

Corporate Governance: the Case of Banking

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1. Premise: establishing the concept of the corporation exercising credit

For the interpreter as for the framer of legislation, it is important to establish the concept of the legal entity under consideration, in our case the limited company, or corporation. For the interpreter, the concept of an entity is the rationale behind the rules, the principal standard for settling questions of interpretation and ensuring systematic treatment. For the legislator, the most precise definition possible of the entity to be regulated is the means of retaining control of the matter and ensuring the good quality of the law.

In the present case, the concept that must be established is that of the company limited by shares, a particularly complex entity that is of fundamental importance in market economies. Since its rise with the industrial revolution, in over two centuries the joint stock company has been the object of a wealth of legislation, of doctrine and of practical jurisprudence. The entity is articulated and differentiated in its manifestations, depending on sectoral needs and special codes. Thus together with the general law governing all corporations, we have a host of special sets of rules.

Here, the idea is to examine special banking legislation alongside general corporate law, to compare and contrast the general juridical concept of corporation with that that emerges from specific banking law.

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2. The standard of corporate governance for fixing the concept of the corporation

Of late, chiefly under the influence of the American academic community, the discussion of the concept of corporation has been conducted through the formula of corporate governance.¹ This is a formula that the legal community has taken over from economists and political scientists. It is worth noting that in the United States the separation of competence between economists and jurists is much less sharp than in Italy, especially when the object of discussion is the general theory and the concepts of the corporation. It is not the habit of the academic world to deal with such themes without a shared culture that approaches practical questions from a variety of angles and grasps them in various aspects.

The word governance, as applied to corporate theory, is a recent addition to legal language even in the US, and thus would appear to stand for a new idea, a new concept of the corporation. To my mind, the new currency of this somewhat archaic-sounding word represents the more precise expression of a standard for systematic treatment of the various forces that determine the management and administration of companies.

In this juridical context, the standard implicit in the term corporate governance conceives of the corporate power, seated in the board of directors, as the resultant not only of the rules of organization of the corporation as a legal person but also of other rules whose scope and importance enable them to influence the corporate structure in institutional terms. The sources of these rules are varied indeed, traditionally forming part of any number of legal codes: bankruptcy law, tax law, the law on financial markets and, to our present point, banking legislation: specifically, Italy's new 1993 Banking Law (formally, Legislative Decree 385 of 1 September 1993, the codified law on banking and credit).

Given these connotations of the term, corporate governance means neither the administration of the company nor its organization in the traditional, technical sense of corporate organs (i.e., the shareholders' meeting, board of directors, and board of auditors, as speci-

¹ I have dealt with these problems in *Argomenti di diritto commerciale*, Part III, "Società per azioni", forthcoming.

fied in the Italian Civil Code, Title V, Chapter V, Section VI). To the jurist, "corporate governance" can take on a technical meaning if it is helpful in grasping the political perspective of the institution of the corporation or company limited by shares in the overall framework of the legal order.

With this meaning, corporate governance provides the standard for ordering the interests institutionally lodged in the management and operation of corporations; lodged, that is, under rules that express their powers and arrangements in legal terms. This standard is also useful, especially from the standpoint of legislative action and institutional reform, insofar as it offers an opening to the disciplines of economics and political science.

With a different conceptual technique, this standard raises once again the less recent question of private interest and public interest in the governance of corporations. And it takes its place alongside the newer standard of social interest as a contractual or institutional interest in the concept of the limited company. However, in the formulation of corporate theory the standard of corporate governance is clearly preferable to that of interest, because it is broader in perspective, more analytical in its grasp of the discipline, and more strictly dependent on statute law; and because it represents a standard of reordering and definition that is neutral *per se* and not founded, like the standard of interest, on an ideological postulate. As employed by the interpreter, the standard of corporate governance does not preclude the ideological consideration of the social interest; but it does make it possible to place that concern suitably within the framework of statutory law, as the result of analysis and not the postulation of a reconstructive predicate.

3. The concept of the corporation in ordinary law

The legal concept of an entity reflects its function. The public limited company is an organizational tool which the law places at the service of individual initiative for the impersonal management of a commercial enterprise, an instrument that can bring together in a single decision-making center capital held diffusely by the general public. The recognition of private legal personality is a succinct formula whereby the law indicates the foregoing (Civil Code, Article 2331).

The key point for the purposes of the comparison made here is that the corporation is an organizational tool at the service of individual initiative. It acts in the business world as an economic agent, like the natural person, undertaking liabilities in its own name and responding with its own assets.

The condition of private legal person arose following the abrogation of the provision of the *ancien régime*, which was taken over in the Napoleonic codes as well, for conferral of "moral personality" by government concession. In Italy, this regime was retained in the code of 1865 but finally abolished with that of 1882 and replaced by provision for a court order recognizing the act of incorporation, at the voluntary request of the company.

With the institution of this modern recognition of the legal personality of any organization conforming to the characteristics laid down in general and abstract terms by the law, the legal order placed at the service of private commerce, for the purpose of profit, the faculty of organizing a moral entity, formerly accorded only to entities whose purposes were public, which is to say, moral.

Organizing as a legal person permits private individuals to undertake initiatives and expand regardless of the capacities of the individual entrepreneurs; this poses problems of the economic and social control of large corporations. There is thus an encounter, a dialectic, between the private interest, represented independently by the company under the provisions of private law, and the public interest, as specified by the law-making authorities in response to the exigencies of social control inherent in the existence of the corporate entity.

This, precisely, is the policy question, which was immediately perceived and amply debated at the time of the abolition of the old concession regime, which the evolution of the economy had made unavoidable. With abolition, in fact, the problem re-emerged, albeit from a different perspective. Under the concession regime, the limited company was defined as a moral entity under public law,² which undoubtedly clashed with the needs of the market and economic growth. With the end of this regime and the emergence of a broad consensus on the corporation's nature as a private entity, the question was reformulated as follows:

² R.T. Troplong, *Del contratto di società*, V. Hansi, Livorno, 1843.

"Two opposed principles contend for sway over the regulation of corporations. *First principle*: the limited company, like all other kinds of civil or commercial company, is a private law contract; the freedom of contract and the freedom to exercise all legally acquired proprietary rights provide the rules, respectively, for the constitution of limited companies and the regulation of their administration. *Second (contrary) principle*: Companies limited by shares are public law entities; their founders exercise a true social function, subject to the legislative constraints that regulate social functions, and when they are constituted their administration is the governance of a public entity that must be subject to the guarantees proper to the government of public affairs".³

The question arises in any and every legislative framework. In the United States, for example, it has been posed as follows: "Throughout much of the history of corporate law, courts and scholars have debated the nature of the corporation and, thus, the proper role of government regulation in corporate governance. This chapter summarizes two fundamentally different approaches to the nature of the corporation – the contractual theory and the concession (or regulatory) theory. It is important to understand these approaches because they have significant implications for public policies toward the corporation".⁴ In the terms of our present discussion, the dialectic between the private-law and public-law approaches, mirrored in the distinction between contractual and concession theory, develops the debate on the limited company, which is resumed in the discussion of corporate governance.

The independent status that corporations now enjoy, a status that arose, for those governed by general law, with the end of the concession regime, is defined in various ways in special sectoral legislation. And this applies in particular to banking. To grasp the sense of banking legislation, it is worth analyzing the juridical techniques whereby the corporation ruled by general law is placed in the position of an independent private party, despite its constitution as a legal person. This means studying the relative incidence of special legislation and of juridical technique, to ascertain the extent to which the common concept is retained or else to suggest a different solution for companies organized on the basis of public interest.

³ M. Pescatore, *Filosofia e dottrine giuridiche*, Bocca, Torino, 1879.

⁴ H.N. Butler and L.E. Ribstein, *The Corporation and the Constitution*, The AEI Press, Washington, 1995.

4. The juridical techniques that make the corporation an instrument at the service of independent private commercial initiative

These juridical techniques are of three kinds: *i)* the legal mechanisms that make the corporation dependent on the free initiative of private individuals; *ii)* the absence of administrative controls, and in particular of controls that impinge officially on the freedom of private parties to dispose of the corporation as they wish; *iii)* the essentially commercial nature of the concept, which makes it possible to bring regulation of corporations down to the law of contracts as an exclusively economic relationship, i.e. one that consists solely in economic interests.

These are the conditions which, once universal, lay the basis for the operation of the competitive market.

i) The corporation is an entity having legal personality, whose existence depends on registration, at a court's order, in the company register and whose regulation is essentially laid down in law. Nevertheless, the corporation remains an organizational tool at the service of individual initiative. As a private-law entity, the company itself has the status of an independent, private body. This position is one of substance, not just form; this is possible owing to the presence of several rules that are fundamental to the juridical nature of the entity, and it is a result shaped by definite characteristics that depend on the rules themselves.

The corporate entity is founded upon the independent acts of private individuals. These acts are: in genesis, the contract of constitution (articles of incorporation); and in existence, resolutions extending the duration of such contract or terminating it in advance. The management of the entity is likewise founded upon private contractual acts: the resolutions of the shareholders' meeting. The passage of such resolutions depends on the will of private parties, which is determined by majority decision.

Actually, by the law governing corporations the contractual interest of the parties is transferred into the interest that qualifies one as shareholder. Participation in the corporation, i.e. the share, is an individual right, which in the broadest sense comprises voting rights at meetings and a share in profits (dividends and equity). Voting, like any right deriving from the conclusion of a contract, is the individual

right of the shareholder, although in this case it is based upon the corporate position of the shareholder in the corporation under the law. The authority of the directors, to whom the management of the enterprise is entrusted, derives from the sovereignty of the shareholders' meeting, in that their appointment and their termination depends on the resolutions of the meeting. Thus the directors are bound to the meeting by a fiduciary relationship governed by the principles of the mandate and agency.

In the shareholders' meeting, the principle of majority rule in the shareholders' decisions replaces that of contractual agreement. However, the wills that form the collective act of the meeting are the expression of individual independence, so that the resolution, although taken by majority rule and thus formally the act of the meeting, i.e. of the organ of a legal person, remains in political and social substance the exclusive expression of individual initiative.

ii) The instrumental role of the corporation in the service of individual initiative is reinforced by the entity's exemption from administrative controls over its constitution, by-laws, management, dissolution and termination.

The procedure for forming a corporation derogates from the general law on the recognition of legal persons, laid down by the Civil Code, as it applies to foundations and associations. That general law is still founded on the traditional notion that the legal personality of the entity, insofar as it represents the concession of a privilege, must necessarily be the effect of a sovereign act.

For the corporation, by contrast, the only official legal intervention in the constituent process or the amendment of by-laws, including the decision for early dissolution, is that of a court, in a voluntary proceeding. The court's action, furthermore, consists solely in a check of legality, with no judgment as to the suitability of the initiative or the operating conditions of the enterprise. In its management, too, the entity is not subject to administrative controls; the safeguarding of the interests of shareholders and third parties is entrusted to voluntary legal action.

iii) The corporation is designed for the purpose of managing an economic enterprise, which is a capital asset. Thus, notwithstanding its status as an entity endowed with legal personality, the corporation is an organization whose content is economic capital, like other commercial partnerships. It is organized according to the rules governing legal persons, but the relationship remains contractual.

For this reason the rules governing corporations form part of private property law, which covers interests which for other legal persons are not property rights, such as the right to personality.

The interests that are treated and composed in private company law thus remain proprietary in nature, and must be considered as such in examining the regulations. The legal order, as it concerns companies, holds to the fundamental principles of private property law, contract and liability law, and these are the principles to which the interpreter of the law must adhere. Specifically, the exclusively proprietary nature of the associative relationship makes it clear that corporate rights, such as the right to vote at the shareholders' meeting, are commensurate with the amount of capital conferred upon the corporation; that is to say, with the proprietary interest of the shareholder. The company is the organization representing the capital invested. From the juridical standpoint, the interests of the company are solely and exclusively the interests of its capital.

The interests involved in the large enterprise are treated in different parts of the legal order, each under appropriate rules that do not necessarily affect the institutional organization of the corporation as such; in general-law companies these interests are regulated elsewhere, not as part of commercial law. Thus progressively more sophisticated bodies of law are concerned with the protection of labour, consumers, the environment, the national or local territory. Moreover, specific codes regulate particular types of enterprise; this is the case with banking, which is covered by specific rules whose characteristics we now proceed to discover.

5. The specifics of banking law as it affects corporate governance

The question that is posed by the special code regulating corporations engaged in banking business concerns its incidence on the entities' independence for reasons of considerations of public interest. First of all, one must draw up a list of the relevant provisions. Next, one must determine whether their incidence on corporate governance is consistent with the exclusively economic nature of the interests that are organized by the rules governing corporate relations or whether, instead, it alters the essential nature of those relations by directly

involving non-economic interests. Finally, one must examine the features of the interests pursued by banking supervision, in order to determine the degree of administrative discretion allowed, in that this parameter characterizes and qualifies the governance of the banking corporation.

6. The specificity of supervisory regulations bearing on the independence of the banking corporation

As a premise, let us reorder supervisory provisions according to the matters covered: the constitution of the corporation; the identity and characteristics of shareholders and corporate officers; the operation of the bank; the power to wind up the corporation; and supervision of the banking group.

The purpose of my presentation being to grasp the principles of banking regulation, I here recall the essential provisions only, deliberately ignoring distinctions and exceptions, particulars and specifications irrelevant to corporate structure.

a) Taking up banking business is subject to the authorization of the Bank of Italy, which verifies compliance with the following conditions: *i)* the legal form of company or cooperative limited by shares; *ii)* minimum capital requirement; *iii)* submission of a programme of operations together with the instrument of incorporation and bylaws; qualification of shareholders, directors and managers, as described below. Persons engaged in significant business activity outside banking and finance may not hold shares or capital parts amounting to more than 15 per cent of a bank's voting capital.

b) Prior authorization of the Bank of Italy is required for the acquisition of shares or capital parts exceeding 5 per cent, and in any case for the acquisition of control of the bank. Shareholders must meet the integrity standards set by the Minister of the Treasury, as must persons performing administrative, managerial or supervisory functions within the bank. The latter must also meet standards of competence.

c) Supervisory regulations cover the following matters: capital and capital adequacy; risk exposure; the acquisition of equity participations; administrative organization, accounting and internal

controls. Administrative rules may subject specified transactions to authorization. In all these matters the Bank of Italy may adopt measures bearing on an individual banking enterprise.

d) The Bank of Italy may: *i)* convene the directors, auditors and managers of a bank; *ii)* order the convening of the governing bodies; *iii)* proceed directly to convene the governing bodies if the bank itself fails to do so.

e) Mergers and divisions are subject to authorization by the Bank of Italy.

f) The Minister of the Treasury, at the proposal of the Bank of Italy, can place a bank under special administration in case of: *i)* serious administrative irregularities or serious violations of laws, regulations or bylaws; *ii)* serious capital losses (including, in the wording of the law, "expected" losses); *iii)* a reasoned request from the corporate organs. In case of "exceptionally serious" losses or violations, the compulsory administrative liquidation of the bank may be ordered. The procedures are organized under the responsibility of the Bank of Italy, which appoints the liquidators. The functions of the regular corporate organs are suspended.

g) The supervision of banking groups is exercised through the corporation identified as the parent undertaking, which, "in carrying out its activity of management and coordination, shall issue rules to the components of the group for the implementation of the instructions issued by the Bank of Italy in the interest of the stability of the group" (Art. 61(4)).

Finally, as the 1993 Banking Law specifies in Article 5(1), "The credit authorities shall exercise the powers of supervision conferred on them [...] having regard to the sound and prudent management of the persons subject to supervision, to the overall stability, efficiency and competitiveness of the financial system and to compliance with provisions concerning credit".

7. The criteria of sound and prudent management

As we have seen, the legislative criteria defining the scope of administrative discretion, on which the special rules on banking

enterprises and corporate governance in banking essentially depend, are the following:

– The *sound and prudent* management of the individual bank; the standard of sound management would appear to extend to organizational arrangements and capital, while that of prudence concerns entrepreneurial decisions. Hence, whereas the notion of sound management implies an assessment of the bank's capital and organizational situation (with special regard to conflicts of interest), that of prudence requires a judgment of predictability of the effects of management decisions as they are made;

– The *stability* of the entire banking and financial system;

– The *efficiency and competitiveness* of the system as a whole and not, therefore, just competition between enterprises, which may nevertheless be important as a means for heightening the efficiency and competitiveness of the overall system with a view to European and worldwide markets. Hence this supervisory task differs radically from the mandate conferred upon the antitrust agency that oversees industrial enterprises, in whose respect the law presumes the overall efficiency of the system to be the consequence of competition between enterprises, guaranteed by the antitrust agency itself.

The criteria of sound and prudent management, transposed into Italian law from a European Community directive, are, *per se*, undeniably generic. This feature fits readily into the Italian system of banking supervision, thanks in part to the principles of administrative law that frame the system.

First of all, the procedures do not provide for a separation of powers that specifies the cooperation, hence the need for mutual adjustment, between the two agencies. Regulatory power is entrusted essentially to the banking supervisory authority, even in matters concerning competition, although the antitrust authority can also enact measures. Nor is the generic quality of "soundness" and "prudence" counterbalanced by any procedure for argument and counterargument in determining their application in practice. As the list of supervisory powers shows, these are supervisory criteria used both in general provisions and in orders to individual banks. Finally, in banking the legal recognition of the legitimate interest of the persons over whom supervisory powers are exercised is extremely weak. In substance, the jurisdiction of the courts is annulled in this area, and

in any case there can be no compensation for damages resulting from illegal action.

Some further specifications are called for.

These criteria are indispensable in the conduct of supervisory activity as the proper goals of the administrative authorities, whose power is functional in the public interest. These purposes find a place only indirectly in the management of the enterprise, as limits on the corporation's independence of action, not as interests functional to its own activity. This is certainly so in the case of system stability, efficiency and competitiveness. But it is no less so as regards sound and prudent management. It is thus perfectly correct to say that "It is the entrepreneur himself, case by case, who selects actions that he considers sound and prudent, thus taking responsibility for the management of the enterprise, with respect to the supervisory authorities as well. Considered in this way, sound and prudent management is consistent with the freedom of enterprise that the law accords to the banking and financial enterprise".⁵ Yet one must also note the different position of the banking enterprise as compared with those under general law. The non-financial entrepreneur who means to survive must also manage his business soundly and prudently, so that from this standpoint the standard merely rehearses a general rule of conduct that is compulsory for all entrepreneurs. In the case of banks, however, the consequence of violation is not simply the risk of failure for a speculative or hazardous undertaking. The point of the law is to endow the supervisory authority with the administrative power to define and enforce sound and prudent conduct, so that in its decisions the banking enterprise is confronted with a potential administrative limit, not a legal, statutory constraint such as the obligation to keep accounts or the requirement to dissolve the corporation when all its capital has been lost.

The function of banking supervision consists in safeguarding the public interest in the sound and prudent management of the banking enterprise, on behalf of the stability, efficiency and competitiveness of the banking system as a whole. Supervision is thus properly an administrative activity, not the provision of a service to improve the operations of private initiative. That is, unlike the oversight exercised by the Companies and Stock Exchange Commission, where in my opinion private parties may have an interest in the commission's

⁵ See Banca d'Italia, "Le politiche della vigilanza nel nuovo ordinamento del credito: profili economici e giuridici", mimeo.

oversight of information requirements, banking supervision is not directed to safeguarding the special interest of private individuals. Thus the latter may claim no juridically protected interest in the proper functioning of the administrative activity of banking supervision. Obviously, this is one more factor that reinforces the discretionality of administrative action.

8. Corporate governance in banking

The corporation engaged in banking business exercises private freedom of initiative. It is a private economic agent, like any other company limited by shares. Yet its position is different from that of the company governed by general company law, and the difference is qualitative, one of relevance from the legal standpoint.

Actually, the administrative provision in this field does not consist in a legislative mandate to the agency to regulate the market and the participating enterprises according to norms, i.e. according to typical conduct that is predetermined in general and abstract fashion. The law endows the supervisory authority with administrative powers of its own, thus subjecting bank management to the external evaluation of the authority, which has administrative powers enabling it to intervene case-by-case, under standards set at its own discretion.

In this way, the governance of the corporation emerges in the course of its operation as the combination of a private interest in profit and the public interest in the overall stability of the system, which corporate managers assume to be the predictable action of the administrative authorities in the exercise of their powers. In some countries, this translates into administrative measures that substitute for, overturn or supplement the private decisions of the corporate organs.

As a result, the banking and financial market takes on characteristics of an administered market.

As noted, corporations organized under ordinary law must also manage their business in a sound manner, while prudence is a virtue for any firm interested in lasting over time and averting the risk of being forced out of the market by insolvency. The difference is that for these firms, the process occurs through market mechanisms that operate by means of the legal conditions of contract, under general and abstract norms.

At times the regulation of a market or of some aspects thereof is delegated to the government or to a sectoral administrative authority. But it is always a question of laying down general and abstract rules. The securities market, for instance, is regulated by an authority, the Companies and Stock Exchange Commission, to ensure transparency of information.

Banking, by contrast, is an administered market, in that crucial aspects of entrepreneurial management are subject to the administrative assessment of the supervisory authority, not only as concerns the working of the market as such but also, and above all, as concerns the operation of each enterprise within it: its constitution, management, modification (merger), and liquidation.

9. The banking group

Under Article 61(4) of the 1993 Banking Law, "The parent undertaking, in carrying out its activity of management and coordination, shall issue rules to the components of the group for the implementation of the instructions issued by the Bank of Italy in the interest of the stability of the group".

To date, doctrinal analysis and practical application have not been sufficient to make clear the real scope of this provision. In any case, this clause would appear to make the parent undertaking directly responsible for the group members' execution of administrative instructions; in this sense it directly charges the parent undertaking with auxiliary tasks on behalf of the supervisory authority.

This is not the proper forum for thoroughgoing study of the question. As posed, in any event, it appears to pertain more to the forms of administrative action than to the governance of banking corporations.

10. The public shareholding presence

A factor that naturally plays a considerable role in determining corporate governance is the nature of the shareholder, i.e. whether

the corporation is publicly owned or controlled or under exclusively private control.

As the corporation is a legal entity at the service of its shareholders' initiative, it is clear that the management's attitude will differ depending on whether it responds to private shareholders or to public-law entities. Private shareholders are understood in the last instance, although perhaps indirectly by means of holdings in other corporations, to be natural persons. In this case the free initiative of the individual is transposed into the governance of the corporation, lending its characteristic of independence. If the shareholder is a public body, corporate governance is characterized in substance by public law regulation and the principle of the management's dependence on political authority. This substance is evident in practice, as experience abundantly shows; and it has a juridical rationale, as an earlier work of mine demonstrates: that is, that the position of the public shareholder does not consist solely in the rights conferred upon it as shareholder.⁶

In Italian banking, public ownership is widespread, so much so that it actually characterizes the system. And notwithstanding the current tendency to transfer ownership to the private sector, this remains fundamental.

The governance of Italian banking corporations, with their predominantly public character, is thus affected by public policy guidelines in two distinct modes: by banking supervision, under ordinary law, and by public ownership, under the special statutes and bylaws of the publicly owned corporation.

11. Responsibility in the governance of banking corporations

Financial activities, be it credit intermediation or finance in general, pose delicate questions of management that counsel organization in the form of regulated markets and, as regards banking in particular, of an administered market. This view is now a commonplace in the experience of many countries and represents a policy choice for the European Union as it moves to organize its single currency system. The question, indeed, is whether it is not advisable

⁶ G. Visentini, *Società per azioni di diritto comune e di diritto speciale*, Longanesi, Milano, 1979.

to work for greater integration between the national supervisory authorities in the interests of better management of the banking market at the European level.⁷

For the Italian legal system, which is the topic of the present forum, the question is not the advisability of regulation as such but its quality. Successful regulation requires that surveillance be conducted as regards the exercise of powers and jurisdiction in such a way as to make clear the responsibilities of every function and every area of competence in banking governance. And in this, it must be said, the Italian system is lacking.

Responsibility is rendered opaque by a series of factors: very broad supervisory powers and their scanty diversification, with a single institution charged with such diverse objectives as stability, market information, and competition; the relative lack of adversary procedures and proceedings; and the virtual absence of formal requirements to make decisions public (the need for a formal statement of insolvency as the condition for a salvage or restructuring operation, for instance, or a formal statement of conduct in violation of competition as prerequisite for continuation of such conduct in the interest of stability). This makes banking governance non-transparent, with management subject to the sort of *de facto* intervention that goes by the name of moral suasion.⁸ For publicly owned corporations, moreover, this state of affairs is aggravated by the influence exercised by the shareholder over management, which is again informal. Nor can the management, vulnerable as it is to *de facto* influence, be made responsible for actions that prove mistaken, because by law it is subject to the influence of the supervisory authority but has not the instruments that would oblige it to assert the sole legitimate interest for which it could be held responsible, namely profit.

The consequence is an attenuation of the market's pressure in banking governance, accompanied in practice by the absence of business risk, i.e. the risk of losing one's invested capital. This works its deleterious effects on the work force of the banks as well. One normally considers the behaviour of managers, but banks' operation is

⁷ For details see G. Visentini, "Relazione di sintesi per i profili giuridici", in *Il sistema finanziario italiano*, Ricerca LUISS-CERADI, coordinated by G. Carli, Roma, 1989. See also G. Carli, *Intervista sul capitalismo italiano*, Laterza, Roma-Bari, 1977.

⁸ I have dealt with this topic in "L'evoluzione del sistema finanziario italiano. I problemi attuali", *Tre lezioni*, Serie Saggi CERADI, n. 1, Giuffrè, Milano, 1995, p. 70.

also, and equally, affected by trade union organizations. It is clear that union action too is oriented to the bureaucratization of the banks, influencing the industry in line with the unions' own special interests. In a system that is scarcely able to attribute responsibility in conjunction with power, the work force too ultimately exerts an informal influence on management, taking its place, thanks to the substantial political power of organized labour, as part of the mechanism of moral suasion.