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Can banks be owned?

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> "The claims to ownership are subdivided in such a fashion, and are so mobile, that the enterprise assumes an independent life, as if it belonged to no one; it takes on an objective existence, such as in earlier days was embodied only in state and church, in a municipal corporation, in the life of a guild or a religious order." (Walther Rathenau, 1918 [1921])

> "The best way to rob a bank is to own one." (William Crawford, Commissioner of the California Department of Savings and Loans, 1988)[1]

1 Introduction

Banks are owned. Or so it seems. In the common language, but even in economic research, one speaks of "government-owned" banks, of "privately-owned" banks, and so forth. Also, banks are apparently "bought" and "sold" on the market for corporate control: when banks' equity shares change hands, especially when many shares change hands, such as this changes the identity of "controlling shareholders" (a term that needs to be specified, as will be done later), it is said that "bank ownership" changes hands, exactly as in other industries.

"Corporate ownership" of banks is the subject of a vast economic literature that purports to show, in particular, how different types of "ownership" (i. e. variation in the "owner's" identity) may affect bank performance. For instance, does "foreign ownership" of banks improve the efficiency of the banking system (as a representative study, see Berger et al., 2005)? Does, by contrast, "government ownership" worsen it (for a paradigmatic

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article, see La Porta, Lopez-de-Silanes & Shleifer, 2002)[2]? Thus not only has "bank ownership" acquired a linguistic matter-of-fact quality; it has become a central category for the economic study of banks – including their organization and performance.[3]

The present paper purports to show, however, that the notion of "ownership of the firm" is particularly problematic in the case of banks; and that a close examination of banking law and regulations in a civil law context (Italy) confirms the broader findings of US legal scholarship regarding the flawed foundations of the "property rights theory" applied to business firms in general and to banks in particular.

Indeed, beyond its application to the banking industry, the very term of "corporate ownership" is problematic. It is problematic because, at least with the advent of the modern corporation in the early XXth century, ownership (which one may define here temporarily as the exclusive right to decide over the use of an asset) has been separated from corporate control, as shown in the seminal study by Berle and Means (1932). As Berle and Means argue, ownership is an evolutionary phenomenon; and it is a legal phenomenon. These authors thus identified the legal bases of a shift in the meaning of ownership that accompanied the emergence of the modern firm.

Berle and Means were not alone in questioning the notion of corporate ownership. Their work locates itself in an important (but somehow largely forgotten) tradition of North American and Continental European legal, economic and business scholars who have attempted to frame our conception of the modern corporation in terms distant both from the classical and neo-classical traditions during the first half of the XXth century, and from the more recent contractual theories of the firm that emerged in the late 1960s and remain very influential in economic scholarship today (see Biondi, Canziani & Kirat, 2007, for a recent discussion of these authors and the relevance of their legacy for contemporary theories of the firm). In their book, Berle and Means cited some passages of a 1918 book authored by Walther Rathenau, a German polymath,[4] who argued that with modern capitalism ownership had been "depersonalized", and thus the enterprise had been "objectified" and existed apart from its alleged owner (Rathenau, 1921).

More recently, even "mainstream" economic theorists of the firm have expressed similar concerns with the use of a term such as the "firm's owner". In his 1980 seminal article, Fama warned that "ownership of capital should not be confused with ownership of the firm"; and further argued that "dispelling the tenacious notion that a firm is owned by its security holders is important because it is a first step toward understanding that control over a firm's decisions is not necessarily the province of security holders." (Fama, 1980a, p.290) However, Fama's rebuttal of the property rights perspective is partial, and he remains committed to a view of shareholders as residual claimants who (should) control the firm (see section 3 below) – in Fama's theory residual claimants are, one may argue, mere functional equivalents of the firm's equity owners. Indeed, as pointed out by Ireland (1999), among others, Fama's aim is not to rehabilitate the corporation but, rather, to replace it with its capital, thus more firmly establishing shareholders' primacy – which is obviously at odds with the view developed here.

The notion that shareholders own the firm has been more significantly and compellingly dispelled by legal and accounting scholars in the past two decades (Biondi, 2013; Blair, 2003; Blair & Stout, 1999; Robé, 2012; Stout, 2012). "[T]he notion that shareholders own the firm is totally false", argues Robé (2012), p. 3; in particular because shareholders, after the process of incorporation, "have *no right of access* to the assets of the corporation; they *do not enter into any contract* in its name"; and because "*no liability* can arise to them from the corporate activity" (Robé, 2012, p. 6. Italics in the original).

From this (critical) perspective, is "the problem with firm ownership" (and, by extension, "bank ownership") just a matter of terminology? In other words, couldn't this problematic notion be solved away with substitute notions, through a different vocabulary? For instance, instead of speaking of the "owners of the firm" one may speak of "controlling shareholders" – and attribute to the latter the same characteristics or rights that were previously (nominally) attached to the "owner". This linguistic solution is not satisfactory, however: what the previously-mentioned authors question is precisely the *theoretical* relevance of the concept of the ownership of the firm (to paraphrase a section in Fama, 1980a). In other words, the issue is whether the notion has any value for theories of the firm - and whether its disappearance would create difficulties for these theories.

"Corporate ownership" is all the more problematic in banks, which are peculiar kinds of firms. Banks are peculiar, above all, because they create money – and, as such, play a crucial economic role within modern economies, without which the latter could not work.[5] The money creating role of banks is played through the creation of credit, whenever banks issue a new loan.[6] Indeed, upon doing the latter, banks create new money claims under the form of new or increased demand deposits. This is where the true uniqueness of banks lies, and not in the fulfilment of financial intermediation functions that do not fundamentally distinguish banks from other financial intermediaries – despite what is commonly argued in contemporary "financial intermediation theories" of banking. It is the role played by banks in the money creation process that explains their peculiar treatment by regulatory authorities. Indeed, by a singular logical twist, the latter is sometimes seen as the only and contingent source of bank's uniqueness.[7] However, the legal recognition of bank charters (which gives them the ability to create money through deposits) is the direct *consequence* of the public nature of money, as legal scholars have recently pointed out (Ricks 2012a; 2012b; Hockett & Omarova, 2017). In particular, as Hockett and Omarova put it, the special role of banks is "that of licensed private purveyor of the public full faith and credit" (Hockett & Omarova, 2017, p. 1158).

It follows that individual banks are part of an *institutional system* (which combines the payment system and the credit system) and can thus be seen as true institutions. Again, this institutional system or architecture revolves around the production of money within modern economies.[8] If the "ownability" of firms is in question, we argue here, then the "ownability" of institutions such as banks is even more dubious.

The problem of the "ownership of the firm" is, ultimately, a theoretical problem rooted in an empirical question – the question of the nature and extent of property rights in relation to the corporation. The latter is largely a matter of law – the determinant of effective, not theoretical, property rights. As Hodgson reminds us, property is a legally sanctioned right, not to be confused with possession, which indicates the effective control of an asset (Hodgson, 2015). Therefore a discussion of "corporate ownership" in banking cannot but ultimately confront theory with the empirical legal foundations of ownership in a particular legal context.

Thus, the present study has two goals: (i) to critically assess the use of the notion of "bank ownership" in the economic literature, drawing both on property rights theory and on alternative theories of the firm; (ii) to analyse the empirical nature and extension of ownership rights as applied to banking, in a specific context - Italy. Italy appears as a suitable choice for such inquiry, for several reasons: (i) it is a medium-sized economy with a very sizeable banking industry; (ii) it is part of the European Union – and therefore reflects the regulatory developments taking place at EU level, which are very relevant for banking regulation; (iii) it has a long, well-established tradition of company and bank law.

The perspective adopted here builds on the critical works mentioned above, which question the legal foundation of "corporate ownership". It extends such perspective by investigating the extent to which the actual rights and obligations of bank shareholders, in a particular context, do warrant both the positive and normative assertions of the property rights theories of the firm. In fact, when property rights theorists accept some of the objections raised by critical scholars, such as the objection that the actual law severely restricts the rights of equity owners, they usually respond by arguing that the property rights perspective merely delineates a normative horizon, and that the purpose of modern firms' corporate governance lays precisely in giving the firm's control to equity shareholders, as if the firm was effectively owned by the latter (even if it isn't). This paper also rebuts such an argument by showing how, in effect, corporate governance as institutionalized by law and regulation powerfully restricts equity shareholders' pretence to control the (banking) corporation. More precisely, there are tensions, within Italian law, between, on the one hand, regulations aimed at consolidating shareholders' claims; and, on the other hand, regulations that affirm the broader purposes of banking entities that are not the property of anyone. Such tensions, we submit, express a broader, ongoing conflict between two views of the firm: one that emphasizes the private nature of the firm and its instrumental relationship with a narrow set of stakeholders; and the other that emphasizes the nature of the firm as a going concern or entity with broader social purpose (Biondi, 2013).

The present paper is structured as follows: Section 2 critically examines the theoretical assumptions made within the large economic literature on banking ownership and performance; Section 3 puts this discussion in context by uncovering the limitations of property rights theory as applied to firms, and especially banking firms; Section 4 brings about a careful analysis of Italian law and regulations concerning the ownership of equity in the banking industry, to check whether the weaknesses of property rights theory are warranted in practice. The conclusions follow.

2 "Bank ownership" and banks' performance: questionable assumptions

The relationship between "bank ownership" and performance stands at the centre of a vast empirical literature, which emerged out of the conjunction of the development of property rights theory applied to theories of the firm after the 1980s, and the wave of bank privatization in the wake of post-communist transition in Eastern Europe (and elsewhere) in the 1990s. The literature has bloomed in the 2000s, benefiting from the appearance of large datasets enabling comparative research and building on the framing of the issue in a seminal article around the question of "government ownership" of banks by La Porta, Lopez-de-Silanes, and Shleifer (2002).[9]

Most works within this literature consist of an analysis of the effects of "bank ownership" on bank performance (broadly defined). In addition to La Porta et al., one may mention the widely-cited works of Altunbas, Evans, and Molyneux (2001), Berger et al. (2005), Micco, Panizza, and Yanez (2007), Iannotta, Nocera, and Sironi (2007), and Cornett et al. (2010); see also Haggard and Howe (2015). A first problem raised by this literature concerns the dependent variables. Indeed, the theorization and measurement of performance in many of these studies leaves room for ample criticism. In particular, the widespread use of share price as a measure of performance leads to tautological explanations whereby variations in share ownership are correlated with variations in share price, which arguably might say something about the functioning of equity markets, but very little about the functioning of banks. More broadly, this empirical and methodological strategy shows the damning theoretical problems that arise from the reduction of corporate performance to equity share price dynamics.

Further works in this literature shifted their focus to an examination of the effects of "bank ownership" on banks' lending behaviour (Beck, Demirgüç-Kunt & Pería, 2011; Berger et al., 2008; Ferri, Kalmi & Kerola, 2014; Micco & Panizza, 2006; Sapienza, 2004) and on banking risk (Bertay, Demirgüç-Kunt & Huizinga, 2015; Saunders, Strock & Travlos, 1990; Shehzad, De Haan & Scholtens, 2010).

Altogether, this literature builds on two assumptions: (1) the assumption that "bank ownership" produces significant effects on bank behaviour; and (2) the assumption that these effects vary in function of a variation in "ownership types" generally construed as dichotomous (state versus public, foreign versus domestic, concentrated versus diffuse etc.). Regardless of the empirical findings produced by this literature, which will not be discussed here, many of the works in the "bank ownership"-performance literature present two very problematic characteristics from the point of view of the present study. First, they rely on ill-defined (what sociologists may call "pre-scientific") notions of ownership. Secondly, their empirics are based on a very narrow theoretical foundation. These shortcomings are discussed below.

The "ownership and performance" literature relies on a notion of ownership that confuses the ownership of equity shares with control of the firm. As Dinç puts it, for instance, government ownership consists in "bank assets [being] directly controlled by the government" (Dinç, 2005). Similarly, according to La Porta et al., "ownership allows the government extensive control over the choice of projects being financed" (La Porta, Lopez-de-Silanes & Shleifer, 2002, p. 266). Slightly more sophisticated analyses separate banks' "ownership structure" into various components, such as ownership concentration and the nature of the owner (Iannotta, Nocera & Sironi, 2007) – however, the authors keep referring to "bank's ownership" and, in a footnote, specify that "We qualify a shareholder as an Ultimate Owner of a bank when it owns more than 24.9 % of the bank's equity capital with no other single shareholder owning a larger share" (Iannotta, Nocera & Sironi, 2007, p. 2734). A more recent, more sophisticated study of the effects of "bank ownership" on banks' lending yet repetitiously asserts that banks are owned ("cooperative banks are owned by their members") – but in the course of analysis the terminology shifts away from ownership towards more neutral (but perhaps also more vague) categories such as "stakeholder banks" and "shareholder banks" (Ferri, Kalmi & Kerola, 2014).

These few examples illustrate a widespread practice among studies of "bank ownership", as mentioned above: that of conflating equity ownership with firm ownership. Yet, as a long tradition in (non-mainstream) economic thinking has shown, "firm ownership" is a contradiction in terms (see Biondi, Canziani & Kirat, 2007, for a synthetic presentation of this literature), as will be further discussed below. In other words, using "bank ownership" as an explanatory or independent variable, without any rigorous discussion of the term, is a severe problem plaguing the works mentioned above. However, one may treat this as a mere terminological problem: if "bank owners" is an incorrect category, one may simply use substitutes such as "controlling shareholders", for instance. This may leave the theoretical argument intact. But this solution would be inadequate because, we argue, the use of a "pre-scientific" notion of ownership[10] actually reflects "pre-theoretical" views on the effects of ownership.

In a nutshell, most of these (empirical and theoretical) works share the implicit twin assumption that (i) equity ownership produces effects on a firm's behaviour; (ii) these effects are very similar (if not identical) to the effects of ownership of non-firm items such as material assets or consumer goods. In fact, one should further distinguish between those works which do consider, sometimes at length, the effect of governance structures and mechanisms that mediate between equity ownership and banks' behaviour (for example, by including governance variables in their models) and those works which don't (such as La Porta, Lopez-de-Silanes & Shleifer, 2002). The next section will address both of them. The latter works lend themselves to the exact same criticism that was raised against theories of property rights applied to the firm. The former works warrant further discussion. Before undertaking a further (critical) analysis of the theoretical underpinnings of these mostly empirical studies, it is important to specify that we do not wish here to dismiss, or even summarily discuss, the empirical findings of such a large body of works. Rather, by questioning their theoretical foundations in light of the importance of law regulating property rights (which will be discussed in section 4), we wish to suggest that a different view of equity ownership and its effects in banking might provide a new lens through which one may reconsider and perform empirical analyses.

3 Re-dimensioning ownership: from property rights theories to an institutional view of banking

3.1 The problematic legal foundations of the property rights theories of the firm

Whether explicitly or not, and regardless of the level of sophistication of the empirical analysis performed, most works in the "bank ownership and performance" literature rely on very tenuous theoretical foundations – noteworthy is, in particular, the paucity of theoretical references and developments used in many empirical works.[11] More importantly, perhaps, the thinness of these foundations owes to the theoretical problems (relative to the existence and effects of "corporate ownership") inherent to the property rights perspective.

Within this perspective, ownership is presented as a "bundle of rights" (Demsetz, 1967) that has two core characteristics: (i) full alienability (i. e. the ability to sell these ownership rights (Alchian, 1965); and (ii) full excludability (i. e. the ability to exclude non-owners from the use of a given asset) (Demsetz, 1967). The rights grouped together under the name of "ownership" (or "property rights") may then be broken down by property rights theorists – but the latter are keen on emphasizing the interrelationships or unity between those rights. As Alchian and Demsetz put it, "it is this entire bundle of rights: 1) to be a residual claimant; 2) to observe input behaviour; 3) to be the central party common to all contracts with inputs; 4) to alter the membership of the team; and 5) to sell these rights, that defines the ownership (or the employer) of the classical (capitalist, free-enterprise) firm." (Alchian & Demsetz, 1972, p. 783)

A key implication of such a view is that equity owners are seen as endowed with certain rights that establish the basis for their legitimate control of the corporation. Even works that disagree with certain tenets of Alchian and Demsetz's original framework share this view. For instance, Katz, who rejects the bundle of rights view, and proposes to conceive instead property rights as the simple right to exclude, writes that "what we mean when we say that ownership is exclusive is that owners have a right to exclude and that the right to exclude *has a certain effect*: the indirect creation of the space within which the owner's liberty to pursue projects of her choosing is preserved" (Katz, 2008, p. 281. Emphasis added).

As mentioned in the introduction above, legal scholars have already shown how this theory of corporate ownership lacks a solid legal foundation. In particular, as Robé has convincingly argued, equity owners have, by law, no direct access to the corporation's assets (points (2) and (4) of Alchian and Demsetz' definition above); and cannot contract with the corporation's suppliers and clients (point (3); see Robé, 2012). The corporation has its own legal personhood; thus it cannot be owned by anyone. In addition, the alienability and excludability of equity shares do not imply a similar alienability or excludability of the corporation itself. Legally, equity shares are claims on a firm's profit: they do not imply ownership of the firm itself (Ireland, 1999). Contrary to what Katz argues, the law actually intervenes to limit "the owner's liberty to pursue projects of her choosing". In particular, as shown in Table 1 at the bottom of the present section, US corporate law significantly circumscribes shareholders' rights with regard to the control of management, claims over a company's profits, and even the extent to which shares can be bought and sold on equity markets.

Table 1: Shareholders' rights: the myth and the legal reality.

Shareholders' rights	Interpretation according to the property rights perspective	Legal grounds (in US case)
Voting rights & right to control over top management	Right to "alter the membership of the team" (Alchian & Demsetz, 1973); to help "pursue projects of [shareholders'] choosing" (Katz, 2008)	Quite limited: shareholders "have no right to select the company's CEO; they cannot require the company to pay them a single penny in dividends; they cannot vote to change or preserve the company's line of business; they cannot stop directors from squandering revenues on employee raises, charitable contributions, or executive jets; they cannot vote to sell the company's assets or the company itself" (Stout, 2012)
Right to share profits	Right to residual cash flows (Alchian & Demsetz, 1973; Fama, 1980a); Right to sue corporate officers for breach of fiduciary duties	Right, no obligation: No breach of fiduciary duty if corporate offices fail to maximize shareholders' wealth (Blair & Stout, 1999).
Right to buy and sell shares	Unrestricted (Alchian & Demsetz, 1973)	Restricted through, in particular: limitations on foreign equity acquisitions; regulations on insider trading; temporary restrictions on short-selling.

This rebuttal has led some property rights theorists to suggest that the property rights perspective does not need a solid legal basis. In a response to Geoff Hodgson's criticism of the economic approach to property rights, for instance, Allen has argued that economic and legal property rights should be carefully distinguished, and that the existence of distinct economic property rights is not only legitimate but lies at the basis of the property rights literature in economics (Allen, 2015). There is no room here for a more detailed analysis of Allen's arguments, but one could simply point out that (i) Allen's own definition of economic property rights (as the "ability to freely exercise a choice") is much wider and looser than any definition actually used in most theoretical or empirical works in the property rights literature in economics, and thus easily avoids all the pitfalls associated with such narrower definitions; (ii) one of the key problems with economic approaches of property rights, as identified by Hodgson, and emphasized in the present study, is precisely the assumed *constant effectiveness* of property rights, *the law notwithstanding*; whereas we argue here, following authors such as Ireland and Hodgson, that property rights are *always* mediated or created by law. Since ownership is a right, it is contingent for both its extent and implementation on laws, legal interpretations and, more generally, the legal system. But this is exactly where the great weaknesses of property rights theory lie: its misconceptions or ignorance of law and the legal system (Hodgson, 2015).[12]

The key importance of law in an economic theory of property rights was actually acknowledged by the early proponents of property rights theory. According to Alchian, a 'system of property rights' is "a method of assigning to particular individuals the 'authority' to select, for specific goods, any use from a non-prohibited class of uses." (Alchian, 1965, p. 818) Furthermore, property rights are "supported by the force of etiquette, social custom, ostracism, and formal legally enacted laws supported by the states' power of violence or punishment." (Alchian, 1965, p. 817) Law and the legal system thus play an important role in circumscribing the effectiveness of ownership-as-control, an aspect which later drops out of property right theories of the firm.[13] In a similar vein, Demsetz writes that "an owner of property rights possesses the consent of fellowmen to allow him to act in particular ways." (Demsetz, 1967, p. 347) Consent thus determines the contours of the bundle of rights which is elsewhere presented, implicitly, as an absolute.[14] More generally, as Robé argues, law plays a vital role in "the *actual structuring* of the social system in general, and businesses in particular." (Robé, 2012, p. 9. Italics in the original)

3.2 The specific problems of property rights theories in the case of banking

The property rights theories of the firm present additional problems in the case of banking firms. First, as mentioned in the first section, banks play a very particular function in the economy: that of creating money. Since modern economies are monetary in nature, banks thus ensure the proper functioning of economy – an institutional role that certainly sets banks apart from other types of firms or economic organizations.

Secondly, banks, as a consequence of their money creating role, have a peculiar business model – a model that consists in the simultaneous fulfilment of different functions: an intermediation function, which financial economists have called "qualitative asset transformation" (Bhattacharya & Thakor, 1993); and the money creation function proper, whereby banks generate new money claims on the economy (Hockett & Omarova, 2017). This specificity of banks' business models (by contrast with, in particular, non-bank financial intermediaries) has two implications: first, while banks may own some of their assets, such as their loans to customers, the money claims they create, by contrast, generate a public good, regulated as such by banking law (Hockett & Omarova, 2017; Ricks, 2012b); secondly, shareholders do not have the monopoly of provision of finance capital to banking entities.[15] As a result, there is no clear residual claimant. An immediate rebuttal of this argument may bring up regulation as a source of control rights (Fama, 1980b). But if regulation establishes who has legitimate claims on residual cash flows, then part of the property rights theory collapses – precisely, the part which assumes the endogeneity of ownership rights. As a recent review of the literature on banks' corporate governance shows, the effects of ownership in banking are *always mediated by regulation* (De Haan & Vlahu, 2016).

Thirdly, in banking, the thesis that ownership rights may be attributed to residual risk bearers does not work. Indeed, if residual risk is defined as the "differences between stochastic inflows and payments" (Fama & Jensen, 1983), risk in banking is not residual at all: it is, rather, at the centre of daily banking business.

Fourth, and finally, deposit-taking banks cannot be just conceptualized as stand-alone firms: dealing with money, aka legal tender, they stand as interdependent entities within an institutional system (Butzbach & Mettenheim, 2014). Their institutional nature shields banks, to a great extent (an extent shaped by law, as will be seen below), from equity owners' (assumed) pretence of exerting the kind of ownership rights conceptualized within property rights theory (rights seen as fully alienable and exclusive).

As a consequence of these theoretical weaknesses, the empirical findings of works falling within the "ownership and performance" tradition may be reinterpreted to give more weight to other explanatory variables. In other words, as shown in several recent studies, the differences in behaviour between public and private banks may have much less to do with equity ownership and much more to do with banks' objectives (Brei & Schclarek, 2015)[16]; the existence of a well-functioning capital market (Sarkar, Sarkar & Bhaumik, 1998); or the general rules applying to banks' operations and management (Milhaupt & Zheng, 2014).[17]

3.3 From ownership as control to control as ownership

While critical scholarship has convincingly established the complete lack of a legal foundation for the most basic claim at the heart of property rights theories of the firm (the claim that equity owners own the corporation), it cannot defeat on its own the normative claims made by property rights theorists. All property rights theories draw, more or less explicitly, on the notion that different types of ownership generate different levels of efficiency through different sets of incentives. Private ownership is deemed to be the most efficient form of ownership because it leads agents to internalize costs and therefore, generate the most efficient "cost-reward system" (Alchian, 1965). In contrast, Shleifer and Vishny dismiss government ownership as inherently inefficient because of the use of "government-owned firms" for political motivations (Shleifer & Vishny, 1994). A discussion of these arguments has no room in the present study.[18] Even such normative arguments have to build, however, on positive statements to have any validity. The incentives associated with private equity owners, for instance, relate the firm's management or business behaviour to the assumption that equity owners are able and willing to exert influence on the firm's management and business behaviour. From a view of ownership as control, conceptualized by Alchian and Demsetz in the early 1970s, these theorists shift to a theory of control as ownership. The problems raised by these theories are similar, however, to the ones highlighted above.

In the agency theory perspective delineated (in part) by Fama, shareholders are seen not as "owners" but as "investors" - as seen above, Fama does away with the notion of "ownership of the firm". Indeed, he argues that "ownership", which he quickly reduces to "equity ownership", arises mostly as a specialization in risk-bearing (Fama, 1980a). The counterpart for that specialization is the claim on residual cash flows: "The residual risk is borne by those who contract for the right to net cash flows" (Fama & Jensen, 1983, p. 302). A principal-agent relationship then ensues, acting as a disciplinary device: cash pay-outs to shareholders reduce managers' power and increase the monitoring of the capital markets when firms seek to finance their activities (Jensen, 1986). It appears very clearly, however, that this is a very partial rebuttal of some of the tenets of the property right framework of Alchian and Demsetz: the residual claimant at the center of Fama's (and Jensen's) attention has similar (if not all) "rights" than those of the owner. Thus Fama's agency theory lends itself to the same criticisms as those mentioned above. But this particular perspective raises additional problems: as Robé and Biondi, among others, have shown, a firm has legal personality, and is not a nexus of contracts (Biondi, 2013; Robé, 2012); the firm's financial resources are a long-term commitment, and cannot be withdrawn at will by shareholders (Biondi, 2013); cash pay-outs to shareholders are not a legal obligation, and are actually quite limited, especially in banking (Biondi & Graeff, 2017). Furthermore, the law does not recognize shareholders as managers' "principals"; the modern corporation has "multiple principals" (Weinstein, 2007).

Similar results obtain from the incomplete contracts perspective. There the basis for ownership rights differs from agency theory: when specific contracting is too costly, the efficient solution (for agents involved in the firm's production process) is to rely on "residual contracting" (Grossman & Hart, 1986). "Ownership is the purchase of [...] residual rights of control." (Grossman & Hart, 1986, p. 692). The link to Alchian and Demsetz's initial formulation of property rights theory is much clearer than in the case of agency theory as expounded in Fama and Jensen. In fact, residual rights of control are very similar to ownership rights; they consist in "the right to decide how these assets are to be used except to the extent that particular usages have been specified in an initial contract." (Hart & Moore, 1990, p. 1120) Again, however, one may object that equity owners have no legal control over the assets of the corporation, as reminded in the beginning of the present section.

Both theories thus assume that, even though the equity owner might not own the corporation, the latter is controlled by the former – and that this control is legally guaranteed. The "residual contractor" and the "residual claimant" are thus not very different figures from the "owner of the corporation". The same rebuttal as the one formulated above can therefore be extended to Fama's agency theory and to Grossman, Hart and Moore's incomplete contracting theory.

In addition, and more broadly, the strong links posited between equity ownership and the control of the corporation (what has been called the "shareholder primacy" view) have been shown to be actually legally tenuous. Yes, shareholders have rights; but, as Lynn Stout argues, "these rights are of remarkably little value to shareholders seeking to force directors of a public company to act as their "agents" and serve only their interests." (Stout, 2012, p. 6) In addition, if equity ownership is always circumscribed in its effectiveness in terms of control of the firm, then it cannot be conceptualized as residual contracting or residual control rights – which are boundless by definition. Table 1 below summarizes the main rights associated with owning equity shares in a (US) corporation – and how these rights are legally warranted (or not) in the US legal system.

3.4 Governance as a conduit for property rights?

However, despite the strong case made by legal and accounting scholars against the legal pretence of shareholders to rule or control the firm, the shareholder value model is still alive – at least, it still haunts law-makers, as is shown by the orientation taken by many corporate governance reforms across countries in the past three decades (Cioffi & Höpner, 2006; Robé, 2016). In Italy, for instance, two important laws reforming corporate governance in not-for-profit financial institutions were passed recently: a 2016 law transforming large regional cooperative banks (the so-called "Popolari") into joint-stock companies; and a 2017 law requiring reform of smaller cooperative banks (the "Banche di credito cooperative) along similar lines.[19]

This example also sheds light on the fact that, while much is known about the way US company law actually disproves shareholder primacy claims – which, in a common law context, also consists in corporate promoters shunning shareholder primacy in corporate charters, as has been shown by Stout (2012), much less is known about the legal and jurisprudential treatment of shareholders' rights in civil law contexts.

These two elements alone warrant a further investigation of the legal foundations of property right claims. But there is yet another justification for such empirical investigation. The ambiguities (and theoretical difficulties) of property right theories of the firm are seemingly overcome by empirical works that, while locating themselves in the tradition initiated by Alchian and Demsetz, incorporate governance problems in their models. In these works, some of which have been discussed in Section 2 above, the ownership of equity effectively leads to control of the firm *as long as* the governance structure is supportive. When, in other words, agency problems are solved or reduced through appropriate governance structures, the types of rights enjoyed by equity holders are identical to the rights of the "firm's owner" as conceptualized in property rights theory. There is still (theoretical) room for ownership as control.

What is, from this perspective, the role of law and regulation concerning governance of firms (and banks)? An accurate answer to this question may necessitate, here again, a change of perspective on governance: instead of being seen and analysed as a set of mechanisms that, by assumption, tighten the relationship between equity ownership and corporate control, governance may be more adequately understood as a set of mechanisms that enable the firm to be governed *in the absence*, or given the impossibility, of equity ownership *as* control of the firm. As a consequence, while laws and regulation governing corporate governance may be publicly and even theoretically based on the need to give shareholders the effective control of the (banking) firm, they may actually limit equity ownership in its undue pretence of controlling the (banking) firm. Our hypothesis builds here on the argument that "the institutional structure of the firm acts as a shield." (Biondi, 2013, p. 411)

However, such arguments cannot be firmly established without an adequate understanding of what the law and the legal system actually say about the extension and limitations of equity ownership in banking. As a first step towards such understanding, the present study now turns to an analysis of the present legal and regulatory conditions characterizing equity ownership in banking in Italy.

4 What does the law say? the Italian case

Italian banking law and regulation have been characterized in recent decades by a dominant trend towards the simplification of company forms usable by banking entities. This trend doubles up as a convergence towards a private law model of the banking firm (aka the limited liability company form). The process started in the 90's with a succession of legislative reforms adopting, in Italian law, the limited liability company model, and applying it across all types of banking business models (including cooperative banks). Until that period, the Italian banking system was very fragmented, organized in segmented markets (very much as in other advanced economies) with specialized lenders and depositary institutions. The legal framework underpinning this structure was also fragmented. Until the late 1980s, there were savings banks ("Casse di risparmio"), local cooperative banks ("Banche di credito cooperativo"), regional cooperative banks ("Banche popolari"), "public interest banks" ("Banche di interesse nazionale"), long-term credit institutions ("Enti di credito a lungo termine") … Each banking category had its own legal regime (specific legal status and regulations), which created significant legal and regulatory challenges.[20] Finally, most banking markets and operations were still regulated under a regime set by a 1936 banking law (see La Francesca, 2004).

This legal and regulatory framework underwent significant change in the 1990s. The stepping stones of such transformations were:

i. The Law of 30th July 1990, n. 218 (aka "Amato Law"), which separated (public) banking organizations (in particular, savings banks and "national interest banks") from newly created, ex nihilo shareholders, the so-called banking "Foundations" (Fondazioni), which were endowed with 100 % of those banks' equity. The Law basically paved the way for the formal privatization and the consolidation of public banks[21];

ii. The Legislative Decree of 20th November 1990, n. 356, setting rules for the restructuring and regulation of banking groups (including the banks covered by the Amato Law);

iii. The Law of 10th October 1990, n. 287, carrying "Rules for the protection of competition and markets", which introduced regulation of banks' equity shareholding (stating, in particular, the principle of separation between bank and industry in equity ownership);

iv. The Legislative Decree of 14th December 1992, n. 481, Implementing European Directive 89/646/EEC on the coordination of laws, regulations and administrative provisions relative to the activity of credit institutions and its exercise and amending Directive 77/780/EEC - this Decree introduces the universal banking model in Italy and radically reforms the previous system, predicated upon banking market segmentation as per the 1936 Banking Law;

v. The Legislative Decree of 1st September 1993, n. 385, which consolidated banking and credit laws, rationalizing most of the Italian banking legislation.

This trend is confirmed by the recent reform of "Banche Popolari", regional cooperative banks forced since a 2015 law to become limited liability companies if their turnover exceeds a threshold of 8 billion euro[22]; and by a 2016 reform of cooperative credit banks (*Banche di credito cooperative*), which aims at grouping them all in banking groups formed around a joint-stock company.[23]

The legal and regulatory changes briefly mentioned above have been only a part (if a crucial one) of a broader transformation of Italy's banking system, characterized by a vast movement of restructuring and consolidation leading to the emergence of two large national bank holding groups (Unicredit and IntesaSanPaolo) and of a dozen or so of nationally relevant banks or banking groups (see Messori, Tamborini & Zazzaro, 2003). All of these large banking groups have adopted the form (and legal status) of joint-stock companies.

However, despite this ongoing (and strongly dominant) pattern toward chartering banks as limited liability companies, Italian banking law remains strongly committed to a system of constraints on the ownership of banks' equity, thereby limiting the extent of the market for corporate control in banking. In this perspective, the very fact that the contestability of ownership in banking is regulated by rules that do not belong to the common rules applied to corporate ownership supports legal theories that hold that banks are "functionally circumscribed", theories thus in line with institutional views of banks (see Section 3 above).

There is, in other words, a tension within Italian banking law: on the one hand, current laws and regulation reflect an increasingly widespread view that banks should take the forms of limited liability companies, governed under private ordering, and responding to a "shareholder primacy" view of corporate governance; on the other hand, the very same laws and regulations also maintain an established commitment (within Italian law) towards viewing banks as specific *institutions* requiring special legal and regulatory provisions – thus circumscribing or invalidating shareholder primacy altogether.[24]

Again, such tension reveals the shifting balance between different views of the nature of the firm, embedded in law and regulations: on the one hand, the firm seen as an instrument in the hands of shareholders; on the other, the firm seen as a "going concern" or an "entity", endowed with broader social purpose (see Biondi, 2013). The legal or regulatory treatment of shareholders' equity is especially illuminating with regard to such tensions, and has financial and accounting extensions as well. While the public discussion of banking reform, even in the post-2007 context, often expresses views favouring shareholding equity as the (legal and accounting) foundation for banking equity, consistent with the proprietary theory of accounting (for a critique, see Biondi, 2012), the actual contents of banking regulation, as seen below, is much less biased towards shareholders' equity.

In particular, both European and Italian regulation contain a series of measures that strongly constrain equity ownership in banking, through requirements and procedures that are absent in the regulation of transfers of equity ownership in non-banking firms. This regulatory pattern appears clearly in the rules governing the operations of banking firms. The regulation of governance in banks confirms the regulatory shaping of banking activities towards the fulfilment of general or collective interest. Thus, the effective control of bank's equity holders is kept in check, to the benefit of an implicit, diffuse control by all the banks' stakeholders – an objective consistent with broader views of the (banking) firm as an entity or going concern (Biondi, 2013).

The present section aims to show with some detail the laws and regulations that (i) govern the acquisition, alienation and transfer of equity ownership in banks and (ii) govern banks' corporate governance (that is, the range of rights and obligations deriving from equity ownership). Table 2 below summarizes our key findings.

Table 2: Italian and European banking law and restrictions on equity ownership's control claims on banking firms.

Key elements of equity ownership in banking	European regulation	Italian regulation

Access to equity ownership	Restricted; "public interest" in the identity of controlling shareholders	Restricted; preliminary authorization in case of "significant influence"
Suspension of ownership rights		Possible in case of breach of authorization regulations
Information and communication duties	Additional duties required for listed companies	Obligation to disclose "relevant shareholdings"
Governance hurdles: restrictions concerning type and extent of ownership	Regulation of indirect control by minority shareholders	Honorability requisites; distinction between different types of control by minority shareholders

4.1 European regulation of equity ownership in financial entities

For most of the XXth century, Italian law imposed a rigid and reciprocal "separation" between banks and non-banking firms – more precisely, since the 1929 crisis and its regulatory aftermath – and in particular the 1936 Banking law, mentioned above (Costi, 2007; p. 115; Ciocca, 1987; p. 93; Ferro-Luzzi, 1995; p. 107; Antonucci, 2009; p. 169; Giannini, 1940; p. 707; Guaccero, 1997; p. 5; Irti, 1998). Current European regulation (in particular European directive 2007/44/CE[25]) does not leave any discretion to member-States regarding the regulation of banks' equity ownership. However, the previous (European) regulatory regime already conceived rules on equity ownership in banking as instrumental to the fulfilment of "general interest" objectives, of the protection of banking firms' autonomy and of depositors' interests. Regulation was thus permeated with an interpretive technique which tended to harmonize general principles of economic governance with industry-specific rules, in a peculiar mix of private/corporate interests and general interest goals (Piovera, 1992; p. 192; Costi, 1994; p. 617; Ghezzi, 1992; p. 1003; Rotondo, 2004; Spolidoro, 1992; p. 183).

In particular, the Italian regulatory regime (embodied in the "*Testo unico bancario*" - Consolidated text of banking and credit laws - henceforth TUB)[26] gives a key role to managerial autonomy (Capriglione, 1988; p. 718; Santoro, 1990; p. 261; Brescia Morra, 2000; p. 21)[27] through the so-called "sound and prudent management" principle, together with the prevention of conflicts of interest and the conduct of a correct assessment of creditworthiness. It is important to remember that the concept of "sound and prudent management" comes directly from European law (the Second Banking Co-ordination Directive, adopted at EU level in December 1989, and transposed in Italian law by a 1992 Legislative Decree); however, in that particular context, it referred only to the qualitative assessment of banks' shareholders. The Italian legislator, instead, has transformed it into a broad principle with a general value, making it both an objective of supervision (cfr. art. 5 TUB) and a guiding rule of action for banks.

Together, these principles create hurdles to access to equity ownership in banking, confirming the regulatory specificity of banking firms, motivated (by regulators and law-makers) by the general interest function they fulfil towards the economy.

European directive 2007/44/CE, already mentioned, defines procedures and prudential evaluation criteria that regulatory authorities have to apply in processes of acquisition and increase of controlling equity in financial entities (De Aldisio, 2008; p. 3; Troiano, 2010; p. 53). The systemic architecture delineated by these rules expresses the existence of a public interest in the assessment of the "quality" of controlling shareholders (Costi, 1995, p. 118) and confirms the overall aim of guaranteeing banks' managerial autonomy with respect to shareholders, in line with the "sound and prudent management" principle (Brescia Morra, 2012, p. 247). The protection of banks against potential damages resulting from the behaviour of shareholders represents a cornerstone of the current Italian regulatory model (Rotondo, 2009, p. 218).

One should add that outside the banking industry, Italian law imposes constraints on and establishes controls of changes in corporate equity ownership. These constraints and controls gradually increase according to the nature and amount of the interests involved in the management of the company. These constraints go beyond the restrictions on the acquisition and sale of equity shares, already mentioned in the US case (see Table 1 above) – such restrictions (temporary bans on short selling, restrictions on foreign equity ownership, regulation of insider trading) also exist at the EU and national level.

In the case of banks, Italian law establishes a series of additional restrictions with respect to board members and "relevant" shareholders, i. e. those with the potential to interfere with the bank's management. There is no room in the present study for a full-fledged discussion of the legal treatment of corporate ownership in Italian non-banking firms. We may simply point out that, regarding the so-called "closed" (i. e. private) firms, changes in ownership are subject to the discipline of the Italian Civil Code, and specifically the rules about the circulation of securities (Book IV, Title V; and art. 2355 of the Italian Civil Code), as well as the rules on the assignment of contracts (Articles 1406–1410 of the civil code), where applicable.

Regarding "open" (i. e. public) firms,[28] the discipline mentioned above applies (unless exceptions specified by the law itself), in addition to numerous other special provisions, contained in prevalence in the "Consolidated Law on Finance" ("Testo unico della finanza", henceforth TUF),[29] and in the "Regolamento emittenti" (Rules for Issuers) produced by the Consob ("Commissione Nazionale per le società e la borsa", National Commission for Listed Companies and stock exchange),[30] in addition to controls by the Consob itself, whose activity is mainly intended to ensure transparency.

Finally, on top of the provisions of the TUF and general regulations concerning listed companies or companies with securities owned by the public, Italian law contains additional, specific provisions for those (listed and not listed) companies that operate in areas deemed "of general interest" and whose activity is therefore subject to public control. In this context, the case of banks' equity ownership is particularly significant (Articles 19–24 of the TUB).

4.2 Authorizing the acquisition of equity

Within Italian law, the acquisition of any share of equity leading to "significant influence" (*influenza notevole*) over management, or to a controlling stake over a bank or the parent company in a bank holding firm, has to be previously authorized whenever it rises above a determined threshold (art. 19 TUB) (Enriques, 2005; p. 166; Antonucci, 2009; p. 172). The notion of "significant influence" is aimed at including, within the range of application of the rule, cases where a subject acquires equity shares below the 10 % threshold but is factually able to condition a bank's managerial and financial decisions.

This form of "preventive control" on bank's equity ownership is so important that it affects equity ownership in non-financial firms that own equity in banks (Costi, 2007, p. 327). The ultimate goal of such regulation is to avoid that "external" subjects (external to the banking industry, both in terms of interests and of personal characteristics) acquire a position of power that leads to an excessive influence over the management of a bank, especially when there are conflicts of interest.

The specificity of banking is also confirmed by the possibility, for regulatory authorities, to cancel the authorization of equity ownership, with a legal duty to sell the equity shares in question, and automatic "freezing" of rights attached to equity ownership. This rule clearly represents an external, authoritative intervention on whomever holds equity in banks. This intervention contributes to greatly diminishing the contestability of the transfer of equity ownership in banking, and then the so-called market for corporate control. This type of regulation clearly curbs equity shareholders' rights, beyond the restrictions existing in the US legal system, mentioned in Section 3 of the present paper. It further undermines the assumption of full alienability of (bank) equity shares envisioned by property right theorists, notably Alchian and Demsetz (1973) and Fama (1980a). Similarly, another aspect of regulation that makes it difficult to access banking equity is the possibility of an assessment of equity share acquisitions according to "proportionality".[31] This means that the regulatory authority, through secondary regulation (i. e. administrative decisions and bylaws), should take into consideration the type of regulated entities and the specific characteristics of the activity conducted, differentiating if necessary between banks and other financial intermediaries or controlled societies. Confirming the hypothesis formulated in the present study, one should underline the fact that the detailed assessment required by the European directive applies to bank ownership only, while it is possible to not apply these stringent rules to other financial entities.

4.3 Information and communication duties

The Italian regulatory regime also includes a series of rules aimed at enforcing the "transparency" of banks' shareholdings (Campobasso, 1994, p. 285) and of controlling subjects (art. 20 ss. TUB) (Marchetti, 2000, p. 158). The obligation to communicate "relevant shareholdings" allows banks to know - more effectively than would be possible under common regulation - their own shareholdings, and enables regulatory authorities to identify the holders of significant equity shareholdings. This helps the authorities to establish an adequate "map" of bank shareholdings and, more importantly, to grasp the effective distribution of power within equity holdings (Costi, 2007: 535). The identification of "relevant" shareholders is conceived as a means both to avoid the excessive influence (over banking operations) of subjects that are external to the banking industry and to guarantee an adequate flow of information to the regulatory authority, so that it may exert its functions in a satisfying manner.

These rules can thus be interpreted as complementing, or compounding, the legal and regulatory dispositions restricting access to equity ownership or providing for the suspension of ownership rights, discussed in the previous sub-sections. In particular, communication is mandatory in the following cases: following operations subject to authorization, or in case of a waiver of authorized operations; when a determined threshold (for equity ownership) is crossed; when shareholdings are reduced below the pre-set threshold. Within the same regulatory category, there are communication obligations concerning the "shareholder agreements" (*patti parasociali*) over voting rights, that is, all the agreements between shareholders that generate (effectively or potentially) effects coinciding with those deriving from one shareholding. The duty to communicate any agreement leading to concerted voting in a bank or a bank-controlling firm lasts the whole duration of the banking firm (Marchetti, 2000, p. 159).

The regulation of communication obligation should shed light on any conditioning of managerial powers, and allow management to take the decisions most adequate to the bank's interest, thus avoiding conflicts of interest. Thus, when a shareholders' agreement may cause prejudice to the bank's "sound and prudent management", the Bank of Italy (Italian banks' main regulatory authority) has the right to suspend the voting rights of participants to the agreement in question. As a consequence, these rules complement the regulation of access to ownership, discussed in the previous sub-section.

Still within the realm of information duties, the regulatory authority may request information from "interested" subjects, so as to reach a full transparency of shareholdings of banks and bank-controlling entities (art. 20 TUB). In particular, the regulatory authority may request from banks or controlling entities the names of shareholders, along with the characteristics of trustees who hold the equity shares. This rule aims to include in the range of its application those subjects who intervene in the conclusion or the implementation of shareholders' agreements. It thus represents a very peculiar extension of the authority's powers in terms of information beyond the range of controlled subjects (Siclari, 2012: 262).

Within the same regulatory area, the Italian regulatory authority may request from subjects holding shares in banks' equity the names of shareholders and controlling subjects (art. 21 t.u.b.), since it is possible to acquire, while not being part of a shareholders' agreement, a position of influence on the bank's management, which does not result from the agreement or from shareholdings. Such a request goes far beyond the range of controlling subjects, since it concerns entities of any nature that hold equity shares in banks. It is a form of control over all the shareholders in a position of exerting influence over banks' management – control that should consent to reach any situation of *de facto* (or indirect) exercise of shareholder's power, situation that does not come under the main communication duties mentioned above.

4.4 Sanctions. suspension of voting rights (and other rights)

The non-observation of rules governing equity holdings in banks is punishable through civil (art. 24 TUB), administrative and criminal sanctions. The TUB creates a system that "freezes" the voting rights attached to non-authorized shareholdings (when such authorization is suspended or cancelled) or to shareholdings not in compliance with communication duties (art. 24 T.U.B.) (Brescia Morra, 2000, p. 40)[32]; while there is an obligation to alienate shares when these shares correspond to unauthorized or forbidden shareholdings (art.24 T.U.B., comma 3).

In Italian securities law, "relevant" shareholdings are subject to transparency duties, and to an extensive control. This aspect reveals the need, embedded in the regulatory regime, to guarantee not only the general interest, so important for administrative law (and its mission to enforce trust in banking entities and protect systemic stability), but also private interests, common to all shareholders, among which the stability and capital adequacy of the particular banking firm (Santoni, 2012; p. 299; Vella, 2011).

Whenever the prohibition of voting is not respected, the decisions made with the contribution of those voting rights that should have been suspended may be legally challenged (Costi, 2007; p. 539; Santoni, 2012; p. 199; Benocci, 2007; p. 243). The specificity of such rule consists in the fact that the legal challenge may be raised by, in addition to the subjects usually legitimized by law, the regulatory authority itself (Antonucci, 2009; p. 192; Santoni, 2012; p. 196), when it holds that the violation of the law damages the public interest, which is indirectly protected through the identification of shareholders (Santoni, 2012, p. 200).

Law attributes to the Bank of Italy a power that does not concern the protection of legality, or of a social interest in a strict sense, but corresponds to the specific regulatory objectives pursued by the regulatory authority itself – power that is exercised with discretion in its regular operations. This power is clearly not in line with the "shareholder primacy" view discussed in Section 3 above. More importantly, it participates in the circumscription of shareholders' rights as theorized in the property rights theory; and further establishes the validity of a view of banking as a "public-private partnership" (Ricks, 2012a), or as a public-private franchise (Hockett & Omarova, 2017). Finally, the TUB includes the obligation to alienate "all" the shareholdings for which no authorization has been received, or authorization has been cancelled.

4.5 Regulating banks' corporate governance: further obstacles to shareholders' potential claims to control banking entities

The regulation of banks' corporate governance has been revised in the wake of the 2007/2008 global financial crisis, so as to guarantee (again) the "sound and prudent management"[33] of Italian banks. However, the pre- and post-crisis regulation of banks' corporate governance displays a strong continuity, predicated upon the conception of banking as a specific activity that, according to art. 10 of the T.U.B., is characterized by monetary intermediation and the functional linking of collecting savings and lending activities. Beyond *economic* activities of general interest, banks are also held to carry larger social functions, requiring stringent governance rules, which can be verified in the context of prudential regulation (Cera, 2015).

In this area of bank regulation, current Italian regulation directly reflects the efforts made at the international and European levels to address specific problems regarding banks' governance, such as the problem of the inadequacy of previous rules and internal controls in front of excessive risk-taking. Thus international bodies (in particular the Basel Committee for Banking Supervision) have adopted a series of principles that should guide national regulations on banks' corporate governance and internal control systems (Frigeni, 2015). These new regulations concerning banks' risk management and corporate governance, here closely related, perfectly express the tension mentioned above between a broad tendency to favour equity shareholders and the limited liability form of banking entities, on the one hand, while circumscribing equity shareholders' potential claims so as to maintain banks' legal and regulatory embeddedness in a model of the banking entity as a social institution.

These principles have been made explicit at the European level by Directive 2013/36/UE ("CRD IV"). They concern the organization of internal controls and the process of risk management, given the guidelines produced by the European Banking Authority (EBA) and the Basel Committee. Subsequently (in July 2013), the Bank of Italy published chapter 7 of Title V of the Circular 263/2006(concerning internal controls) and (in May 2014), chapter 1 of Title IV of Part One of the Circular 285/2013(concerning corporate governance). Given that the CRD IV Directive only contains broad guidelines, the Bank of Italy could implement those guidelines through much more detailed rules adapted to the national banking system.

The last (fourteenth) Bank of Italy regulatory update as of 2016, is a regulation dating November 24th, 2015, which aims to implement EC Delegated Regulations 61 and 62 of 2015. They concern liquidity and leverage and modify and complement the regulations contained in CRD IV and in EU Regulation n. 575/2013 ("CRR"). These (National) regulations innovate in that they clarify specific aspects regarding the newly-introduced (at international level) Liquidity Coverage Ratio and Leverage Ratio. Such modifications indicate the modalities through which discretionary rules can be applied, according to the aforementioned Regulations issued by the European Commission.[34]

Altogether, these regulatory measures[35] are articulated in general principles and specific rules. The regulations covering the role and functioning of governance bodies, and of their relationship with the corporate entity of banks, are wide-ranging. On the one hand, the rules emphasize the duties of governance bodies to guarantee adequate control of the risks undergone by the bank in its day-to-day activities, attributing to the Board of directors the duty (that cannot be delegated) to define, approve and evaluate the correct implementation of risk management schemes. On the other hand, the regulations produce a re-organization of responsibilities and competences of the supervisory body, with respect to the managerial bodies.[36] Such regulations have direct effects on the nature and exercise of ownership rights in banking.

The classical corporate governance problem of coordinating and harmonizing diverging interests among stakeholders assumes a specific aspect in banking, thanks in large part to banks' specific regulatory regimes. As seen in the previous sub-sections above, the regulation of equity ownership in banking creates a series of communication and information duties on the part of those subjects with shareholdings such that they may enable them to exert an influence on the bank's management (Galanti, 2008, p. 469). In addition, these regulations impose strict limitations on the acquisition and alienation of equity shares.

Regarding corporate governance, the Italian regulatory regime has, for a long time, allowed the co-existence of multiple, variegated types of ownership and governance (Bruzzone, 1997, p. 194). As seen above, equity ownership in the banking industry is regulated by European Directive 2007/44/CE (transposed in national regulations), which defines procedural rules and assessment criteria that national regulatory authorities have to apply in procedures of acquisition and increase in "qualified" shareholdings in financial entities. In Italy, these rules are contained in a single section of the Single Banking Law, namely Chapter III of Title II (art. 19–24) of TUB and in art. 25 of the same text ("honorability" requisites).

The explicit aim of these regulations is to establish clear, precise and uniform rules for the assessment of the acquisition of equity shares for national regulatory authorities, so as to limit discretion and avoid discrimination (Bank of Italy, 2010, p. 2). In the Italian version, these rules are guided by the overarching principle of "sound and prudent management", already mentioned, which represents a true regulatory innovation (both with respect to European legislation and to past Italian regulation).

As shown above, current regulations, both at the European and national levels, establish a series of terminological distinctions that produce regulatory effects and, in particular, effectively circumscribe the governance impact of equity ownership in banking. First, the concept of "participating interest", originally defined as the existence of a "durable link" between the shareholder and the entity in question,[37] now extends to "the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking".[38] The Italian Single Banking Law identifies as "participation"[39] the following: equity shares and other financial instruments that attribute administrative rights, or rights listed in art. 2351, last comma, of the Civil Code. Secondly, European regulations identify the existence of "qualifying holding" in relation to "significant influence" exerted by shareholders above a certain threshold of equity ownership.[40]

Similarly, the notions of "indirect participation" and "control", in art. 22 and 23[41] of the Single Banking Law, assume an important role, since they integrate the normative content of the complex regulation of shareholdings (Maimone, 2006, p. 106). In particular, Art. 22 fills an important regulatory gap with the introduction of the notion of "indirect participation", which includes any form of intermediation in the acquisition of equity ownership in banking (Costa, 2013: 194), that is, the acquisition operated by controlled firms, trusts, or intermediate persons.[42]

Another important regulatory contribution to the specific treatment of equity ownership in banks is given by the rule governing honorability requisites in subjects participating to banks' equity (art. 25 t.u.b.). This rule actually codifies a principle that has a long and consolidated existence in Italian law, namely, the presupposition that any relevant power of influence over a bank must be exercised only by those subjects (physical or legal persons) in possession of personal honorability characteristics (Alessandra, 2010: 174).

Finally, various rules concerning information duties for banks, and subjects included in consolidated banking supervision (art. 51 ss. of T.U.B.) weigh on the relationship between ownership and governance, given that they govern intra-group relationships between banks and those subjects, financial or not, that are part of them. Article 51 of the Single Banking Law, for instance, rules that banks must send to the regulatory authority frequent information, balance sheets and any other document required. Article 66 determines the rules of consolidated information supervision in banking.

In carrying out supervisory functions, the Bank of Italy may conduct inspections and ask to be shown any documents and records it deems necessary. The Bank of Italy can inspect: banks, "authorized entities", entities supervised on a consolidated basis, intermediaries entered into the General and Special Registers, electronic money institutions. Assessment and supervision of intermediaries[43] are based on a consolidated approach, aimed at understanding the overall risks and safeguards of the supervised entities. Accordingly, the scope of application of the Analysis Patterns (APs) primarily includes banking groups and investment firm groups subject to consolidated supervision. The primary objective of inspections is to evaluate the regulatee and/or specific issues to be examined in compliance with the tasks set out in the Assignment Letter. This objective should be pursued bearing in mind efficiency requirements, optimizing the interaction between the quality of the product and the duration of assessments.

Compliance with the principle of efficiency is functional to both the timely completion of all the scheduled assessments and the positive outcome of the verifications. As a matter of fact, in order to ensure full effectiveness to any corrective measures to be taken, the problems found and the assessments carried out must be promptly reported to the regulatee concerned and to the Supervisory Authority respectively.

Bearing this in mind, at the beginning of the assessment, the Head of the inspection team plans the necessary activities, unless any peculiarity of the assignment prevents this from happening. To this end, after having assigned the individual duties to the team members, he/she periodically monitors compliance with the time schedule and updates it to take account of any additional necessary checks.

For the inspection to be fully effective, the flexibility criterion is particularly relevant: it is meant to confer a margin of technical discretion to the inspector so that he/she can choose, for example, the AP to follow, the appropriate sampling criteria, the documentation to be examined, the corporate officers to contact, etc. in order to better support the inspection's objectives. Inspectors have the power to access all the information available at the regulatee's premises, so as to get the documentation needed for the assessments. The effective functioning of on-site inspections often requires this power to be strongly exerted, analysing a considerable amount of data and information and dealing with many corporate officers. However, on-site assessments shall be carried out avoiding any unnecessary administrative burdens for the regulatees. In particular, the actions (e. g. request for documentation, meetings with officers) which entail the lowest burden for the regulatees – given the requested level of effectiveness – should be preferred.

To minimize the assessments' impact, requests should be carefully pondered, assessing their consistency with the objectives of supervision and balancing expected benefits and related costs, also considering the intermediaries' capacity of response. To this end, the best possible use of the information available should be pursued, limiting additional verifications to a minimum and exploiting the possibilities of electronic data processing.[44]

5 Conclusions

To sum up, the current legal and regulatory regime governing equity ownership in banks in Italy presents a paradox. On the one hand, successive reforms have clearly favoured the joint-stock company form in banking, thus confirming trends seen in many other countries - trends characterized, since the 1980s, by a massive move away from public and ad hoc forms of non-private ownership, towards private ownership and the limited liability form (See Kroszner & Strahan, 2014).

On the other hand, banking law and regulations continuously erect obstacles to potential control claims by equity holders, confirming the view, presented in the first sections, that property rights theory as applied to theories of the firm is clearly inadequate to represent the actual (effective) extent of ownership rights in banking. In particular, the differentiation established by regulators among multiple types of equity owners ("relevant" shareholders, shareholders taking part in a shareholders' agreement, etc.) amounts to a technique for circumscribing shareholders' claims to control the banking firm. "Ownership of banks" is a fiction - perhaps a dangerous one. And law, whatever the degree of faith placed in such fiction by policy-makers, apparently could not but circumscribe the extent to which the fiction could turn into reality; it could not but further anchor banking governance in a peculiar institutional setting. Indeed, the multiple limitations to the acquisition of equity ownership and to the exercise of ownership rights that exist in the Italian case demonstrate the specific treatment of banking firms within corporate law. In this sense, banks are (still) treated more as institutions, with important public goods functions, than as private corporations. This specific treatment, we suggest, is in line with a long legal and regulatory tradition, in Italy and many other countries. Within this tradition, banks cannot be owned.

Certainly, Italy is a specific case. Thus the conclusions reached here might be non generalizable. However, this objection appears weaker if one considers that national banking regulation in European Union member countries has been strongly influenced by European-wide regulatory efforts and has gradually converged towards, if not a unique, at least comparable models – even though some European legal concepts, such as that of "sound and prudent management", have experienced a broadening of their meaning and application in the Italian context.[45] Comparative analyses of the legal and regulatory treatment of equity ownership in banks may help extend the findings of the present study. Another rebuttal to the aforementioned objection may arise from the (voluntary) circumscription of the analysis of the legal/regulatory limitations to equity ownership and ownership rights as conceptualized in the property rights theory (and the ownership and performance literature in banking). Indeed, the analysis proposed above was limited to the explicit treatment of ownership and governance in (Italian and European) regulation. However, there are many other potential sources of limitations of ownership rights, located not in the explicit regulation of equity ownership, but in the regulation of banks' operations and activities. In fact, pursuant to Law No. 262/2005, the Bank of Italy, according to CICR Resolution 277/2008, provides the limits and conditions under which a bank may assume risks towards 'related parties'. This concept includes both 'related entities'[46] and 'entities connected to related entities'.[47]

Pursuant to the provisions of the Bank of Italy, the full amount of the risky assets of a bank or of a banking group towards related parties cannot exceed certain diversified thresholds (in any case no more than 20 per cent) of its regulatory capital. Furthermore, persons who carry out directive and controlling duties within the bank, as well as a company of the banking group, can enter into obligations with the bank only under the prior authorisation of the board of directors. In December 2011 the Bank of Italy approved the rules implementing the CICR Resolution 277/2008. According to said implementation rules: in the approval of transactions with 'related entities' the role of the independent directors of the bank is particularly relevant since the bank shall constitute an executive committee (internal to the board of directors) exclusively composed of independent directors who are requested to communicate their prior opinion in respect of the relevant transaction by means of an express declaration in occasion of the vote in the board of directors called to resolve on the transaction; and the bank will set internal procedures aiming at regulating the transaction with related entities.[48]

Indeed, the fact that banks are strongly constrained in their ability to undertake transactions with related parties evidently places a limit on the far-ranging "right to use" attributed to owners by property rights theory. In other words, even if one held that a bank's owner should be equated with the controlling shareholder, the latter is limited in the nature and the range of strategic decisions she might want to take – strategic decisions that embody the "right to use" that characterizes ownership rights. This, we hypothesize here, might prove to be the ultimate nail to the coffin of property rights theory applied to banks and banking.

However, at this point we ought to mention an important caveat to the argument presented above: while our synthetic exposition of the regulation of equity ownership in Italian banks does, in our mind, contribute to invalidate the theoretical premises of a large chunk of the contemporary economic literature on banking, it does not mean that the myth of "shareholder primacy" (Stout, 2012) has not produced effects on Italian banks – and, in particular, on the behaviour of Italian banks' top managers over time. Financialization – which can be construed as the diffusion of financial norms across business and the economy – has progressed in Italy, too. The recent reforms of Italian cooperative banks reflect a broader, decades-long cultural shift away from the view of banks as institutions – and of firms as entities, not ownable by shareholders.[49] This shift has been compounded, in the case of banks, by the aftermath of the 2007–08 global banking crisis which laid emphasis on bank shareholder equity as a key lever to reduce systemic risk in finance – while, in fact, shareholders' equity has contributed very little to banks' capital prior to or during the crisis (see, for a case study of Deutsche Bank, Biondi & Graeff, 2017; more generally, Biondi, 2012). As a consequence of this new regulatory emphasis, many banks across advanced economies – including Italy – have gone through difficult and sometimes traumatic re-capitalizing efforts.

In conclusion, the myth of shareholder primacy keeps pervading the culture of banking and has been compounded by capitalization issues; however, actual regulations continue to impose checks and balances on shareholders' claims within banks, consistent with a broader view of the nature of the firm: this tension is what we have tried to show in this article.

List of main legal sources

Law 30th July 1990, n. 218 ("Amato Law"), Rules on capital restructuring and consolidation of public credit institutions.

Law 10th October 1990, n. 287, Rules for the protection of competition and market".

Legislative Decree 20th November 1990, n. 356, Rules for restructuring and regulation of banking group.

Legislative Decree 14th December 1992, n. 481, Implementing Directive 89/646/EEC on the coordination of laws, regulations and administrative provisions relating to the access to activity of credit institutions and its exercise and amending Directive 77/780/EEC.

Legislative Decree 1st September 1993, n. 385, Consolidated text of banking and credit laws.

Legislative Decree 24th February 1998, n. 58, Consolidated Law on Finance pursuant to Articles 8 and 21 of Law n. 52 of 6th February 1996.

Law 28th December 2005, n. 262, Rules for the protection of savings and financial markets regulation.

Directive 2007/44/EC of the European Parliament and of the Council of 5th September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector.

Law 24th March 2015, n. 33, Conversion to law, with amendments, of the decree-law 24th January 2015, n. 3 laying down urgent measures for the banking and investment.

Law 8th April 2016, n. 49, Conversion to law, with amendments, of the decree-law 14th February 2016, n. 18, laying down urgent measures concerning the reform of the cooperative credit banks, the guarantee on the securitisation of non-performing loans, the tax regime on procedures for crisis and the collective asset management.

Notes

1 Cited in Black (2005).
2 Cited by 2,214 works according to Google Scholar (as of 25th February 2016).
3 Google Scholar proposes 1,830,000 entries for a search with the keywords "bank ownership"; Scopus has 2,113 results; Web of Science has 2,304 results.
4 A successful engineer, industrialist, and statesman, Rathenau was murdered in 1922 by right-wing extremists.
5 The term "banks" is henceforth used, in the present study, to refer to deposit-taking or creating financial institutions.
6 While not as popular among economists today as the "financial intermediation theory", the "credit creation theory of banking" has a long and respectable pedigree including authors such as Henry Macleod in the XIXth century, who wrote that "the peculiar essence of [bankers'] business is, not to lend […] money to other persons, but on basis of this bullion to create a vast superstructure of Credit; to multiply their promises to pay many times: These Credits being payable on demand and performing all the functions of an equal amount of cash." (Macleod, 1906, p. 311) For a recent statement of the credit creation theory, see Werner (2016).
7 for instance, Fama argues that banks are unique because their assets and liabilities are affected by specific regulations, such as deposit insurance or reserve requirements; see Fama (1980b, 1985).
8 The legal scholars mentioned above have distinct but similar ways of conceptualizing such institutional system: A public franchise according to Hockett and Omarova (2017); a public-private partnership according to Ricks (2012a, 2012b).
9 Interestingly, behind the continuing popularity of the issue among financial and banking economists, there has been an evolution in the regional focus of such works: The crust of the academic studies on the topic of "bank ownership" seems to have shifted, in recent years, away from a US or Western European focus towards China, India, and other emerging economies. One may suggest that the decreasing production of US or Europe-centered "bank ownership" studies has to do with the declining relevance of "bank ownership" in a post-2007 crisis context where the distinction between ownership types lacks salience for the understanding of (systemic) banking failures.
10 By "pre-scientific" we mean a notion ("bank ownership", as "firm ownership") that has solid roots neither in theory nor in empirics, and is not adequately explicated.

11 For instance, the only two theoretical references cited in La Porta et al.' s seminal study of government banks are Kornai and Shleifer and Vishny (1994) (La Porta, Lopez-de-Silanes & Shleifer, 2002).
12 Regarding the empirical literature briefly discussed above, a way out of the theoretical and methodological weaknesses of the concept of ownership in banking might be a full-fledged abandonment of ownership (and property rights theories) and a full embrace of the notion of control. See Saghi-Zedek (2016) for a recent successful empirical example of such conceptual strategy.
13 In addition, and paradoxically, the "bundle of rights" view of ownership, which emerged in the late XIXth century and is dominant in modern economic approaches to property rights, is even more tied to the law than the previous view. As Klein and Johnson argue: "the bundle formulation tends to suggest that property depends on its being created, defined, recognized, and validated by the state" (Klein & Robinson, 2011, p. 195). The re-emergence of the "bundle of rights" view in the 1970s may be associated with the return to a "financialized" view of equity ownership, by contrast with a "socialized" view that prevailed in the mid-XXth century – using the terms set forth by Ireland in a recent study (Ireland, 2016).
14 More explicitly yet, Alchian and Demsetz, apparently unaware of the theoretical contradictions that they raise so, later write that ownership rights are "are always circumscribed, often by the prohibition of certain actions." (Alchian & Demsetz, 1973, p. 17)
15 Arguably, a bank's various stakeholders (depositors, creditors) each plays a role in either providing funds to the bank (in the bank's intermediation function); or in receiving the new money claims created by the bank (in the bank's money creation function).
16 This argument is the symmetrical opposite to the one put forward by Alchian in his initial formulation of property rights theory (Alchian, 1965).
17 As the latter point out in a rhetorical question, "what if a state sets the rules for economic activity […] such that the standard dichotomy between [state-owned enterprises] and [privately-owned enterprises] breaks down?" (Milhaupt & Zheng, 2014, p. 668). In the case of finance, a cogent response to this question is proposed by Hockett and Omarosa, cited above (Hockett & Omarova, 2017).
18 The most questionable statements are found in the literature on government "ownership" of banks, whose functionalist views of "bank ownership" ("state banks are created for a purpose", Shleifer & Vishny, 1994) contradict one major tenet of property rights theory, i. e. that ownership is endogenous (Demsetz & Lehn, 1985; Demsetz & Villalonga, 2001). Moreover, the question of political influence in banking deserves more sophisticated treatments, such as the one provided in a recent book by Calomiris and Haber (2014).
19 Such legislative reforms, one must add, are consistent with the undergoing pattern of banking reforms initiated with the 1990 so-called "Amato law", which created de novo shareholders for previously public banks, laying the ground for their privatization. See next section.
20 For instance, an ongoing debate among courts and legal scholars in the 1980s was whether Italian savings banks were public or private entities (see Butzbach, 2016). One should note that this ambiguity actually reveals the ongoing, and perhaps inherent tension between different views of the firm, as spelled out in the introduction above.
21 Subsequent legislation, throughout the 1990s and 2000s, encouraged and then obliged Foundations to divest their shares in banking entities.
22 Law-decree n.3 of 24th January 2015; converted into law n.33, 24th March 2015.
23 Law-decree n.18 of 14th February 2016; converted into law n.49, 8th April 2016.
24 This view may seem to clash with the observation that, in the words of an authoritative scholar of Italian banking and banking regulation, that "the recognition of banks as enterprises, enshrined in the Civil code, has long been the basic principle adopted by the Bank of Italy." (Ciocca, 2005, p. 70)
25 Directive of 5th September 2007, which modifies Council's Directive 92/49/CEE and European Directives 2002/83/CE, 2004/39/CE, 2005/68/CE and 2006/48/CE, regarding procedures and criteria for the prudential assessment of acquisitions and increate shareholdings in the financial sector.
26 Testo unico delle leggi in materia bancarie e creditizia. The T.U.B. was originally passed as a "legal decree" in 1993 (decreto legislativo 385/1993); the original text has been frequently updated and modified over time. What we call "T.U.B." here is the current version of the regulation – as of February, 2018.
27 And, more specifically on the finalization of regulation towards the preservation of banks' managerial autonomy.
28 I.e. public companies, either listed on regulated markets or not listed but whose equity is spread among the public to a considerable extent - according to criteria set by the Italian regulatory authority in charge of the supervision of securities, the Commissione Nazionale per le società e la borsa (Consob).
29 "Decreto legislativo 24 febbraio 1998, n. 58: Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52". The TUF incorporates Securities law but also include legislation on stock brokers, issues, etc.
30 "Regulation implementing the TUF concerning the discipline of issuers" (adopted by Consob with resolution no. 11,971 of 14th May 1999).
31 It is generally assumed (in the literature) that proportionality refers to an assessment of the exercise of power in government and, at the same time, could be seen as: A method for law-makers' activity; rules of interpretation/application of judicial decisions; a standard of action for the public administration (for example, powers of supervision and regulation attributed to the financial markets authorities). In the context of the banking/financial system, proportionality represents one of the basic principles of European Law (mentioned in the art. 5 of the Lisbon Treaty on European Union; see Scipione, 2013, p. 1161), in virtue of which the action of the Regulator must be limited to what is necessary for achieving the regulatory objective. Subsequently, proportionality has become a real regulatory "mantra", in virtue of its systematic reference – especially after the birth of the European System of Financial Supervision – to the necessity to provide a correct balancing of the various interests involved in financial markets activities. The principle of proportionality, therefore, represents one of the fundamental parameters used to rebalance the interests connected to the legislative and control functions, and is used in many areas by European and national supervisory authorities. See on this point: Schwarze (2003), p. 52; EBA Banking Stakeholder Group (BSG) (2015), which traces the programmatic guidelines for implementation of the principle of proportionality in the European banking sector; Aikman et al. (2014), Aiyar, Calomiris, and Wieladek (2014), and European Commission (2014), 2015; European Parliament (2014) and Llewellyn (2014).
32 Regulation identifies interference into shareholding activities whenever shareholdings are acquired without the required authorization, or in case of omission of communication.
33 As seen above, in Italian law the "sound and prudent management" is both a key objective for the authorities and a parameter for supervised entities. In the authorization process under the current Banking Directive, supervisory authorities consider the suitability of the prospective shareholders or members by taking into account the need to ensure the sound and prudent management of a credit institution.
34 Which have modified regulation concerning liquidity risk contained in CRR, upgrading it to "first pillar" risk, and updated the rules concerning the Leverage Ratio along the lines of the most recent guidelines produced by the Basel Committee.
35 "*Disposizioni di vigilanza in materia di organizzazione e governo societario delle banche*".
36 One may mention here the following provisions of TUB: Art. 53, comma 1, lett. a) according to which Banca d'Italia shall issue general provisions concerning the limitation of risk in its various forms - similarly to paragraph 1 lett. d) concerning administrative and accounting procedures and internal controls; art. 53, comma 2-bis, which establishes the regulator's role regarding relative valuations and risk

measurement systems that can be used by banks and banking groups (and, in general, see the article 53); art. 67, which, for the purpose of carrying out consolidated supervision, assigns to the Banca d'Italia the power to issue to the parent company, by general or specific regulations, provisions concerning the banking group as a whole or its components, relating to sound administrative and accounting procedures and internal controls; art. 56, which establishes that the Bank of Italy assesses whether the provisions of the banks' statutes are not in conflict with the principles of sound and prudent management.
37 According to a 1978 European Directive, ""participating interest" shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities." (Article 17 of the Fourth Council Directive 78/660/EEC of 25th July 1978).
38 Article 4, comma 11 of EU Directive 2006/48.
39 Art. 1, comma 2, lett. *h-quarter* of T.U.B.
40 "'Qualifying holding' means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking" (Article 4, comma 11, of European Directive 2006/48).
41 Article 23 t.u.b. specifies that control exists, also with reference to different subjects by the companies, in the cases mentioned in the Article 2359, first and second subparagraphs, of the Civil Code.
42 Equity positions held by investment funds do not fall under this regulation because they are seen (by Italian regulators) as temporary acquisitions not likely to influence bank management. Thanks to the editor for pointing this out.
43 The regulations examined in this paragraph and the following ones concern bank holding companies, not just their intermediary subsidiaries.
44 Bank of Italy (2008).
45 Interestingly, legal scholarship has repeatedly highlighted that the "sound and prudent management" principle gives the supervisory authority too much discretion on the market for corporate control in banking. Directive 2007/44/EC took note of this and attempted to limit and reduce any forms of interference of the supervisory authority.
46 'Related entities' are: - persons that carry out directive and control duties within the bank or the leading bank of the group; - major shareholders who, under the TUB, needed prior authorization for the acquisition of their share capital; - entities that may appoint, by virtue of agreements or of the articles of association, one or more members of the directing and controlling bodies; - companies over which the bank or the banking group may directly or indirectly exercise a dominant influence; and other entities identified by the Bank of Italy by the application of the International Accounting Standards (IAS).
47 While 'Entities connected to related entities' are: companies directly or indirectly controlled by a related entity; entities that control directly or indirectly a related entity; and other entities identified by the Bank of Italy by the application of the IAS.
48 Fulvio, Marra, and Di Vincenzo (2013).
49 Thanks to an anonymous reviewer for calling our attention to this issue.

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