily due to low compliance with collective bargaining rates rather than falling collective bargaining coverage. In fact, contractual minimum wage increases seem to have small positive effects on wages at the bottom of the employment distribution. This supports the argument that loopholes for cost-cutting strategies have been opened in a more subtle way, and that they act mostly by facilitating rule-breaking strategies at the micro-level.

Support for this reasoning can also be found when thinking about the role of institutions regulating cooperatives. Although fraudulent subcontracting is not dependent on the cooperative form, there are elements of the design of the institutional space around cooperatives that leave spaces of opportunity for the crossing of the border between legality and illegality. Indeed, some interventions could be put in place to reduce further the incentives for the creation of cooperatives of convenience and strengthen it as an institution (Bellavista, 2020). One example is the regulation of the "crisis mode". When facing economic hardship, the members of a cooperative can democratically decide to enter a "crisis mode" and compress wages, and this possibility is frequently abused by cooperatives of convenience. It would possible, for example, to limit these abuses by obligating cooperatives to report these decisions to the inspectorate. Yet, as argued, in cooperatives of convenience exploitation happens under the cover of plausibility and is fuelled by mostly by workers' vulnerability and by other system incentives –mainly, the lack of controls prior and post the point of creation of the firm.

Some measures have been taken to deal with the latter issue. In particular, since 2018 (Law 205/2017), it has become possible for public authorities to forcefully dissolve a cooperative that does not abide to mutualistic principles, and the cooperation between the ministry and the tax offices has been strengthened in the attempt to favour the timely exchange of data. Moreover, it has been established that cooperatives must have more than one manager and that their mandate can only be temporary. Less has been done to tackle the first issue, that of the vulnerability of the worker. There are proposals in this sense (Bellavista, 2020) - one in particular being to strengthen the ability of the workers and of the unions to signal irregular cooperatives and make sure that these reports are preferentially pursued by the authorities. The

other step in this direction would be to intervene on the regulation of the status of the "member worker" and strengthen the implications of the employment contract.

However, other structural problems, like the disparity of treatment, would remain. Although there are particular issues emerging from the displacement of the cooperative as institution that support the spread of fraudulent subcontracting, framing the issue of fraudulent subcontracting as one of cooperatives would miss part of picture. The problem of the removal of the incentives for cost-containment strategies is not limited to the cooperative form but to the whole system and the loopholes in the regulation and monitoring of subcontracting in general weaken measures exclusively aimed at cooperatives – as shown by the tendency of intermediation to find new forms and shapes. On the other hand, the issue of the vulnerability of the workers involved cannot be resolved through the modification of the cooperative as an institution alone, as most of its institutional sources have to be located outside, in the current setting of migration laws and policies.

5.5 Migration Policies

In the case of labour exploitation one of the main conditions for the illegal practice to be profitable is the availability of a vulnerable labour force (Phillips, 2011). Vulnerability will make workers less likely to rebel and exit the labour relation (Xiang, 2017) and less unlikely to inform on their employers' illegal deeds (Allain et al., 2013).

Vulnerability is not just an inherent characteristic of the worker but also a condition that is created. As shown in the second chapter, vulnerability in subcontracting chains is created on labour management practices based on intermediation. Through a mix of coercion and incentive strategies, intermediaries ensure the collaboration of the worker and sustained labour expenditure under exploitative conditions.

The presence of intermediaries is however not sufficient to explain how this system of systematic exploitation through illegality is supported. Although management practices help reproduce vulnerability, it has been shown that the source of vulnerability itself can be located also outside of the labour exchange, in structural conditions (Phillips, 2017). This is where institutions come back in. Structural elements of the regulatory framework concur in creating vulnerability profiles. In particular, migration policies shape workers' vulnerability profile and favour their confinement in particular segments of the labour market (Anderson, 2010).

As said, migrant work was fundamental for the implementation of the "low-road strategy" to economic development. The integration of migrants in the Italian labour market has followed the pattern of other southern European countries, where migrants enjoy relatively high employment entry chances but concentrated in low quality occupations (Ambrosini & Panichella, 2016; Fellini & Fullin, 2018). In northern Italy migrants entered the market in scarcely productive companies focused on production and into personal services and care occupations. Migrant women entered as a support to the familistic welfare system and compensated for scarce public investment (Fellini & Fullin, 2018; Pastore et al., 2013). On the other side, the presence of migrants in productive activities was either substitutive or complementary to the native occupational trends (Avola, 2018) and allowed small companies to survive external competition (Murat & Paba, 2004).

After the financial crisis, the quality of the occupations available worsened for all workers but especially for migrants. Moreover, although overall migrant workers in the country seem to have maintained a certain "advantage" over natives in the access to employment opportunities (Fellini & Fullin, 2018), one can observe a partial inversion in the trend of employability in the north (Avola, 2018): migrant workers appear to have become more disadvantaged than natives when it comes to employment

entry opportunities, a situation which could have further increased their availability to accept lower quality jobs. This trend, however, was the outcome of the worsening of market conditions for migrant men occupied in the sectors most affected by the crises (manufacturing and construction) and did not mean an increase in competition with natives (Ambrosini & Panichella, 2016). In fact, the increased disadvantage of migrant workers in the north takes shape through their allocation in smaller firms concentrated especially in commercial personal services like hotels and restaurants and in logistics and other services (Avola, 2018). Unsurprisingly these are also the sectors where illegality and fraudulent subcontracting are the most spread.

In this context of general downgrading, Italian migration policies intervene to make migrant workers even more vulnerable by increasing their dependence on their employers. Italy is the perfect example of the needed but not welcome conundrum (Reyneri, 2016; Zolberg, 1987). The regulation of migration has been affected by political dynamics common to other western countries, in particular the rise of a strong anti-migration sentiment that has invariably influenced policy decisions (Ambrosini, 2018). Yet, since the national economy has come to depend so much on the availability of migrant labour, governments have had to find a way to allow the entrance of large influxes of workers while officially restricting possibilities for regular in-migration. Instead of developing active entry policies, the country has relied on a 'back door entrance' policy, forgoing control and allowing for the informal matching between demand and supply of labour (Pastore, 2016). On the other side, the official terms for the regularisation of migrant workers position have been hardened. Regularisation has become even more dependent on the employment status. This contradictory set up brings about the necessity of periodic regularisation rounds: already between 1986 and 2012 there had been seven regularisation rounds mixed with minor or hidden amnesties (Ambrosini, 2018). Since they had to be justified face to an increasingly

hostile electorate, regularisations were often linked to employment status and to specific sectors and figures that are framed as more deserving, in particular to domestic work (Bonizzoni, 2017).

This means that migrant workers are extremely dependent on the employer for regularisation purposes, and that workers who did not perform domestic work often had to rely on deception to obtain a visa. This situation generated opportunities for exploitative behaviour and fostered the emergence of a "regularisation business" (Bonizzoni, 2017). Workers end up having to pay for their own regularisation and are often victims of scams perpetrated by intermediaries and employers. This dependence can also be exploited to elicit collaboration in the workplace.

Obtaining a work permit reduces the dependence of the worker from a single employer but not that from an employment status. Migrant workers can receive a visa up to one year if they have a fixed-term contract, and of two years if they have an open ended one. If they lose their job they can apply for a temporary visa for job search purposes – the length of which has been extended from 6 months to 12 months in 2012 (Legislaive Decree 109/2012), in partial counter-tendence with the general logic of migration policies. Since work opportunities for migrants are mainly located in low end service jobs, migrant workers wishing to keep their legal status still have to adapt to lower working conditions. Within this regulatory framework workers are produced that can be managed through illegal work arrangements.

5.6 Active Labour Market Policies

The argument of partial enforcement as result of (partial) forbearance is reinforced when considering how far some level of rule breaking can be necessary for the state. If deliberate institutional weakening can be thought of as a strategy to favour a low productivity competition model, I argue that, in Italy, the weaking of the regime

of labour intermediation also worked as a substitute to state-financed measures for the matching of supply and demand of labour.

In fact, while the spread of fictitious companies damages the state, the expansion of irregular work also represents an opportunity for cost-saving on welfare provisions. It is well known that the Italian state has used migrant labour, formal and informal, to make up for missing investments in care services (Fellini & Fullin, 2018; Pastore et al., 2013). Moreover, outsourcing (and especially outsourcing to cooperatives) represented an tool for local administrations to ensure service provision in a context of "permanent austerity", namely the shrinking of public investment which started in the 1990s with the implementation of spending containment to meet supranational targets on debt reduction and was aggravated by the financial crisis: much like in the private sector, cost-containment was achieved by exploiting cost differentials and then transferring these costs on workers (Dorigatti et al., 2020; Mori, 2019). As shown, this transfer also relied on borderline practices and misclassification, and, especially, on the missed recognition of the triangular nature of the employment relationship.

This research suggests however that the spread of misclassification also served another social purpose: that of directing the match of the supply and demand of labour where the state or other publicly sanctioned private actors did not intervene.

Italian placement services have been historically weak and Italy never had a tradition of active labour market policies. After the Second World War the country established a state monopoly on placement, creating a system that strongly limited the discretion of employers in hiring procedures by creating obligatory hiring lists with a limited number of exceptions. This was complemented by the introduction of a law on traineeships that was supposed to improve the matching between skill demand and supply through the upskilling of southern migrant workers. Yet, none of these

measures was actually implemented (Bonoli, 2010, p. 445; Musso, 2004). In practice, when it came to hiring practices exceptions became the rule, as the necessary structures to sustain the application of the law were never implemented and employers largely resorted to tricks to avoid the "chiamata numerica" (numeric call) from hiring lists. On the other hand, employers used traineeships more as a saving mechanism than as an upskilling tool.

During the 70es and the 80es the observation of the inefficiencies of the post-war system of public placement did not lead to the reimagining of its structure and function, but were rather met with the introduction of legitimate exceptions from the numeric-call mechanism (Musso, 2004). As Musso reconstructs, it is in this context of lack of implementation and of willingness to re-design placement services that the process of European integration provided the final push to make the move to the marketisation of placement in the 1990es. While formally advocating a mixed-model of placement between public and private, governments never really invested in the strengthening of the public part, leaving de-facto the governance of the labour market to the private initiative. Moreover, the logic of active labour market policies after the nineties was never really oriented at upskilling: measures were mostly limited to hiring incentives and reduced social security contributions for new entrepreneurs and ignored skill promotion or human capital development (Burroni et al., 2019; Rizza & Scarano, 2019). Tendencies that were formed before the crisis and the process of European integration where locked-in by the impact of external pressures constraining public spending capacities.

In this context, as said, the matching of supply and demand of migrant labour at the lower end of productive activities was completely left to the informal initiative of private actors. Despite formally subordinating legal entrance in the country to an employment offer, governments never set efficient mechanisms in place to allow the

cross-border match between supply and demand, and efforts at within country cooperation were modest compared to the actual needs (Pastore et al., 2013). In fact, the shrinking of the possibilities for legal in-migration reduced the incentives for sending countries to collaborate in negotiated agreements (Pastore, 2016). On the other hand, bureaucratic structures to support administrative procedures for legalisation and permit renewals have also been chronically understaffed and underfunded, with unions and local authorities making up for part of the lack of central coordination.

It is has been argued that in this context the allocation of migrant workers happens mostly through ethnic networks (Ambrosini, 2013) and that employers do not have a large interest in governing this allocation because in a context of low-skilled productive activities workers are highly interchangeable (Fellini & Fullin, 2018). While the role of networks is not under dispute, this research casts doubts on the lack of further organisation of this process. As shown, private intermediation in the Italian market extends beyond what commonly assumed, confirming that even at the low end of the market some level of coordination beyond networks is required. If we think of service companies just as the entry point in the market, and not as a final destination, we get a more nuanced picture of placement mechanisms and also understand that what the state is not doing is being done somewhere else – not just by co-ethnics, employers, families and NGOs, but also by other economic actors that make a profit out of this activity.

The allocation of placement to private actors, formal or informal, can be thought of as another chapter of saving through the externalisation of governance. In a context of scarce development of public capacity and de-skilling as part of competitiveness-enhancing strategies, informal intermediation through illegality becomes tolerated as a low-cost solution and also an alternative to politically difficult decisions. The problem

of the state, then, becomes deciding to which degree private intermediation should be allowed to expand and in what forms. However, the dependence of the state on informal private allocation mechanisms enhances the contradictions between different policy goals and reduces incentives and possibilities to re-regulate the matter of intermediation in an effective way.

5.7 Employment Status and Segmentation

What are is the impact of partial enforcement on institutional settings? As argued in chapter two the covert spread of intermediation has changed the labour market by creating specific channels through which a large segment of the labour force can access work opportunities, directing them into lower-quality, more exploitative jobs. Inside this group a specific stratification emerges between those workers who can access established service companies and those who find their job opportunities through intermediaries hiding behind fictitious companies. The transformation of the institutions governing labour intermediation contributes to the crystallisation of this specific segmentation.

The hollowing out of the institutions that support the principle of the correspondence between the employer and the subject that exploits the labour effort impacts on the institutions of the standard employment relationship. By favouring misclassification strategies, the "greying" of the ban on intermediation contributes to the hollowing out of the status of "*employee"* in favour of a process of *private ordering* (Dukes & Streeck, 2020). In these employment-relation the recognitions of the rights attached to the SER becomes more of a private choice of the employer rather than something that is imposed upon the parties by rules implemented to bargaining institutions and guaranteed by the state.

Misclassification challenges the status rights of the worker in two ways, the more obvious one being the removal of the vulnerable worker from the reach of the

institutions of the employment relation through the creation of fictitious companies and exploitation practice. The second one is more subtle and derives from the quite acceptance of softer forms of labour intermediation and the subsequent failure to recognise the triangular nature of the employment relationship realised in the service industry.

Workers involved in these covert triangular employment relationships are only partially covered by the protections of the SER and end up constituting a special status category of their own. Although subcontracted workers can be formally *employees*, workers' status rights in these triangular employment relationships are gradually depleted: their relationship with their "primary" employer is mediated by a commercial relationship which severs most legal bonds between the two, while their characteristics make them vulnerable face to a "secondary" employer whose main business strategy consists in bringing down the cost of labour.

This status change is reinforced by the displacement of the institution of the cooperative and the insufficient efforts to govern this change. The failing of the institution to protect the workers inside the employment relationship is due to the misclassification of the worker as "member" of the cooperative. Cooperative members are not classified as *employees* because they are considered co-participants in the organisation and direction of the cooperative, ideally closer to a partner in an economic endeavour than to a dependent subordinate of a firm. Yet, the displacement of the cooperative as an institution has gradually expelled workers from the management of service cooperatives.

Legislators have not been completely blind to this transformation, and, over time, they have intervened to partly re-design of the relationship of the workers with the cooperative by creating the hybrid status of the "member worker" (*socio lavoratore*). Members who also work for the cooperative are attached to the institution

by two contracts, one as a member and one as an employee. This intervention allowed to link the worker to some of the protections and guarantees of the standard employment relationship, in terms of treatment, wages and even freedom of association. Yet, the status of member can override that of employee, in particular when it comes to the regulation of termination of the employment relationship. This kind of compromise protects the existence of the institution of the "worker's cooperative" as a third kind of economic organisation between public and private, while trying to reduce incentives for its mis-use. At the same time, it crystallises a different status for the workers involved, to which workers can be falsely attributed through misclassification - thus creating a special segment inside the workforce and the labour market placed somewhere in-between the employee and the autonomous worker.

The former section reveals how migration rules interact with this specific institutional setting. For migrant workers, the access to status right is linked to their migration status. While also workers who enjoy full citizenship rights are faced with a poor labour offer, the status of the migrant as worker is eroded through the double channel of strict migration rules and a weakened intermediation regime. Provided that the quality of the offer for migrants in the Italian market is generally low, migration status can improve the workers' position face to the employer and facilitate their access to different kind of intermediaries.

The mixture of illegality and institutional vulnerability contributes to the solidification of market segments populated mainly by migrant workers and excluded to various degrees from status rights. The intersection between misclassification through illegal subcontracting and the greying of institutional guarantees realises a stratified zone of exception from employment protections.

5.8 Partial Enforcement as Design and Contradiction

The analysis of the policy regime of labour intermediation suggests that shortcomings in law enforcement play an important role in explaining the expansion of misclassification in the Italian labour market. Yet, it also shoes that this incomplete law enforcement is in part willingly cultivated as a form of economic governance.

For a regulated market, like the Italian one, the creation of labour market segments through partial enforcement, seems to be a viable solution that allows to offer industries cost-containment opportunities that do not challenge excessively internal social equilibria. On the other side the weak implementation of public placement services has made the state dependent on private intermediaries to support the operation of part of the labour market. Service companies in general and cooperatives in particular are the main channel of placement in the service sector, providing an opportunity for labour cost reduction through rule breaking.

Yet, when challenges are extreme, like in the case of the spread of misclassification through fictitious companies, damages might surpass advantages. Although the dumping of the costs on migrant workers mean that higher levels of exploitation will be tolerated, the spread of fictitious companies challenges other market players - like service companies and cooperatives – weakens state budgets and brings about a threat of infiltration of criminal organisations in market structures. The necessity to react to these treats while also preserving differentiated protection levels and an informal private placement system, leads to the set-up of a mix of policies and regulations that are partly contradictory and scarcely effective. Partial enforcement in this sense could be characterised as a mix of forbearance and failure, where failure derives not (only) from a structural impossibility to enforce the rules but from the contradictory nature of the interests of the market players and of the state itself. The

process of reform of the policy field that regulates labour intensive subcontracting embodies this kind of contradiction.

The greying of the definition of what is legal and illegal intermediation, of what is intermediation or subcontracting and of what is a cooperative and what is not, contributed to turn the regime of intermediation into an interface between legality and illegality. One can observe the creation of a specific policy equilibrium regarding the matter of intermediation through subcontracting that supports the silent legitimation of these arrangements. While the lack of willingness to regulate "softer" cases of fraudulent intermediation means that they become implicitly tolerated or normalised, the attempts at containment are focused on the instances where the outcomes in terms of workers exploitation and fiscal damage are the most serious. However, this also means that some measures that could improve the ability of the state to control extreme cases of fraudulent intermediation are not implemented. Communications, data collection and more controls at the moment of registration are tools that would increase the effectiveness of the inspecting activities, but they could be implemented only when labour-intensive subcontracting were to be recognised as a full-fledged triangular employment relationship, one that needs the same kind of protecting and regulating as agency work. The lack of will to intervene decisively on labour-intensive subcontracting is paired with a set of migration rules weakens the status of migrant workers – thus crystallising a space of exception inside the labour market where exchanges are organised through various forms of private intermediation.

In this chapter I have shown that the expansion of misclassification, is part of a process of broader employment institutional change that the national states are partly suffering but also partly encouraging. In the following chapter, I will analyse the political debate behind these reforms to understand how the system moved to the current equilibrium.

Chapter 6: The Politics of the Reform of the Regime of Labour Intermediation

The process of institutional change that led to the current setting is complicated and stratified. What happened to the institutional regime of intermediation has both the character of *layering* and of a *drift* (Streeck & Thelen, 2005): the change was politically promoted as part of a process of de-regulation leading to various reforms that layered on top of the existing norms and added new complexity to the regime of labour intermediation; but it was also the result of the unwillingness to address the shortcomings in the implementation of the law on illegal intermediation.

However, the policy regime described in the former chapter is not a static entity and, as I have shown, not all the changes in the system have necessarily gone in the direction of furthering deregulation. Some of them might be thought of as partial steps back, although to a different policy equilibrium that the one precedent to the 2000s.

Far from being a linear strategy, the transformation of the Italian labour market was marked by a high level of volatility. Multiple governments intervened repeatedly to modify the decisions of the previous ones. In this chapter I trace this debate to disentangle the strategies of different market participants in the process. In particular, I focus on the political debate supporting institutional reforms in order to disentangle the discourses that supported change and the political dynamics that fostered or hindered it.

6.1 The Reform Process

In the process of reform of the regime of subcontracting it is possible to identify a period of stronger deregulation, corresponding to the years of the Berlusconi governments (between 2001 and 2011), and later a phase of partial or incomplete re-regulation.

6.1.1 Before 2003: the 1990es and the Introduction of Agency Work

Since the beginning of the 1990es, a consensus over the inevitability – if not necessity – of externalisations for the functioning of the economy has consolidated into the regime of intermediation that was described in chapter four. Temporary agency work was introduced in 1997, as part of a process of "regulated deregulation" (Hyman, 2001) during the so-called golden age of corporative bargaining. At the beginning of the 1990s the Italian political system was shaken by a series of internal and external shocks that weakened the political authority of Italian governments. Internally, Italy had to face the demise of two of the three biggest parties following the emersion of a huge corruption scandal involving members of the Christian Democratic and Socialist parties. Meanwhile rising public debt and inflation threatened the programmed adhesion of the country to the Monetary Union. In this context, fragile governments sought the collaboration and support of the actors of the industrial relation system to facilitate the restructuring of the Italian economy (Negrelli & Pulignano, 2008; Regini & Regalia, 1997). A first, "soft" flexibilization was achieved through "concertazione" meaning the signing corporatist pacts providing the framework for following reforms. In particular, the reform of 1997 was drafted by a centre-left government (at the time led by Romano Prodi) who broadly shared the philosophy of regulated deregulation, and believed that the introduction of some "flexibility" in the system would have favoured the employment of women and younger workers and that a controlled opening to private intermediation would have improved the performance of the Italian labour market – while also aiming at greater conformity to European standards.

For a moment, at the end of the decade, it seemed that this season of collaboration between the social partners would have led to the institutionalisation of "concertation" as a method and even to the merging of the three confederal unions (Baccaro & Howell, 2017). Yet the window of opportunity for this change closed as soon

as the centre right of Silvio Berlusconi won the elections in 2001 - a turn of events which broke industrial peace and inaugurated a phase of state-led market reforms.

6.1.2 The Reform of 2003 and the Liberalisation of Private Placement

Stronger political parties tried to move from concertation to consultation (Regalia, 2012). In particular, the Berlusconi government pushed the reform of the labour market from the very beginning of its mandate and exploited the large ideological resources provided by the international debate on labour market flexibility. To build internal support and legitimisation it also co-opted established labour law scholars to prepare the grounds for the reform, including professor Marco Biagi, an industrial relations and labour law expert that had consulted with all the previous left-wing governments and had been named the Italian representative at the committee on work and occupation of the European Commission. Invited as a consultant by Maurizio Sacconi, the Minister of Labour and Social Security, Biagi rapidly became the face of labour market reform. Together they coordinated the publishing of a *Libro Bianco* (Ministero del Lavoro e delle Politiche Sociali 2001), a "White Paper" containing a series of proposals for a reform of the Italian labour market. The paper promoted a shift of policy focus from job protection to employability and became the primary source of legitimation of the upcoming laws. In this framework, the liberalisation of private placement was promoted as one of the facilitators of this shift: a mixed private and public regime would have improved the efficiency of placement and, together with the introduction of new kinds of employment contracts, it would have facilitated the inclusion of marginalised workers. The logic of the argument was in line with that applied by the centre-left government that introduced agency work, but the idea was that the previous reform had been too timid and therefore the regime of placement was still too rigid.

As Musso duly shows (Musso, 2004) labour law scholars always had an important role in the interpretation of the norms on externalisation and, more specifically, of the ban on intermediation. In the 1970es and 1980es, the scholarship broadly adopts the interpretation of the ban that emerges from collective bargaining. At the time the position of the unions was that productive "decentralisation" is intrinsically fraudulent as it aims at breaking the unity of actions of unions, and, therefore, threatens the collective interest of the protection of workers' rights. However, at the end of the 1980es and throughout the 1990es, new positions started to emerge that embraced the premises of the discourse in favour of *flexibility*. Some prominent labour scholars, and later some judges, consider that some forms of externalisation and intermediation are not detrimental to workers' rights *per se* and they rather reflect a legitimate and physiological need of the firm (Ichino, 2002). Therefore, the ban should be interpreted more narrowly if not completely revised. It is this interpretation that is channelled into the guidelines of the white paper.

Yet, the elimination of the ban on intermediation was not prominent in the public debate, subsumed in the general discussion about the introduction of new contractual arrangements and obscured by the fight around the proposal to reform dismissal protection laws. The guidelines take shape in a proposal for a delegated law, presented at the senate in November 2001, which also contains indications for the modification of the employment protection legislation. This proposal immediately captures the public debate and the fight over the EPL becomes the symbol of the power struggle between the social partners: Italian employers perceived the change as one of great strategic importance as a bridgehead to the liberalisation of the labour market, while for the government the proposal was a test of its ability to overcome unions' opposition on controversial laws (Baccaro & Howell, 2017). The move opens a fight between the government and the unions in which the CGIL finds itself rapidly isolated.

The confederation opens a season of intense mobilisation while the CISL and UIL remain more cautious, especially after the violent death of Marco Biagi, killed by the Red Brigades on the 19th of March of 2002. In the same month, the CGIL organised a demonstration that became one of the biggest in the history of the Italian Republic, but the CISL and the UIL did not participate. Faced with the success of the mobilisation the government had to back down on the modification of the EPL and tried a new strategy by reaching out to the CISL and the UIL. The part of the reform containing the modification of the EPL was removed from the proposal for the Delegation Law (bill 848) and presented separately in a softer version in June 2002 (bill 848 bis), and the government invited social parties to a table to discuss the reform. In this situation unions are again divided: CISL and UIL consent to sign a general agreement in July 2002 that legitimises the approval of the delegation law. Meanwhile, the mobilisation of the CGIL around the EPL continues with a campaign to collect signatures for a law proposal that would reinforce the regime instead of weakening it, by extending the protection to workers in firms with less than 15 employees. The campaign was a success but the following referendum, in June 2003, failed to reach the quorum for legal validity. However, also the (mitigated) reform of the EPL stalled and the regime was not modified. What was reformed instead was a wide variety of employment contracts and the regime of placement.

In the proposal of the delegated law, the government had already envisioned that the liberalisation of private placement would also entail the elimination of the ban on labour intermediation and the contextual introduction of staff leasing. After the signing of the Pact for Italy the approval of the delegation law was expedited, and in the discussion in the parliament, the majority that supported the government was quite compact. The harshness of the debate outside was reflected inside the Parliament, where the majority refused to accept any amendment presented by the opposition.

Most importantly, the majority was defending the approval of a delegated law with a content that would be broad enough to allow the government some room for manoeuvre in the design of the implementation Decree.

Interestingly enough, much like with the introduction of atypical contracts, the liberalisation of externalisation was presented by the rapporteur of the government as a way to prevent fraudulent behaviour. According to the ministry, the labour regime should have been modified to recognise forms of employment relations and organizational behaviour that had already become the norm: once the legitimate necessities of the firms would have been accommodated, harmful fraudulent behaviour would have physiologically receded. The ministry recognised that fraudulent intermediation had been spreading during the previous decade, and attributed this to the rigidity of the ban itself and of the norms on public placement. It even recognised that subcontracting was instrumentally used to obtain flexibility:

> [The Government has] the will to create an advanced regulatory regime to offer guarantees to the workers that they don't enjoy in the current reality of service companies, a reality that is in front of us, and that grows – I don't know if I should add "unfortunately" [...] Moreover, our legislation contemplates a special regime for the appalto di servizi [contract for services] (we want to partially reform it) that, because of the way it is disciplined and above all used, often hides forms of labour intermediation that are between the lawful and the unlawful. Well, the workers employed in that sector surely don't enjoy those protections that are instead typical of agency work, whose discipline inspires the current decree. Faced with the reality [...] of cleaning services, security companies, tech consultancy, but even of the operators in libraries (public ones as well), our will is to offer a legislative regime that provides higher protection to the workers. [...] About agencies: I want to specify that they would be operating in ways that are surely more transparent and providing higher protection levels than what happens today as the result of ahistorical restrictions. (Sacconi in XIV Legislatura, 2002b)

The problem was framed as one of inefficient labour market structures, and not as one of cost containment. Externalisation and flexible needs were physiological to a post-Fordist economy and they should be regulated rather than resisted. In this perspective, the removal of the ban and the regulation of private placement and externalisations would have inevitably led to the reduction of rule evasion. According

to this logic, when faced with the choice between legal and efficient intermediation and fraudulent behaviour, companies would have chosen the former.

During the parliamentary discussion and in the meetings of the labour commission, the deputies in opposition repeatedly brought about the problem of the removal of the ban and of the definition of the difference between intermediation and a service contract – a definition that, they claimed, should have been discussed and approved by the parliament and not delegated to the government. They also expressed their opposition to the opportunity that the authenticity of a service contract could be certified by third parties. At the commission at the chamber, the preoccupation over the removal of the ban is even shared by a member of Forza Italia, the majority party, yet all the proposed amendments are rejected (XIV Legislatura, 2002a).

When the delegation law came back in the form of the implementation decree, the government had indeed made use of the broad terms of the delegation, it had modified the ban and the regime of service contracts and also removed the principle of the parity of treatment – a move which had not been anticipated in the delegation law. When the decree is submitted to the Commissions for a last round of consultation, the members of the opposition contend that the reform is favouring a marginalisation of the role of public placement instead of reinforcing it and that the modifications to the laws on subcontracting and intermediation favoured the use of service contracts instead than staff leasing, favouring vertical disintegration and competition on labour costs (XIV Legislatura, 2003a, 2003b). On that occasion the sub-secretary responds that in the new regime staff leasing is designed for purpose of creating competition between the new contractual forms and that in this framework the regime of joint liability was introducing a sufficient incentive, making it "reasonable to suppose that the entrepreneur will have an interest in turning to trustworthy and professional players" (Sacconi in XIV Legislatura, 2003c).

Despite the imbalance of the regulation coming out of the decree, that part of law scholars that had supported a reform of the Italian labour market continues to broadly support the reform. [...] In a comment on the approval of the decree, a close collaborator of Biagi, Michele Tiraboschi, largely confirms the analysis of the sub-secretary on the effects of the reform:

> Concerning the regime of service contracts, the undeniably higher cost of agency work [...] will be probably balanced by the quality of the service offered, that in many cases will entail high competency tasks which can only be satisfied though a highly trained workforce (Tiraboschi, 2004, p. 209)

The exclusion of agencies from the costs for collective dismissal and the decision to exclude workers externalised through the agency from the computation of the workers of the firm realise the competition between the contract of service and agency work and, in his opinion, incentivise the latter as an alternative to the former. Regarding the deletion of the parity of treatment clause, the scholar argues that a rigid application of this norm "in all the cases of legitimate agency work and service contracts" (Tiraboschi, 2004, p. 227) would have contributed to the increase of fraudulent practice instead of limiting them – applying the general argument that rigid labour market norms were favouring rule evasion. At the same time, and in partial contradiction, he concludes the Italian labour market is "not yet ready" for a rigid regime and that the proposed solution was "more realistic" (Tiraboschi, 2004, p. 227). In general, his analysis supports the idea that externalisation should be considered physiological to the organisation of the modern firm and that a reform of the ban on intermediation would have offset the "interpretive degenerations" of the norm that wanted to impose "restrictions on the flexible organisation of the workforce" (Tiraboschi, 2004, p. 214). It is the need for organisational flexibility that drives employers to break the rules, while the importance of cost-containment in these organisational decisions is, again, underplayed.

6.1.3 The Years of the Crisis and the Approval of the Law Against Caporalato

The matter of fraudulent intermediation got back on the table only in 2011. This time the problem of *Caporalato* was framed as the issue of the exploitation of migrant workers in agricultural labour and construction. The approval of a new law on *Caporalato* was the outcome of intensified activism and a vast public campaign. Since 2010 the topic of irregular migrant workers featured prominently in the public discourse following a period of unrest after the murder of two agricultural workers in a migrant workers' camp in Calabria (Porqueddu, 2010). In 2011, agricultural migrant workers in Nardo (Puglia) started to organise against inhumane working conditions, an effort which contributed to increase public awareness and which led to one of the first trials for intermediation and enslavement (La Repubblica, 2022). Meanwhile the FLAI CGIL and the FILLEA CGIL (respectively the agricultural workers union and the construction workers union inside the confederation) promoted a vast public campaign against *Caporalato (La Repubblica, 2011)*. Despite the initial resistance of the government and its attempts to frame local unrest as a problem of public security and illegal migration, the combined effort of unions and migrants' initiatives was able to create enough political pressure, and led to the institution of the crime of "Illicit intermediation and workers' exploitation" (*intermediazione illecita e sfruttamento nel lavoro*) (Penal Code, art. 603bis). The introduction of the so-called crime of *Caporalato* represented one of the few re-regulation attempts that succeeded during a term of a Berlusconi government. However, as detailed in chapter three, the success was only partial, as the law was flawed and considered scarcely applicable. The measure was included in the Finance Act of 2011 (Law 148/2011) and it did not feature in the parliamentary debate, although the Democratic Party proposed amendments both at the Senate and at the Chamber to extend the applicability of the law. The

introduction of the new crime of intermediation did not move the policy equilibria that were set in 2003, although it did lay the foundation for future reforms.

Yet, there would be no particular development for a long time. The following economic crisis and the election of an "emergency" government did not provide the framework for a revision of the norm in particular and the regime of intermediation in general. In fact, the results of the earlier reform crystallised. Meanwhile the Berlusconi government was forced to resign under international pressure because it failed to achieve radical reforms of the labour market and in particular of the EPL legislation and of collective bargaining (Bulfone & Tassinari, 2020). Composed mainly of technocrats, foreign to politics, the "technical government" in the next two years implemented the requested austerity measures, introduced a deficit-reducing clause in the Constitution and opened a reform cycle that strengthen some flexibility measures. Although it did introduce some legal obstacles to the fraudulent use of non-standard and atypical work the reform did not cancel any of the multiple contracts introduced in 2001.

6.1.4 The Centre-Left Government and the Decriminalisation of Fraudulent Subcontracting.

The issue of fraudulent intermediation resurfaces in the political agenda during the centre-left government of 2014-2016. The outcome of this period is the stabilization of a regime of intermediation that punishes extreme cases of exploitation but favours labour-intensive externalisations. Although the labour reform of the Renzi government was the source of heated political conflict, the elimination of the offence "somministrazione fradulenta" and the decriminalisation of "illicit subcontracting" did not feature prominently in the parliamentary debate. These two measures were presented as technical adjustments, part of a process of rationalisation of labour law,

while the political debate was completely overtaken by other measures, in particular the weakening of the legislation on dismissal.

The debate around the reform of 2014/2015 was particularly heated because this time it was a centre-left government that was supporting the further flexibilization of labour market rules. This time the rhetoric supporting the reform was particularly centred on the ideas of *modernisation* and *flexicurity* (XVII Legislatura, 2014). In particular, the idea that the Italian market was in need of modernisation and that unions were responsible for slowing down this process became central in the public discourse of the prime minister Renzi (La Repubblica, 2014). Eventually, the government implemented a model of "embedded flexibilization" that entailed the loosening of the employment protection legislation and the relaxation of the norms on other flexible contractual arrangements, while at the same time increasing protection *in the market* for workers at the margins.

The elimination of "somministrazione fraudolenta" was approved with the legislative decree 81/2015 that stemmed from the enabling act 183/2014. Like in 2001, the use of this extra-ordinary legislative instrument meant that the parliamentary discussion was limited to the general framework of the reform. In fact, there was no specific mention of the removal of the offence in the enabling act. The government requested instead a generic delegation to simplify administrative procedures and revise labour law's sanctioning regime by promoting reward-based incentives.

The declared aim was to introduce a sanctioning logic that would distinguish "formal violations" from "substantive" ones[vi], implying the existence of instances where administrative mistakes were sanctioned with the same severity that fraudulent

[vi] Art. 3, l. 183/2014 b) "eliminazione e semplificazione, anche mediante norme di carattere interpretativo, delle norme interessate da rilevanti contrasti interpretativi, giurisprudenziali o amministrativi" *and* e) "revisione del regime delle sanzioni, tenendo conto dell'eventuale natura formale della violazione, in modo da favorire l'immediata eliminazione degli effetti della condotta illecita, nonché valorizzazione degli istituti di tipo premiale."

behaviour. This proposition was met with particular favour by Confindustria that appreciated how the law "by promoting the revision of the sanctioning regime based on rewards rather than on sanction and by envisaging different sanctions in those cases where the violations are merely formal, affirms important principles and goes in the right direction, by favouring the respect of the norms instead of repression" (Confindustria, 2014, p. 8). On the other side the unions did not appreciate the vagueness of the delegations (CGIL, 2014; CISL, 2014) or directly denounced them as further step in the deregulation of the labour market (USB, 2014).

Once the legislative decree was approved, the removal of "somministrazione fraudolenta" was treated as a matter of reorganisation and simplification, justified by the fact that "the definition of the casus was uncertain and hardly ever applied" (XVII Legislatura, 2015, p. 181). This justification, together with the discourse on 'formal' and 'substantial' matter, fit into the "simplification and modernisation" logic that accompanied the reform.

The depenalisation of "appalto illecito" was also the outcome of a reorganisation and simplification, but outside the framework of a labour market reform. It was included in a judicial reform meant to revise the sanctioning regime of those conducts that were formally criminalised but only subject to administrative sanctions (Legislative Decree 8/2016). This meant that it was framed as part of an effort to simplify the workings of administrations, and excluded from any political discussion on its implications for the labour market.

In this phase the topic of the regulation of subcontracting made a comeback in the agenda of the confederal unions, and in particular CGIL, although focused mainly on the issue of the joint liability regime. Its strengthening was part of a Referendum proposal promoted by the confederation aiming at reinforcing EPL protection and eliminating vouchers. The Referendum was part of a broader agenda aiming at the

overall revision of the rules of the Italian labour market (CGIL, 2016). This campaign managed to create enough pressure to strengthen the solidarity regime: preferring to avoid confrontation on the matter of vouchers, the government passed two laws incorporating the requests of the confederation.

On the other side it is with the Renzi government that the Labour Inspectorate is reformed and new sanctions against undeclared work are introduced (Ferrante, 2017). In this framework, the sanitization of the discussion on "somministrazione fraudolenta" was counterbalanced by the approval of the limit to the total amount of activities that could be subcontracted within the framework of a public sector contract (Legislative Decree 50/2016, art. 105) and by the approval of the law on *Caporalato*.

The law was not presented as direct alternative, or counterbalance, to the elimination to "somministrazione fraudolenta". In the wake of the reform of 2011, *Caporalato* was framed as a sector-specific problem of labour exploitation in agriculture. Law 199/2016 represented an attempt to incentivise rule abidance in the sector and, as such, it was assigned for elaboration and discussion to the parliamentary Commission "Agriculture and food production". Although practically the law ended up having a wider applicability and coverage, in the parliamentary discussion *Caporalato* was not framed as a general problem pertaining to the use of labour-intensive subcontracting (XVII Legislatura, 2016d, 2016e, 2016f).

In its relation to the commission, the parliamentary rapporteur defines fraudulent subcontracting and the practice of hiding behind fictitious companies as a *new* form of labour exploitation:

> … labour exploitation takes place today through systems that are quite different from those of the past. It takes different forms: that of labour intermediation carried out illegally, supplied by "procurers" in contact with "temporary agencies" operating illegally, and that which is carried out through a kind of subcontracting by so-called "landless agricultural cooperatives", also operating illegally, which - although widespread mainly in areas of Central-Northern Italy - are also present in parts of the South, and have the characteristic of disappearing and reappearing continuously

> with new names; in the latter case, the "caporali" are usually the directors of the cooperative society, who act as managers and receive their remuneration by means of black fees from the client. (Rel. Gatti, XVII Legislatura, 2016d)

In general, the re-regulation is justified on the basis of the gravity of the situation, the necessity to contrast organised crime and the willingness to prevent and punish extreme cases of labour exploitation (XVII Legislatura, 2016b).

While the crime of “somministrazione fraudolenta” was abolished because it was scarcely applicable and applied, the difficulty in the application of the crime of “illicit intermediation and labour exploitation” is the grounds on which its reform is justified. With these choices, the political focus is shifted from the regulation of intermediation in general to the containment of extreme cases. This approach granted a wide political consensus and the law was approved with a large majority. The only party that abstained from the vote was the then Northern League, which justified its decision on the grounds of the excessive bureaucratic burdens affecting legally operating agricultural companies. The Party downplayed the incidence of the problem in the North and shifted the blame on migrants. In the parliamentary debate the league argued that the issue was related mostly to southern regions and to illegal migration, and that it should have been tackled with measures directed specifically at migrants (XVII Legislatura, 2016c).

6.1.5 The Governments of the 5 Stars Movement and the Proposal for the Reinstatement of the Ban on Intermediation

It is the Movimento 5 Stelle that, through its various mandates in government, pushes for the re-prioritisation of the issue of fraudulent intermediation and for restoring a regulation that would limit the possibility of labour extensive externalisation. Its attempts at reform and at reframing the issue have modest or uneven results.

With the parliamentary discussion of the labour reform of 2018 the framing of the problem of fraudulent intermediation evolves to become the "issue of spurious cooperatives". Labour was at the core of the electoral campaign of the Movimento 5 Stelle, that rose to Government for the first time in 2018 in a coalition with the Lega. The core topic of the campaign where the introduction of a universal guaranteed minimum income, the abrogation of the Jobs Act and the promotion of policies that would discourage delocalization. After the elections, the party managed to obtain the direction of the Ministry of Labour, yet the coalition with the Lega severely limited its room of manoeuvre in the new reform (Bulfone & Tassinari, 2020). In particular, the M5S had promised the reinstatement of the EPL levels to those prior to the crisis, but it could not really deliver on this promise because the Lega was not willing to upset its traditional electoral constituency, composed of northern SMEs.

In many ways, that of 2018 was an incomplete reform. Since it was difficult to modify the EPL legislation in any meaningful way, the M5S focused on the regulation of temporary contracts, reducing the maximum number of renewals allowed. The situation also meant that its attention the regulation of intermediation was focused on agency work instead than on subcontracting. As agency work was identified as a source of precarity, the regulation of temporary contracts though agency work was largely equalised with that of temporary contracts in general. When it came to subcontracting, however, its intervention was limited to the symbolic reintroduction of "somministrazione fraudolenta", which was re-written as a copy of the former regulation without solving the issues hindering its applicability.

The debate in the parliament focused completely on the regulation of agency work while the reintroduction of the offence almost disappeared. Although in its opening statement to the chamber of deputies the Minister Tripiedi declares that "we have introduced somministrazione fraudolenta and increased sanctions, which will

discourage despicable actions like caporalato or false externalisations" (XVIII Legislatura, 2018a), the potential impact of the measure is so limited that the Ministers themselves avoid stressing the matter further during the debate. Also, the move has scarce political potential, as the issue was so technical that it did not lend itself to be used as flag reform. The rest of the political forces in parliament confirmed the irrelevance of the matter by completely ignoring it during the debate, reflecting the indifference for that specific measure of the unions and employers' associations (Alleanza Lavoro, 2018; Assocontact, 2018; Assolavoro, 2018; Assosom, 2018; CGIL, 2018; CISL, 2018; Confindustria, 2018; UGL, 2018; UIL, 2018).

Terms like *appalto* or *fraudulent intermediation* almost do not feature in the discussion. What emerges is instead the matter of "spurious cooperatives" that is repeatedly brought about by political opponents as part of the critique to the reform. Parties on the centre left, like the PD and LEU, argue that the reform misses its mark because it is excessively restrictive on agency work but does not tackle "the real problem", that of the spurious cooperatives. On the other side the M5S itself declares its intentions to legislate "on the matter of false cooperatives" and "for the protection of serious and honest cooperatives" (Di Maio in XVIII Legislatura, 2018b) in a separate bill. In this occasion, it is only the CGIL that – in the context of the auditions - frames the matter at hand not as one of "false cooperatives" but as that of cost-reduction strategies in the fragmentation of production chains, and calls for "the affirmation, for all forms of labour externalisations (posting, agency work, subcontracting) of the principle of the parity of treatment of the workers" (CGIL, 2018, p. 3).

The limitations of the reintroduction of "somministrazione fraudolenta" were partly counterbalanced through the 2019 budget law which increased administrative sanctions for illicit subcontracting (Law 145/2018). On the other hand, however, the coalition government also increased the limits to subcontracting in the context of a

public contract from 30% to 40% (Law Decree 32/2009), starting to move away from a logic of prevention in favour of a freedom of services one.

Regarding the problem of fraudulent subcontracting and the regulation of the regime of intermediation the law proposal that the M5S presented at the end of 2018 – n.1423 - had much broader ambitions and contained measures to limit the possibility of labour-intensive subcontracting. The proposal meant to "face the issues of false cooperatives, workers' exploitation, illicit subcontracting and unauthorised intermediation" which were described as "a scourge for the entire system that infests the country since decades" (XVIII Legislatura, 2018c). While still revolving around the re-regulation of cooperatives, and in particular around the strengthening of the employment status of cooperative members, it also meant to revise the regime of subcontracting. In particular, it proposed to reintroduce the parity of treatment and to limit the possibility of labour-intensive subcontracting to high-skilled workers and to situations where the value added of the externalisation could be proved. In spirt, the proposal is centred around the concept of the safeguard of the principle of the necessary correspondence of the employer and the actor that exploits the labour effort. Although it was presented in 2018, the proposal was introduced to the Labour Commission at the Chamber only in 2020, and there the discussion was interrupted after the introductory sessions. This also means that the law has never been discussed by the parliament in a plenary session, and to the best of the authors knowledge its discussion in the commission has never been rescheduled.

During the following coalition government between the M5S and the Centre-left, the Senate approved the creation of a new investigative parliamentary commission on working conditions in the country. Amongst the numerous attributions, the commission was tasked with assessing "the entity of labour exploitation", "the incidence of the presence of companies controlled, directly or indirectly, by organised

crime" and "the presence of spurious cooperatives inside the national boundaries" (XVIII Legislatura, 2019, art.3, c.1). Meanwhile, as a deterrent to fiscal evasion it also tried to introduce a "reverse charge" VAT system for labour-intensive contracts happening on the site of the client firm and using the clients' tools and means (Law Decree 124/2019). However the proposal was subject to the approval of the European Commission which did not agree, on the grounds that the measure was disproportionate to the goal of preventing fraud and possible ineffective, while representing an excessive administrative burden for the firm (COM(2020)243). Despite this obstacle, some correctives were still introduced by the decree, in particular an obligation for the client firm to check that the contractors' compliance with fiscal obligations.

The Draghi government did not bring about modifications in the regime of fraudulent intermediation but it did intervene again on the regulation of subcontracting in public contracts, again towards the direction of a liberalisation. The reform responded - again - to the pressures coming from the European Union to eliminate the limit to subcontracting in public contracts. In particular, already in 2019 two sentences of the European court of justice (Judgments 26.9.2019 n. 63/2018 and 27.11.2019 n. 402/2018) had declared the measure in contrast with the art. 71 of the European Directive 24/2014, while the Commission had started an infraction procedure (2018/2273) in 2018 (XVIII Legislatura, 2020). Inside the government the proposal for the liberalisation came from the Lega, which in the distribution of the charges within the coalition government had obtained the Ministry for Infrastructures and which had already tried to move in the direction of a total liberalisation during the coalition government with the M5S. The proposal of the Lega pushed for the total eliminations of the quantitative limits to subcontracting but also for the introduction of a criteria of adjudication that would favour the participant who could offer the lowest

price in the adjudication of the call for tender – instead of the criteria of the *offerta economicamente piu vantaggiosa* (most advantageous economic offer) which is a broader criteria that includes the evaluation of quality over price and allows public bodies to inquire with the participants in case that their offer is judged excessively low. The proposal elicited a strong negative reaction of other members of the coalition government and of the unions, which led to a compromise solution (Linkiesta, 2021): eventually the limit was eliminated but the law introduced an equality of treatment clause in subcontracting chains linked to a public contract. This clause, however, referred only to secondary subcontractors in relation to primary ones (not to the client firm) (Law 108/2021).

The commission issued its report in 2022. One of the chapters of the report was completely focused on the issue of fraudulent intermediation through fictitious cooperatives. Despite the partial limitations in the assessment of the nature and extent of the issue, that were explored through the first three chapters, the report frames the practice as a strategy "to extract profit from labour" (XVIII Legislatura, 2022, p. 32). It also denounces the deficiency of the norm on solidarity and argues for the introduction of the parity of treatment clause.

The report of the commission could open a window of opportunity for the re-regulation of labour-intensive subcontracting, although it does not prescribe a limitation of the options of labour-intensive subcontracting as strong as the one envisioned by the law proposal 1423. While it is unclear how the election of the current right-wing government will influence the discussion, it seems that the option of regulating fraudulent intermediation by limiting labour intensive subcontracting has been reintroduced in the political debate.

6.2 Not only Governments: Enforcement Agencies and the Jurisprudence

Besides governments, other parts of the state intervene in the maintenance of institutions, and in this case not only courts but also enforcement agencies. In fact, while the role of the latter in the maintenance of institutions expresses itself mostly in their enforcement activities on the ground (Dewey & Di Carlo, 2022; Dewey et al., 2021), Inspectorates can, to some extent, also influence rule making. As formally independent authorities they can produce interpretations that can be used by other actors to argue for re-regulation and they issue guidelines to steer the interpretation of regulations and laws.

There is evidence that the Italian labour inspectorate tried to oppose attempts at forbearance and to preserve the spirit of the norms. Besides indicating fraudulent subcontracting as a practice of high social and economic disvalue (*di maggior disvalore sociale e economico*) (INL, 2021a) the Labour Inspectorate, especially after its re-organisation in 2015, has tried to make use of its interpretive role to overcome enforcement obstacles and support an extensive interpretation of the law. In particular it has issued operational guidelines that tend to strengthen the applicability of the offence "somministrazione fraudolenta" by suggesting that "resorting to an illicit contract – and, therefore, to intermediation outside of the limits set by law – is in itself a symptom of a fraudulent behaviour as intended by the law [Note of the author: the law on somministrazione fraudolenta], because it eludes obligatory norms set by law and by collective bargaining" (INL, 2019a) arguing that the evasion of contribution and of the quantitative limits to agency work should already be considered the indication of the willingness to cheat the system. Moreover, it has argued that even when the company is not in general economic hardship, the economic advantage derived from the illicit contract can be proved by showing that the client company was not able to cover personnel costs through its declared revenue (INL, 2019a).

On another front, the Inspectorate also tried – interpretatively – to limit the obstacles to the inspecting activities created by certifications, by arguing for example that the certification should not be considered a valid document when there is evidence that it was issued by a clearly illegitimate or non-representative body (INL, 2018a, 2019b).

Besides, the Inspectorate, also the courts offered interpretations that contrasted deregulation tendencies. Despite the oscillations of the relevance of the topic in the public and political sphere, the issue of the individuation of the border between subcontracting and intermediation and of the correspondence of the employer with the user of the labour effort has never been ignored by the jurisprudence and by labour law experts, who have continued to produce a large body of analyses and pronouncements. There is evidence that the jurisprudence has largely protected the ban of labour intermediation even after its formal abolition by transporting its spirit into the interpretation of the following laws (Ballestrero & De Simone, 2019) and that constitutional court has been increasingly attentive to the determination of the actual employer in the employment relationship looking beyond the existence of fictitious companies, at the indirect modalities in which clients can exercise organisational power and at the level of integration of the contracted activity in the production cycle (Bellavista, 2022). The Court of Cassation has issued the judgment that strengthens the solidarity clause and the clients' responsibility for the payment of social contributions, by arguing that two-year period of limitation that applies to workers who want to claim missed wages against the client firm does not apply to social security authorities, which instead have up to 5 years to demand the payment of pending contributions (INL, 2019c). Before that, it had also confirmed the extended applicability of the solidarity clause to the full subcontracting chain (INL, 2018b). Lastly, the jurisprudence has also recently pronounced itself in a way that reduces the

fiscal advantages of fictitious subcontracting, by revoking the discounts on taxes obtained through the declaration of the contract as a contract for services (Gavelli & Sirri, 2021).

6.3 The other Actors of the Industrial Relation System

Besides coming from non-governmental state actors, pressures for re-regulation have also come from the outside. This section discusses the influence of unions, employers' associations and cooperatives in the development of the new regime of labour intermediation.

6.3.1 Unions

Although the spread of segmentation strategies through fraudulent subcontracting is clearly a strategy aimed a weakening workers organisational power, the structure of Italian unionism itself ends up feeding into this segmentation (Piro & Sacchetto, 2021). In particular, the sectoral structure of Italian unions translates in segmented representation inside the workplace. Workers hired in subcontracting companies are formally attributed to different unions than those hired by the client firm, which can feed into divide and rule strategies, especially when translated into internal conflicts between different sectoral unions about the attribution of responsibility and membership (Campanella, 2020). Moreover, confederal unions – with some territorial exceptions – were initially slow in reacting to the spread of labour-intensive subcontracting preferring to opt for defensive strategies in favour of core workers. This absence opened a space of opportunity for the consolidation of so-called autonomous unions, that have become, with time, protagonists of organising efforts at the bottom of subcontracting chains. Grassroots unions engage in more radical and political action, and while showing movement-like characteristics they have also engaged in on-site bargaining, although not necessarily with universalistic outcomes as often the agreements are applied only to members (Piro & Sacchetto,

2021). In time, traditional confederal unions, faced with the intensification of vertical disintegration and with the increase in the intensity of conflicts, tapped into their ideological resources and also intensified their efforts at organising peripheral workers. Finally, there is evidence that migrant workers themselves have become increasingly active and promoted forms of plant organisation that are not necessarily framed inside broader organisational structures (Piro & Sacchetto, 2021). Despite the intensification of organising attempts, the fragmentation of actors and strategies seems to represent an obstacle to overcoming segmentation. As Piro and Sacchetto (Piro & Sacchetto, 2020) show, organisational efforts develop also according to how the unions themselves understand the role of subcontracting in organisational processes. Some unions tend to conceive subcontracting as a natural and inevitable development and, therefore, choose compromise bargaining that aims at improving minimum conditions but does not challenge outsourcing logics. Other unions instead understand subcontracting as a divide and rule strategy that hinders the construction of solidarity and, consequently, unionisation. In this case, they tend to bargain for partial re-internalisation or for encompassing plant agreements, that while not eliminating subcontracting aim at flattening disparities. Yet, these attempts do not necessarily lead to the inclusion of subcontracted migrant workers as the unions have yet to develop a strategy to build a collective identity between different groups. Finally, grassroots unions consider the "appalto" more in terms of a strategic action point and as a place of convergence of broader social fights. Identification with the organisation is not only built against the employer but also against traditional unions that supported or failed at challenging reorganisation strategies. While this adversarial strategy allows for the creation of identification in the organisation and supports organising, it can also obstacle solidarity building at the plant level amongst the workers.

These conceptual and strategic differences are also reflected in union strategies at the national level. While grassroots unions are mostly excluded from centralised political debates, confederal unions seem to oscillate between acceptance and opposition to vertical disintegration. It is in particular the CGIL that over the years has promoted a strategy of re-composition and reduction of cost-differentials, and that has recently campaigned the most for the re-introduction of a statutory parity of treatment clause. This is consistent with a logic of accountability of the client firm and of compression of the economic advantage of subcontracting to reduce incentives to vertical disintegration. However, its proposal for the reintroduction of the parity of treatment prescribes its application only to contracts for the externalisation of parts of production and subordinates it to the existence of an economic dependence between client and subcontractor (Bellavista, 2022). On the other hand, the union also proposes to tighten the definition of a "genuine" contract in a way that strengthens the principle of correspondence between the employer and the user of the labour effort, proposing a number of criteria that could be used to investigate the nature of the employment relationship (CGIL, 2016). The proposal seems to envision an equilibrium where the legitimacy of the externalisation of services as an organisational strategy is not under discussion, while attempts at regulation focus on its modalities and on the strengthening of sectoral bargaining. However, even in sectoral bargaining results have been uneven. In some sectors like logistics, confederal unions have managed to improve conditions set by collective bargaining by introducing a solidarity clause within the logistic chain and imposing to the client an obligation to notify a change of contract and an obligation to retain the previous workers in the change[vii]. However, they were only able to bargain this obligation for companies within logistics chains and not as a generalised rule applying to service provision in every sector. On the other

[vii] Art. 42 Ccnl logistica, trasporto merci e spedizioni

hand, confederal unions have also settled for low-cost wage setting, like in the case of the Multiservizi contract. These choices seem to fit into a general strategy of adaptation to labour market flexibilization. In fact, when it came to the de-regulation of the Italian labour market, confederal unions move from outright opposition to adaptation – again with the CGIL occupying a in-between position - working more towards limiting negative outcomes and contain economic advantages for firms than to elimination (Pedersini & Dorigatti, 2021).

6.3.2 Employers' Associations

Although employers' associations have been, in general, in favour of the de-regulation of subcontracting and opposed to the introduction of additional administrative procedures for the purpose of control or prevention - that are normally framed as excessive additional costs – they have also taken positions that would suggest an interest in containing extreme forms of deviation from the norms.

Recently, political economists have argued that employers' associations in Italy have not been necessarily in favour of a radical deregulation of collective bargaining (Regalia & Regini, 2018). In fact, Confindustria, has repeatedly sought out a coordination with the confederal unions to support the role of centralised collective bargaining. Bulfone and Afonso (Bulfone & Afonso, 2020) have argued that the support for encompassing sectoral bargaining derives from the nature of the membership Confindustria, which unlike in other countries is composed by a majority of SMEs. SMEs, they claim, do not necessarily have an interest in an intensified form of decentralisation. According to them, Italian SMEs have formed a preference for centralised bargaining that derives from the desire to reduce transaction costs, limit industrial conflict and prevent cut throat competition, especially with "pirate" contracts. This preference has been reinforced after the withdrawal from the organisation of some of the largest companies in the country – FIAT first and later

Luxottica, Marcegaglia (Meardi, 2018; Pedersini & Dorigatti, 2021) – a development which supports the idea of an increased diversification in employers' interests, with the (few) bigger companies increasingly acting on their own (FIAT left the association, opted out of collective bargaining and national arrangements and created a separated bargaining system for the firm) while the smaller ones re-group along more defensive lines.

A separate chapter is that of the approval a minimum wage law to which both employers and unions have been traditionally opposed. If unions have been withholding support out of fear that it would be exploited by employers to disempower collective bargaining (Pedersini & Dorigatti, 2021) there is evidence that employment associations have been resisting its introduction on the very ground of safeguarding the role of bargaining, out of fear that the introduction of a mandated minimum wage would undermine their position in the bargaining system and threaten their existence (Bulfone & Afonso, 2020). However, recently, a possible way to the implementation of a minimum wage has opened, as various actors have shown their support to a statutory extension of the minima set by sectoral collective agreements - possibly with the identification of a minimum wage floor – to be framed inside a law on representativeness. In particular, the president of Confindustria, while still arguing that the minimum wage floor could be potentially damaging for collective bargaining (Conte, 2022) opened to the introduction of a minimum wage "for fragile workers" and in order to fight the extension of pirate contracts (Fubini, 2022).

Besides the developments in industrial relations politics, there is evidence that employers' associations have recently engaged in the negotiation of the extension of bargaining coverage to limit unfair competition both in the cleaning and in the public sector (Pedaci, Braga, & Guarascio, 2018) where they have reached some local agreements with the unions and the municipalities on the application of reinforced

selection standards in public procurement. Moreover, the emersion of "excellent" cases of workers exploitation has pushed some sectoral organisations, especially in the logistics sector, to sign various non-binding local "pacts for legality" (CNA Bologna, 2023; Legacoop Romagna, 2022). However, the pacts are not a new practice. Local actors like municipalities have resorted to pact as a form of soft incentive before without obtaining significant results.

Finally, there is also evidence that employers' associations have variously shown support for the implementation of less restrictive migration policies, a support which has further increased after the pandemic because of the reduction of migrant influxes which has led to a labour shortage. If the preoccupation of employers is to bring migration levels back to pre-crisis levels (Centro Studi Confindustria, 2016) they also openly argue for more integration, in a language that challenges the "wanted but not welcome" rhetoric and defines migrants as "resources" (Baraggino, 2019; Picchio, 2016). In fact, they call for the extension of legal entry quotas and for ex-post regularisations. These positions were also exposed in parliamentary auditions in the occasion of the presentation of a legislative proposal to revise migration policies, when several employers' associations expressed their support for a revision of migration laws (the full record of the consultations can be found at the official webpage of the campaign "Ero Straniero" https://erostraniero.radicali.it/iter-in-parlamento/).

Although their support for the de-regulation of the regime of intermediation shows that employers did indeed push for the expansion of options for informal cost-containment strategies, and although some of the developments presented here might be more aesthetic than concrete, the emersion of employers' associations initiatives against more severe deviations suggests that there might be a collective interest forming to at least contain cut-throat competition, and settle at an equilibrium that is less disruptive.

A separate discussion is necessary when it comes to cooperatives. As we said cooperatives are particularly affected by the spread of fraudulent intermediation through fictitious companies, because this model of cost-containment through hidden intermediation threatens their position in the labour market and their own identity. Besides this, cooperatives are also threatened by the reputational damage deriving from the equation of cooperation and illegality. Therefore, the central cooperative associations have been very active in campaigning against fictitious companies.

The representation of cooperatives is organised along several groups divided along political lines, with the majority of the cooperatives affiliated to the three biggest organisations – Legacoop, Confcoperative and AGCI. Since the 1990s the three main organisations have engaged in efforts at coordination, first by agreeing to a joint model of industrial relations, which led to the joint signing of the currently most relevant collective agreements, and then in 2011 by creating an umbrella association, the Alleanza delle Cooperative Italiane (ACI) which currently covers 90% of the cooperatives operating in the country (see the ACI website https://www.alleanzacooperative.it/). In 2015 the ACI starts a campaign for a "clean economy" and presents a legislative proposal to the parliament named "Disposizioni per il contrasto alle false cooperative" (Provisions for the fight to fake cooperatives). Besides supporting interventions aimed at limiting downward competition and fighting the economic infiltration of organised crime, the proposal also recognises the necessity to revise internal processes of governance, and in particular to strengthen the democratic participation of members (XVII Legislatura, 2016a). Many of the provisions suggested by the ACI were incorporated in following law proposals and government interventions (Bellavista, 2020), including the provisions to strengthen sanctions for fictitious cooperatives and contrast the practice of the single administrator discussed in chapter 4.

6.4 How much Rule Breaking?

This effort at tracing parliamentary debates confirms again the importance of constraints set by institutional settings. Governments wishing to support the deregulation of the labour market in general, and of labour-intensive subcontracting in particular, put a lot of effort in legitimizing their efforts. They enrolled experts and built a framework of justification that relied on the positive narrative of modernisation and efficiency and de-politicised certain aspects of the reforms. However, alternative narratives have emerged that supported different kinds of institutional equilibria leaning towards the partial re-regulation of intermediation. These narratives were supported by other organisational actors, like unions or even cooperatives, wishing to defend their legitimacy and the role that they have built in the system. They were also externally supported by rule enforcers, showing how different part of the state can also intervene *in the legislative act* either by supporting a certain definition of the interpretation of the law – for example through the production of interpretive documents – or by trying to set priorities though their reporting activity. These resources can be used by other actors to strengthen the legitimacy of their claim, as proof of the validity of their position face to society and to the economic system. However, it seems that some level of misclassification is tolerated by a large majority of economic actors, supporting the idea that the Italian competitive strategy is currently based the tolerance of a certain level of illegality to allows for labour cost-containment, much like it was in the post-war years.

All in all, it emerges that the debate over the institutional system of industrial relation is not just a debate over regulation but also as a silent discussion over the amount of rule breaking that can be tolerated. It is not just about *what*, it is about *how much*. In this sense, rule breaking confirms itself as a fundamental part of the process

of institution-building in regulated labour markets, on that needs to be further explored to fully understand the dynamics of contemporary capitalism.

Chapter 7: Conclusions

As evidence of the spread of illegal business practices in regulated economies increases, so does the preoccupation of social sciences with the theorisation of the role of illegality in modern capitalist economies.

The observation that firms in advanced economies worldwide are increasingly resorting to strategies of labour subcontracting that are fraudulent or illicit and therefore criminalised by the legal system is puzzling in many ways, especially for institutionalist accounts of labour markets that consider rules and institutions as pillars supporting market exchanges in modern capitalism. If we think of markets as ordering processes that rely on institutions to solve coordination problems, the social order that they create should be fundamentally challenged by systematic decisions to opt-out, eliciting the reaction of other market players and especially of the state, in its role of guarantor of the social order.

While opting out in the form of rule *avoidance* or *evasion* fits neatly in explanations of gradual institutional change, business strategies that are clearly *illegal* and can even configure a *criminal* offence or behaviour constitute a worse threat to market stability, and their economic sustainability is not necessarily self-evident. This dissertation contributes to the empirical and theoretical effort of understanding how these practices become a viable business strategy and overcoming the analytic distinction between the legal and illegal to understand the systematic connections between these two faces of economic action.

The analysis of the Italian case confirms that even in a regulated economy, a certain level of rule-breaking can be tolerated and even legitimised. But, more radically, illegality can become fundamental to supporting an economic model that tackles competitive challenges through cost reduction. Fraudulent subcontracting practices that entail high levels of exploitation are just the most extreme expression of

cost containment practices that are widespread and tolerated. The latter is widely used in the private sector in the absence of alternative industrial strategies. But they are also used in the public sector, where the state itself - in its role as an employer – resorts to borderline organisational arrangements to respond to budget cuts while, at the same time, abdicating to its role of regulator of labour market exchanges by outsourcing the governance of placement to private actors. This dissertation shows that besides being the outcome of the strategies of powerful market actors capable of pressuring service companies into rule-breaking to stay in the market, the expansion of illegal practices derives from state inaction and its active promotion of restructuring practices based on labour-intensive subcontracting. The state does not necessarily encourage extreme cases of rule-breaking, but it also fails at adequately regulating them because this would obstacle predominant competitive strategies and business models. This conflict of interests generates contradictions in the design of labour market policies that prevent effective rule enforcement.

Analytically, I reached this conclusion by looking at the interpenetration point between legality and illegality in labour-intensive subcontracting. To understand how the Italian labour market is organised and how it came to be organised this way, I studied the interfaces of legal and illegal practices inside the employment and commercial sides of triangular employment relationships. The study of these interfaces was nested within that of the legal framework that defines the borders of legality and illegality in the subcontracting of employment, which allowed me to observe how the state intervenes in the regulation of labour-intensive subcontracting arrangements.

Looking at interfaces between legality and illegality was theoretically and empirically relevant: it was crucial to understanding why 'market discipline' is not working and provided further explanations for how illegality is integrated into legal markets. Moreover, this approach allowed me to consider the relationality of concepts,

moving back and forth between definitions and practices to understand how the category of "fraudulent subcontracting" is built through rule enactment and interpretation by the actors involved. Most importantly, it allowed me to re-conceptualise the issue of fraudulent contracting into one of *misclassification* and to further develop the concepts of *intermediation* and *forbearance* in a way that enables thinking of "the illegal as part of economies" (Gregson & Crang, 2017), not simply as a parasitic phenomenon at the fringes but as a part of the capitalist process of accumulation.

7.1 Misclassification, Staging and Fictitious Companies

The primary outcome of this re-conceptualisation effort was to single out *misclassification* as the primary mechanism that supports the redrawing of the firm's boundaries. If cost containment is dependent on the severing of the employment relationship through the redrawing of the firm's boundary, it is the misclassification of the actors and arrangements involved that supports vertical disintegration for social dumping. Misclassification is a broader concept than fraudulent contracting. Besides including practices that hide the actual nature of the employment relationship and organisational arrangements, it also includes the effects these arrangements have on other market players by obfuscating their role in the labour market. Moreover, misclassification as a sociological concept offers the possibility to unveil the process that realises social dumping rather than putting the focus on the static legal outcome and focusing systematically on structures and actors that intervene in this process.

To become sustainable, misclassification requires developing specific techniques to conceal the actual nature of the organisational arrangements at hand and create superficial plausibility of rule-abidance. Through my research, I have singled out *staging* as a technique of misclassification that describes organisational efforts to preclude the necessity of conformity to the rules. Firms involved in fraudulent

subcontracting engage - to a larger or smaller extent - in setting up a stage that allows them to disguise irregularity by creating a façade of regular behaviour, enacting a *fictitious* organisational form. Within these arrangements, the contract for the provision of services can be considered a performance that hides the factual circumstances of the employment and contractual relationship.

The most elaborate versions of staging include the creation of *fictitious companies*. Fictitious companies are legal entities that disguise the actual employer and hide the nature of the commercial interaction between the economic actors involved. However, the fact that the form is fictitious does not imply that there is no actual organised economic activity behind the staged organisational structure. On the contrary, the primary role of the actors behind the fictitious companies is to bring the necessary workforce to the service or production process at lower prices than those of the legal labour market exchanges. In other words, their primary function in the organisation is to intermediate cheap – predominantly migrant - labour for the client company. *Fictitious companies,* therefore, can be defined as companies created ad hoc for hiding labour intermediation. Besides procuring labour, informal intermediaries contribute to misclassification by reproducing workers' vulnerability inside the employment relationship. The higher the vulnerability, the lesser the need for the employer to secure workers' goodwill and the lower the probability that the worker will expose the fraudulent arrangement.

Yet, misclassification is not just an issue of fictitious companies. Subcontracting arrangements that do not involve the use of fictitious companies can also realise a form of misclassification. I got to this conclusion by systematically thinking about *what* is achieved through vertical disintegration and *how*. Eventually, the contraposition between fraudulent subcontracting achieved by creating fictitious companies and the operation of other labour-intensive subcontracting arrangements confirms that

fictitious companies are not a deviation from standard organisational practices but rather the most elaborate expression of a systematic social dumping strategy.

Since labour-intensive outsourcing has become the predominant cost-saving organisational strategy, companies offering labour-intensive services compete on their ability to provide a lower price rather than a better service. The incentive of the subcontracting company to intensify practices of risk externalisation to workers derives from the dependency of the subcontractor on the client firm and from high levels of competition in the sector. Competition is further enhanced by the spread of informal intermediaries hiding behind fictitious companies, which offer better cost reduction opportunities and an arrangement where the client company keeps tighter control of the labour process. Under these conditions, it becomes more convenient for service companies to renounce management ambitions and focus on the administration and coordination of the work supply while executing the directives of the client firm. When this is the reality of the employment relationship, a situation is created where, much like in the case of the creation of fictitious companies, the commercial contract misrepresents the relationship between the commercial partners and between the companies and the worker. The worker is misclassified in the sense that its bond to the client firm - and, therefore, the triangular nature of his employment relationship - is not recognised. On the other side, the role of the service company in the employment relationship is modified since its business model is transformed from the provision of services to the mobilisation of labour. This is true even in situations that do not entail high levels of exploitation and where the primary employer is the state and not a private company. Misclassification supports the firm's reorganisation and is so widespread that labour-intensive (sub)contracting primarily operates by breaking the rules.

If we do not treat illegality as an exception but as a systematic feature of reorganisation processes, it is also possible to see its structural outcomes. While challenging the institutions of the employment relationship, boundary-making strategies also fundamentally alter the operation of the labour market. The modification of the business models of service companies means that the service they provide increasingly overlaps with that of staffing agencies, leading to the undetected expansion of labour market intermediation. The other side of the coin to vertical disintegration is the expansion of a market for labour intermediation hidden behind labour-intensive subcontracting.

7.2 A Market for Intermediation Services

The expansion of misclassification through labour-intensive subcontracting can be understood as part of a process of re-privatisation of labour intermediation that supports radical segmentation. This process led to creating a veritable market for intermediation services catering to the demand for cheap and vulnerable labour and populated by formal and informal actors. In this market, actors with state-sanctioned authorisation - like staffing agencies - compete with informal intermediaries and with service companies. In their drive to redefine the company's borders, firms chose alternatively between these service providers, factoring in the costs and risks involved. Through intermediation, the employer can organise work to ensure managerial control while opting out of the institutions of industrial citizenship. In this system, illegality is not an exception, but it is fundamental to support an economic model based on cost containment.

Recognising the nature of labour-intensive subcontracting calls to expand our understanding of the role of intermediaries beyond the flexible provision of a vulnerable workforce to match fluctuating business volumes. When misclassification is the logic of the organisational arrangement, the role of intermediaries evolves to

offer companies another service, that of *interposition*. The term, borrowed from legal langue, suggests the physical apposition of an obstacle between two elements. In this case, it entails introducing a second employer within the employment relationship that severs the bond between the company and the worker and creates an arrangement that allows the transfer of costs and responsibilities. The creation of a (hidden) triangular employment relationship should not be conceived just as an outcome of misclassification but as part of the service offered to companies by intermediaries in regulated labour markets.

Finally, reframing the issue of fraudulent subcontracting into one of misclassification and labour intermediation also allows us to refine the terms to describe the impact of the reorganisation on the market.

Misclassification and the creation of a market for intermediation emerge as essential drivers of labour market segmentation in the Italian economy. The covert spread of intermediation has created specific channels through which a large segment of the labour force can access work opportunities, directing vulnerable workers into lower-quality and exploitative jobs. Inside this group, a stratification emerges between those workers who can access established service companies and those who find job opportunities through intermediaries hiding behind fictitious companies. While the latter gives mostly access to highly exploitative jobs, the former can provide decent working conditions, although coupled with varying levels of economic exploitation and insecurity.

7.2.1 The Role of Consultants

If the function of intermediaries is to offer solutions to some of the coordination problems of the labour market, the market for intermediation services also needs to be coordinated. Therefore, when we consider the provision of labour-intensive externalisations as part of a market for labour intermediation services, consultants are

a fundamental element of the architecture of this market and support its social organisation.

It is well established that consultants provide the necessary knowledge and expertise for pushing the boundaries of legality in border-making. However, the task of consultants can extend further to creating and supporting the connection between the actors involved in the subcontracting agreements. Since the market functions by breaking the rules and boundaries, consultants answer coordination problems typical of illegal markets. In particular, they help to overcome the problem of lack of transparency deriving from the necessity of keeping agreements secret or camouflaging them. In addition, consultants can broker the connection between firms wanting to cut costs through externalisations and actors providing the means for creating the externalisation. In the case of fraudulent subcontracting, this activity of brokering new connections also offers the fundamental support needed for the creation of a certain amount of trust to support the transaction: consultants reduce the uncertainty of the interaction between actors that do not know each other by providing information and vouching on the trustworthiness of the partners.

7.2.2 Misclassification and Cooperatives

The effects of the spread of misclassification on the structure of the labour market are even more profound if we consider its impact on a specific form of service company, that of the cooperative. Besides transforming the role of service companies in general, the new competition structure challenges the nature of the cooperative as an institution.

The gradual transformation of cooperatives is an underplayed element of the liberalisation of the Italian economy. Historically, cooperatives have played an important economic and social function, allowing marginalised workers into the labour market at better working conditions than the market ones. As they grew in dimension,

they also became core market players and became fundamental in the provision of public services. However, as the cooperative grew, it also sacrificed part of its democratic and mutualistic nature. Growing cooperatives gradually replaced mutuality organisational principles and practices with functional structures similar to those of capitalist companies. And while established cooperatives do not fall under the definition of *fictitious companies*, it is clear that their status as cooperatives becomes increasingly ambiguous since workers are less and less involved in the co-determination of the organisation of the production process.

The loss of power of service providers in the market contributes to the displacement of the mutualistic nature of the cooperative in favour of profit-seeking organisational strategies that involve the provision of labour intermediation services. Like in the case of other service companies, their participation in the market for intermediation services is obscured by the lack of recognition of the nature of the triangular employment relationship that is realised in most labour-intensive subcontracting agreements. However, in the case of cooperatives, the representation of the organisational agreements is even more distorted by the fact that their new hybrid nature, divided between cooperative and company and between the service provider and intermediary for the lower end of the labour market, is not properly reflected in the policies and institutions designed to regulate them.

7.3 Misclassification, Forbearance and the State

Besides showing how illegality can be structurally integrated into regulated labour markets, this dissertation also contributes to the redefinition of the role of the state and of partial enforcement in regulated economies. If the practices of employers and intermediaries make misclassification possible by reproducing vulnerability and creating plausibility, the state also has a responsibility for the spread of illegal practices. While it is assumed that in regulated economies the state has an interest in

upholding institutions, I show that the spread of illegality in the Italian case is the (also) the outcome of the purposeful partial enforcement of the norms. In fact, I argue, forbearance can contribute to failures in rule enforcement.

Partial rule enforcement is a strategy that allows governments in regulated economies to obtain flexibility that cannot be openly bargained, and the Italian case is an example of this dynamic. Starting from the 1990s, Italy took a "low-road" to economic development and engaged in a process of deregulation of the labour market that was not compensated by investments in productivity. This strategy based on the compression of labour costs was supported by the arrival of a large number of migrant workers and by the tolerance towards the spread of illegality at the lower end of the labour market. For a regulated market like the Italian one, the creation of labour market segments through partial enforcement was a viable solution that allowed industries to offer cost-containment opportunities that did not challenge excessively internal social equilibria. Moreover, I argue, the weak implementation of public placement services made the Italian state dependent on private intermediaries to support the operation of the lower end of the labour market. Informal intermediation became an indispensable channel of placement for migrants working in the service sector.

But the level of deregulation necessary to support this model could not be openly bargained. In the case of the regime of intermediation, forbearance was realised through the de-regulation of the regime of labour intermediation, through the weakening of the enforcement system and through incomplete efforts at re-regulation. The sabotage of institutions and enforcement practices was a fundamental part of the flexibilization of the labour market.

7.3.1 Sabotage Through the Greying of Institutions

Incentives for the expansion of labour-intensive subcontracting are created in the design and implementation of regulatory institutions, which are also key determinants for generating opportunities for business practices of illegality in the management of labour. Institutional frameworks set the conditions in which illegal business practices become feasible and coherent 'management practices' while sectoral regulatory differentials make risk transfer through subcontracting possible. Labour-market regulation mediates the calculus underlying restructuring (partly by offering incentives, partly by erecting barriers) and the consequences of restructuring for labour. The regime of regulation of intermediation is at the core of these calculations.

That subcontracting falls under the domain of labour law is less self-evident than other forms of outsourcing, like agency work. Conceptually and legally, agency work and subcontracting are treated as different entities, the first describing a modality to externalise labour, and the second the organisational choice to interrupt the in-house performance of activities and start to buy them in the form of services performed by another company. However, if we understand labour-intensive subcontracting as a borderline practice between the two, its regulation becomes central to the architecture of labour markets. In fact, one of the possible limitations to these arrangements derives from the definition of what labour intermediation is and what it is not and of what subcontracting is and what it is not.

The sociology of illegal markets has shown that grey zones are created through practices of contestation around whether the object of the exchange and its modalities are to be considered legal or not. This study shows that contestation can also concern the classification of the object of the exchange and, therefore, its allocation to a specific regulatory regime. It is not just about deciding whether intermediation is legal but also classifying certain behaviours as intermediation. The boundaries between legality and

illegality can shift depending on the willingness to classify a specific behaviour as belonging to a class of behaviour that is defined as illegal. This change can be supported or hindered by understanding such behaviour as legitimate or illegitimate. Therefore, the creation of loopholes and uncertainty can be used by policymakers to support covert change and to indirectly legitimise some forms of illegal behaviour through non-enforcement and tolerance.

The Italian case is an example of this dynamic. The reform of the Italian labour market was accompanied by a set of minor reforms hidden in the folds of a more overt process of liberalisation that included the legalisation of private intermediation through agency work. What happened to the institutional regime of intermediation has both the character of *layering* and of a *drift*: on the one hand, change was politically promoted as part of a process of de-regulation, leading to various reforms that layered on top of the existing norms and added new complexity to the regime of labour intermediation; in part, it was the result of the unwillingness to address the shortcomings in the implementation of the law on illegal intermediation. The weakening of the regime of labour intermediation is coupled with a migration regime that reinforces the vulnerability of migrant workers and adapts them to market needs. In particular, this vulnerabilisation is obtained through backdoor entry policies that condemn migrants to enter the labour market irregularly, combined with strict regularisation rules that make migrants dependent on their employer to change their status.

7.3.2 The Connection Between Forbearance and Failure

While the sabotage of institutions can be used to pursue certain policy goals, forbearance can lead to enforcement failure when different policy aims linked to the same set of norms contradict each other. In fact, I argue, the state can fail in the containment of extreme cases of rule evasion as a consequence of its encouragement

of vertical disintegration and of the tolerance of rule-breaking in the use of labour-intensive subcontracting as a competitive strategy.

In the case of Italy, although the dumping of the costs on migrant workers meant that higher levels of exploitation could be tolerated by the system, the spread of fictitious companies challenged other market players - like service companies and cooperatives – weakened state budgets and brought about a threat of infiltration of criminal organisations in market structures. The necessity to react to these threats while also preserving the possibility to exploit cost differentials led to the set-up of a mix of policies and regulations that are partly contradictory and scarcely effective. One can observe the attempt to create a specific policy equilibrium regarding intermediation through subcontracting, where "softer" cases of fraudulent intermediation became implicitly tolerated or normalised, while tolerance for extreme deviations receded. However, this set-up is inherently flawed because the maintenance of this equilibrium means that some measures that could improve the ability of the state to control extreme cases of fraudulent intermediation are not implemented. Partial enforcement, in this sense, can be characterised as a mix of governance and failure, where failure derives not from a structural impossibility to enforce the rules but from the contradictory nature of the interests of the market players and of the state itself.

The process of reform of the policy field that regulates labour-intensive subcontracting embodies this kind of contradiction. The analysis of the parliamentary debates shows how these contradictory interests substantiate themselves in the political process, as the relevance of different policy aims varies through time. Governments wishing to support the deregulation of the labour market in general, and of labour-intensive subcontracting in particular, enrolled experts and built a framework of justification that relied on the positive narrative of modernisation and

efficiency and de-politicised certain aspects of the reforms. However, alternative narratives have emerged that support different kinds of institutional equilibria leaning towards the partial re-regulation of intermediation. These narratives were supported by other organisational actors, like unions or even cooperatives, wishing to defend their legitimacy and the role that they have built in the system. They were also externally supported by rule enforcers, showing how different parts of the state can also intervene *in the legislative act* either by supporting a certain definition of the interpretation of the law – for example, through the production of interpretive documents – or by trying to set priorities through their reporting activity. These resources were used by other actors to strengthen the legitimacy of their claim as proof of the validity of their position face to society and to the economic system.

Eventually, what emerges is that the debate over the institutional system of industrial relations is not just a debate over regulation but also a silent discussion over the amount of rule-breaking that can be tolerated. It is not just about *what*; it is about *how much*. In this sense, rule-breaking confirms itself as a fundamental part of the process of institution-building in regulated labour markets, one that needs to be further explored to fully understand the dynamics of contemporary capitalism.

7.4 Misclassification and the Employment Relationship

Uncovering this dynamic also allows us to better understand the mechanism through which rule-breaking impacts on the employment relationship. By favouring misclassification strategies, the "greying" of the ban on intermediation contributes to the hollowing out of the status of "*employee"* in favour of a process of *private ordering* (Dukes & Streeck, 2020). In these employment relationships, the recognition of the rights attached to the SER becomes more of a private choice of the employer rather than something that is imposed upon the parties by rules implemented by bargaining institutions and guaranteed by the state.

Misclassification challenges the status rights of the worker in two ways, the more obvious one being the removal of the vulnerable worker from the reach of the institutions of the employment relationship through the creation of fictitious companies and exploitation practices.

The second one is more subtle and derives from the quiet acceptance of softer forms of labour intermediation and the subsequent failure to recognise the triangular nature of the employment relationship realised in the service industry. Workers involved in these covert triangular employment relationships are only partially covered by the protections of the SER and end up constituting a special status category of their own. Although subcontracted workers can be formal *employees*, workers' status rights in these triangular employment relationships are gradually depleted: their relationship with their "primary" employer is mediated by a commercial relationship which severs most legal bonds between the two, while their characteristics make them vulnerable face to a "secondary" employer whose main business strategy consists in bringing down the cost of labour.

This status change is reinforced by the displacement of the institution of the cooperative and the insufficient efforts to govern this change. The failure of the institution to protect the workers inside the employment relationship is due to the misclassification of the worker as a "member" of the cooperative. Cooperative members are not classified as *employees* because they are considered co-participants in the organisation and direction of the cooperative, ideally closer to a partner in an economic endeavour than to a dependent subordinate of a firm.

Yet, the displacement of the cooperative as an institution has gradually expelled workers from the management of service cooperatives. Legislators have not been completely blind to this transformation, and, over time, they have intervened to partly re-design the relationship of the workers with the cooperative by creating the hybrid

status of the "member worker" (*socio lavoratore*). Members who also work for the cooperative are attached to the institution by two contracts, one as a member and one as an employee. This intervention allowed linking the worker to some of the protections and guarantees of the standard employment relationship in terms of treatment, wages and even freedom of association. Yet, the status of member can override that of employee, in particular when it comes to the regulation of termination of the employment relationship. This kind of compromise protects the existence of the institution of the "worker's cooperative" as a third kind of economic organisation between public and private while trying to reduce incentives for its misuse. At the same time, it crystallises a different status for the workers involved, to which workers can be falsely attributed through misclassification - thus creating a special segment inside the workforce and the labour market placed somewhere in between the employee and the autonomous worker.

Finally, this outcome is reinforced by the fact that in the case of migrants, the outcome of the intermediation regimes interacts with strict migration rules that also erode their access to the institution of the employment relationship. The mixture of illegality and institutional vulnerability contributes to the solidification of market segments populated mainly by migrant workers and excluded to various degrees from status rights. The intersection between misclassification through illegal subcontracting and the greying of institutional guarantees realises a stratified zone of exception from employment protections.

7.5. Going Forward

This dissertation has shown that the study of advanced capitalist economies should always consider the space between the rules as a fundamental space of empirical exploration. When studying changes in capitalist economies, questioning should not

limit itself to how much the rules are strict or have changed but also to how much they are evaded and how much they are implemented.

I consider this work as an example pointing in that direction. But while the data that I have collected allowed me to draw a comprehensive picture of the outcomes of misclassification practices of market actors and market structures, this particular space between the rules could be further explored.

While this study had a focus that was more macro-structural in nature, the study of micro-practices could be furthered through a research design based on the interviews of workers involved in labour-intensive subcontracting arrangements and through the comparison between experiences in accessing the labour market of workers hired through fictitious companies and of those working in service companies. On the other side, the study of micro-enforcement practices could provide information about the coherence of labour enforcement strategies not just with policy aims but with guidelines set at the national level, providing an even better picture of the nature and role of partial rule enforcement in regulated economies. Moreover, micro-focused studies could allow us to make sense of how structured the Italian process of allocation of migrant workers to jobs has become. If a lot of studies argue that this process is predominantly spontaneous in nature and dependent on informal networks, the expansion of informal intermediaries might suggest that something has changed. The question, therefore, is how far the state has outsourced the governance of migration to market intermediaries. This kind of approach would overcome the limitation of the current study, which could not provide a focus on the full process of the allocation of the workers to the job, starting from their movement from the country of origin to that of destination, therefore remaining limited in its understanding of the politics of the state to attract enough migrant workers to match the offer for low-quality jobs.

Besides changing the focus, another way to develop this research further would be to introduce a comparison. Comparison would help to further test the generalizability of the concept that I developed or proposed to expand. For example, a sectoral comparison would provide us with information about possible differences in the dynamics of expansion and the logic of the use of misclassification in different productive arrangements under the same institutional framework.

On the other side, this effort could go in the direction of comparing different or similar forms of misclassification inside different institutional systems. As shown by Wagner and Shire (Wagner & Shire, 2020), misclassification is not a practice that is limited to the Italian case and comparison with other institutional frameworks could provide data to strengthen its conceptualisation.

As explained, the Italian case emerges as unique in the European framework because of the form that misclassification has taken inside its boundaries. When it comes to social dumping, fictitious companies occupy the place that in other European countries is taken by posting or agency work. It seems that in other states, employers have preferred to resort to institutional opportunities created at the supranational level by European market integration. In fact, it is widely assumed that it was the introduction of posting that weakened European industrial relations institutions the most by disembedding labour market transactions from national labour regulation. The Italian case, however, shows that similar structural opportunities for social dumping can also be built inside the national boundaries of regulated employment systems.

It is possible that this has something to do with different systems allowing for more or less space for rule-breaking, leading market actors to rely on external resources to create flexibility. However, it is also possible that similar misclassification dynamics remain hidden and, therefore, yet unexplored, calling for different kinds of

explanations. A comparison with an (apparently) different case would allow us to understand how institutional opportunities inform rule evasion but also how far, questioning whether there are other conditions that inform the final outcomes of misclassification on the labour market.

On the other side, as mentioned, there is evidence that misclassification through fraudulent subcontracting has been used in other non-European regulated labour markets – like, for example, Japan (Imai, 2011) - to hide labour intermediation. A comparison between these cases could also give us more information about how different institutional systems can produce similar outcomes while also overcoming the western-centric approach to the study of regulated capitalism.

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