Andrea Antonino Silipigni

Kent Law School, University of Kent

Neoliberal Restructuring in the Eurozone Crisis: 'New Constitutionalism' and Italy's Post-Crisis Legal Transformations, 2014-2016

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Abstract

If we examine things from a different point of view, we could be able to see something that otherwise it would not be possible. This is the purpose of this thesis. It seeks to 'see' the reform process put in place – in the aftermath of the 2007 financial and economic crisis – within the European Union and in Italy from a different point of view. Specifically, applying Stephen Gill's 'new constitutionalism of disciplinary neoliberalism' theoretical framework, the reform of the labour market, as well as the institutional reform – proposed and partially implemented by Renzi Cabinet, between 2014-2016 – in Italy do not seem to be a mere 'domestic' or 'internal' issue. By contrast, this thesis argues that such regulations envisage a neoliberal restructuring of the Italian politico-legal system, which would confirm Gill's claim that new constitutionalist measures aim to shift nation states from social democratic towards neoliberal orders.

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AGS	Annual Growth Survey
AMR	Alert Mechanism Report
CGIL	Confederazione Generale Italiana del Lavoro
CSR	Country-Specific Report
DG ECFIN	Directorate-General for Economic and Financial Affairs
EC	European Commission
ECB	European Central Bank
EMU	Economic and Monetary Union
ESM	European Stability Mechanism
EP	European Parliament
EU	European Union
GDP	Gross Domestic Product
IDR	In-Depth Review
IMF	International Monetary Fund
ISTAT	Istituto Nazionale di Statistica
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries
MIP	Macroeconomic Imbalance Procedure
MoU	Memorandum of Understandings
NRP	National Reform Programme
PD	Partito Democratico
RMI	Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances
SGP	Stability and Growth Pact
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union

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Council Directive 2011/85/EU of 23 November 2011 on requirements for budgetary frameworks of the Member States OJ L 306

Regulation (EU) no. 1173/2011 of 23 November 2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area OJ L 306

Regulation (EU) no. 1174/2011 of 23 November 2011 of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area OJ L 306

Regulation (EU) no. 1175/2011 of 23 November 2011 of the European Parliament and of the Council amending Council Regulation (EC) no. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies OJ L 306

Regulation (EU) no. 1176/2011 of 23 November 2011 of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances OJ L 306

Council Regulation (EU) no. 1177/2011 of 23 November 2011 amending Regulation (EC) no. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure OJ L 306

Regulation (EU) no. 473/2013 of 27 May 2013 of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area OJ L 140

Regulation (EU) no. 472/2013 of 27 May 2013 of the European Parliament and of the Council on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability OJ L 140

Introduction

Since 2007, the European Union[1] (EU) has experienced a deep financial and economic crisis (also known as 'Eurozone Crisis' or 'European Sovereign Debt Crisis'). Many International Financial Organisations (IFOs) conducted a huge number of studies aiming to understand the economic causes of the crisis. For the most part, these analyses substantiated that the causes of the crisis were essentially two: the 2007 financial crisis in the United States of America, as well as the high level of sovereign debts of many member states of the Economic and Monetary Union[2] (EMU). As a matter of fact, Eurozone member states were not able to repay or refinance their public debt without the assistance of third parties, such as the EU, and the International Monetary Fund[3] (IMF). On 28 May 2013, however, J. P. Morgan Chase and Co.[4] conducted a report – *The Euro Area Adjustment: About Halfway There*[5] – which went beyond these widespread analyses and assumed that the financial and economic crisis was also triggered by political and legal factors. The J. P. Morgan's report, indeed, supported that

> At the start of the [2007 global financial and economic] crisis, it was generally assumed that the national legacy problems were economic in nature. But, as the crisis has evolved, it has become apparent that there are deep seated political problems in the periphery [of Europe], which, in our view, need to

[1] The European Union (EU) is a political and economic union which includes 28 European member-states. It establishes common economic, social, and security policies. Its main institutions are: the European Council, the European Commission, the Court of Justice of the European Union, the European Central Bank, and the European Court of Europe.
[2] The Economic and Monetary Union (EMU) – launched with the Maastricht Agreements in 1992 – involves the coordination of economic and fiscal policies, a common monetary policy, and a common currency of 19 out of 28 European Union member states. It seeks to provide both economic growth and stability by a set of surveillance and sanctioning mechanisms established by EU and extra-EU laws.
[3] The International Monetary Fund (IMF) is an international organisation – founded in 1945 at the Bretton Woods Conference – which promote international monetary co-operation, facilitate international trade, and foster economic growth.
[4] J. P. Morgan Chase and Co. is an American multinational banking and financial services holding company headquartered in New York City. It is the largest bank in the United States, the world's sixth largest bank by total assets, and the world's second most valuable bank by market capitalisation. Its services include investment banking, markets and investor services, treasury services, asset management, private banking, merchant services, wealth management and brokerage, and commercial banking.
[5] J. P. Morgan Chase and Co., 'The Euro Area Adjustment: About Halfway There' (Europe Economic Research, 28 May 2013) <https://culturaliberta.files.wordpress.com/2013/06/jpm-the-euro-area-adjustment-about-halfway-there.pdf> accessed 8 November 2016.

> change if EMU is going to function properly in the long run. The political systems in the periphery were established in the aftermath of dictatorship, and were defined by that experience. Constitutions tend to show a strong socialist influence, reflecting the political strength that left wing parties gained after the defeat of fascism. Political systems around the periphery typically display several of the following features: weak executives; weak central states relative to regions; constitutional protection of labor rights; consensus building systems which foster political clientalism; and the right to protest if unwelcome changes are made to the political status quo. The shortcomings of this political legacy have been revealed by the crisis. […] There is a growing recognition of the extent of this problem, both in the core and in the periphery. […] The key test in the coming year will be in Italy, where the new government clearly has the opportunity to engage in meaningful political reform. But, in terms of the idea of journey, the process of political reform has barely begun.[6]

This brief, but significant section of the J. P. Morgan's report triggered this research. The American financial institution, analysing the economic and financial performances of Eurozone countries in the midst of the 2007 economic and financial crisis in Europe, has directly linked the constitutions of Southern European countries – and their strong socialist influence – to the persistent character of the Eurozone crisis, as well as the improper functioning of the EMU. To be more precise, J. P. Morgan underlined that the political systems of Portugal, Spain, Italy, and Greece possess inherently weaknesses such as weak executives, weak central states in favour of local authorities, and strong labour protections.

The J. P. Morgan's report was published in the midst of a major reform process put in place both in the European Union and Italy to respond rapidly and effectively to the 2007 financial and economic crisis. At the supranational level, the European Union has primarily sought to restore economic growth by creating a favourable business climate for investors. To this purpose, the European political and economic union has deeply reformed its economic governance system through

[6] ibid 12-13.

the 2011 revision of the Stability and Growth Pact[7] (SGP), the implementation of the 2013 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union[8] (TSCG), and two regulations[9] (also referred to as 'two-pack'). More specifically, the Stability and Growth Pact, the Fiscal Stability Treaty, and the two-pack set specific financial and economic parameters in order to ensure that contracting parties keep their public finance sustainable. In addition to this, these regulations established a set of both monitoring and sanctioning instruments which addressed any deviation from the financial and economic parameters, ensuring compliance of contracting parties with fiscal discipline.

At the same time as the reconstruction of the current European Union's system of economic governance, the then Italian Prime Minister, Matteo Renzi[10], set an extensive political agenda which aimed to deal with the 2007 financial and economic crisis in Italy. This political agenda included, among many others, the reform of both the labour market and the institutional framework. With regards to the former, Renzi and the then Minister of Labour, Giuliano Poletti[11], proposed and implemented the Law 183/2014 (also referred to as 'Jobs Act') which has involved a far-reaching reform of the Law 300/1970 (commonly known as 'Workers' Statute'). In the first place, the Jobs Act reformed both 'open-ended' and temporary contracts by establishing a brand-new contract type, i.e. *contratto a tutele crescenti* (contract with gradually increasing protection). This contract type does not provide any obligations for firms to reinstate workers after invalid dismissals unless these are discriminatory or orally communicated. The contract with gradually increasing protection thus

[7] The Stability and Growth Pact (SGP) – entered into force between 1997-1999 – is an international agreement among the 28 member-states of the European Union. The agreement sought to strengthen the monitoring and coordination of national fiscal and economic policies. The Stability and Growth Pact has been revised for the first time in 2005. The revision sought to better consider individual national circumstances, as well as to strengthen surveillance and coordination of both fiscal and economic policies.

[8] The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) – also known as Fiscal Stability Treaty – is an intergovernmental treaty which entered into force in 2013. The treaty seeks to strengthen the economic pillar of the economic and monetary union by mandating fiscal discipline, coordination and governance.

[9] The two-pack – entered into force in 2013 – reinforces economic coordination between Member States and introduces extra monitoring instruments.

[10] Matteo Renzi served as President of the Province of Florence (from 2004 to 2009), as Major of Florence (from 2009 to 2014), and as Italian Prime Minister (from 2014 to 2016). From 2013 to 2018, he was the Secretary of the main Italian social-democratic political party, Partito Democratico (PD).

[11] Giuliano Poletti served as Minister of Labour and Social Policies both in the 63rd and 64th Cabinets of the Italian Republic.

obliges firms to simply reimburse workers with a minimum economic compensation. In the second place, the labour reform extended the use of hourly-tickets (also referred to as 'vouchers'). These vouchers are a non-standard type of employment relationship which allow firms to compensate workers for occasional supplementary jobs. According to the framers of the bill, the Jobs Act would have involved a twofold aim: it would have boosted employment (in particular for women and young people), while reducing the use temporal and atypical type contracts.

With regards to the latter, reform of Italy's institutional framework also came to be considered a priority for Renzi Government in the awake of the crisis. The then Italian Prime Minister and the then Minister of Constitutional Reforms and Relationship with the Parliament, Maria Elena Boschi[12] proposed the constitutional bill n. 1429-B. The bill called for altering the current relationship between the executive and the parliament, as well as the relationship between national and subnational levels. According to the framers, the constitutional bill would have overcome the lack of coordination between government and parliament, the overlapping of competences between state and regions and the lack of coordination in the division of responsibilities between central and local public administrations. On 4 December 2016, Italian voters were asked to decide whether accept or reject the constitutional bill, and voted to reject it by a majority of 59.11% to 40.89% approving.

Several legal scholars and political scientists have already analysed the major reform process put in place both in the European Union[13] and in Italy[14] in the midst of the 2007 financial and

[12] Maria Elena Boschi served as Minister of Constitutional Reforms and relationship with the Parliament of the 63rd Cabinet of the Italian Republic, as well as Secretary of the Council of Ministers of the 64th Cabinet of the Italian Republic. She is member of the Partito Democratico (PD).

[13] For the EMU reform, see: Kenneth A. Armstrong, 'The New Governance of EU Fiscal Discipline' (2013) 29/13 Jean Monnet Working Paper Series <http://jeanmonnetprogram.org/wp-content/uploads/2014/12/Armstrong.pdf> accessed 10 April 2017; Fabien Terpan, 'Soft Law in the European Union: The Changing Nature of EU Law' (2015) 21/1 European Law Journal <https://halshs.archives-ouvertes.fr/halshs-00911460/document> accessed 17 April 2017.

[14] See: Beniamino Caravita, *Referendum 2016 sulla Riforma Costituzionale. Le Ragioni del SÌ* (Milano: Giuffrè 2016); Luciano Violante, 'La Riforma Costituzionale e il Referendum. Le Ragioni del SÌ' (2016) 2/2016 Questione Giustizia <http://questionegiustizia.it/rivista/pdf/QG_2016-2_06.pdf> accessed 6 November 2017; Roberto Bin, 'Referendum Costituzionale: Cercasi Ragioni Serie per il NO' (2016) 3/2016 Rivista AIC <https://www.rivistaaic.it/images/rivista/pdf/3_2016_Bin.pdf> accessed 6 November 2017; Eugenio De Marco, 'Spunti di Riflessione sulla Riforma Costituzionale "Renzi-Boschi". Una Riforma Ormai Improcrastinabile non Priva peraltro di Ambiguità e Nodi Irrisolti' (2016) 2/2016 Rivista AIC <https://www.rivistaaic.it/images/rivista/pdf/2_2016_De%20Marco.pdf> accessed 9 November 2017; Valerio Onida, 'La Riforma Costituzionale e il Referendum. Le Ragioni del NO' (2016) 2/2016 Questione Giustizia <http://questionegiustizia.it/rivista/pdf/QG_2016-2_04.pdf> accessed 9 November 2017; George Tsebelis,

economic crisis in Europe. For instance, Professor Kenneth A. Armstrong argues that the adoption of the 2011 revision of the Stability and Growth Pact, the 2013 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, and the two-pack completed the restructuring process of the European Union's system of economic governance, began in 1992 with the establishment of the Economic and Monetary Union. To be more specific, he affirms that the just mentioned combination of regulations involves the strengthening of a plurality and diversity instruments and mechanisms which impose fiscal discipline among contracting parties in Europe.[15] Along the same lines, the legal scholar Fabien Terpan states that the European Union - through its current system of governance – not only possesses the power to set specific fiscal and economic parameters, but also both monitoring and sanctioning instruments necessary to ensure compliance of contracting parties with fiscal discipline. In particular, he argues that these legal instruments reduce the room of manoeuvre of European Union's member-states by a combination of elements. These consist of: guidelines and timetables for achieving goals, benchmarks which help to identify the best practice, and constant monitoring of economic performances.[16]

Not only the reform of the European Union governance framework, but also the Jobs Act reform and constitutional bill in Italy have been the subjects of a great deal of political and legal analysis. With regards to the Jobs Act, Marta Fana, Dario Guarascio, and Valeria Cirillo argue that the Jobs Act has completed the making of a flexible labour market in Italy. In particular, they stress

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'Compromesso Astorico: the Role of the Senate after the Italian Constitutional Reform' (2017) 47/1 Italian Political Science Review, <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/AA5E60064356DFCBA9BD423261E20733/S0048840216000216a.pdf/compromesso_astorico_the_role_of_the_senate_after_the_italian_constitutional_reform.pdf> accessed 24 October 2017.

For the labour market reform, see: Marta Fana, Dario Guarascio, and Valeria Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (2015) 5/2015 ISIGrowth Innovation Fuelled, Sustainable, Inclusive Growth <http://www.isigrowth.eu/wp-content/uploads/2015/12/working_paper_2015_5.pdf> accessed 8 June 2017; 'Did Italy Need More Labour Flexibility? The Consequences of the Jobs Act' (2016) 51/2 Leibniz Information Centre for Economics <https://archive.intereconomics.eu/year/2016/2/did-italy-need-more-labour-flexibility/> accessed 10 June 2017; 'La Crisi e le Riforme del Mercato del Lavoro in Italia: un'Analisi Regionale del Jobs Act' (2016) Argomenti 3 <http://ojs.uniurb.it/index.php/argomenti/article/view/573/577> accessed 13 June 2017; Carlo Dell'Arringa, 'Il Jobs Act: Principi Ispiratori, Contenuti e Primi Effetti' EUT Edizione Università di Trieste <https://www.openstarts.units.it/bitstream/10077/14013/1/Dell'Aringa_Mercato_lavoro_online.pdf> accessed 13 June 2017.

[15] Armstrong (n 13) 15-18.

[16] Terpan (n 13) 13-26.

that the removal of hiring and dismissal restrictions has involved the emergence of an extreme form of flexible workers.[17] With regards to the institutional reform, George Tsebelis argues that the constitutional bill – if approved – would have reduced the number of veto players in the Italian legislative process and, as a consequence, it would have brought greater stability and efficiency to the whole system of governance.[18] In contrast with this analysis, the Professor Gustavo Zagrebelsky argues that the constitutional bill would have involved an excessive centralisation of powers towards the executive branch, harming the whole institutional framework in Italy.[19]

These studies thus well describe how the 2011 Stability and Growth Pact, the 2013 Fiscal Stability Treaty, and the two-pack have strengthened European Union's legal capacity to ensure compliance, among its member-states, with financial and economic parameters. Or to address any deviation from such parameters by enabling monitoring instruments, as well as sanctioning mechanisms. Similarly, other studies describe how the Jobs Act made the labour market system more flexible in order to face unemployment and thus to restore economic growth. Or how the constitutional bill – if approved – would have made the institutional framework more efficient aiming to encourage both international and national investors to invest capitals in Italy. Accordingly, these analyses seem to apply a 'problem-solving' perspective to the politico-legal reform process in the European Union, as well as in Italy. This perspective is reflected in the work undertaken by the political scientist, Robert W. Cox – *Social Forces States, and World Orders: Beyond International Relation Theory*[20] – in which he argues that 'problem-solving theory'

> takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organized, as the given framework for action. The general aim of problem solving is to make these relationships and institutions work smoothly by dealing effectively with particular sources of trouble. Since the general pattern of institutions and relationships is not called

[17] Fana, Guarascio, and Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (n 14) 15-17.
[18] Tsebelis (n 14) 92-101.
[19] Gustavo Zagrebelsky, *Loro Diranno, Noi Diciamo. Vademecum sulle Riforme Istituzionali* (Laterza 2016) 96-97.
[20] Robert W. Cox, 'Social Forces States, and World Orders: Beyond International Relation Theory' in Robert W. Cox with Timothy Sinclair (Ed), *Approaches to World Order* (Cambridge University Press 1996).

> into question, particular problems can be considered in relation to the specialized areas of activity in which they arise. Problem-solving theories are thus fragmented among a multiplicity of spheres or aspect of actions, each of which assumes a certain stability in the other spheres (which enables them in practice to be ignored) when confronting a problem arising within its own. The strength of problem-solving approach lies in its abilities to fix limits or parameters to a problem area and to reduce the statement of a particular problem to a limited number of variables which are amenable to relatively close and precise examination.[21]

By contrast, this thesis relies on a rather different perspective. In particular, it adopts a more critical perspective which reflects Cox's idea of 'critical theory'. As he argues, critical theory

> stands apart from the prevailing order of the world and asks how that order came about. Critical theory, unlike problem-solving theory, does not take institutions and social power relations for granted but calls them into question by concerning itself with their origins and how and whether they might be in the process of changing. It is directed toward an appraisal of the very framework for action, or problematic, which problem-solving theory accepts as its parameters. Critical theory is directed to the social and political complex as a whole rather than to the separate parts. As a matter of practice, critical theory, like problem-solving theory, takes as its starting point some aspect or particular sphere of human activity. But whereas the problem-solving approach leads to further analytical subdivision and limitation of the issue to be dealt with, the critical approach leads toward the construction of a larger picture of the whole of which the initially contemplated part is just one component, and seeks to understand the processes of change in which both parts and whole are involved.[22]

A notable theoretical framework that helps in writing a critical analysis of the politico-legal process put in place in the EU and in Italy in particular is the 'new constitutionalism of disciplinary

[21] ibid 88.
[22] ibid 88-89.

neoliberalism'[23] (or simply referred to as 'new constitutionalism'), theorised by the political scientist Stephen Gill in collaboration with A. Claire Cutler. According to Gill, 'new constitutionalism' is the politico-constitutional mechanism associated with neoliberal restructuring of the world order.[24] 'New constitutionalism' thus operates to create and preserve a neoliberal order which generates capital accumulation[25], as well as provides favourable legal and other protections for investors.[26] New constitutionalist measures, Gill further argues, insulate dominant economic forces from democratic pressure and popular accountability, and institutionalise the liberalisation of markets for capital, goods, and labour. The former seeks to make any political contestation against the neoliberal form of capitalism hard to achieve.[27] The latter seeks to generate economic growth and extend capital accumulation.[28]

From a 'new constitutionalism' perspective, thus, very important hypotheses concerning the implications of the legal reform process that took place within the European Union and in Italy might be addressed:

1. The first hypothesis concerns the European Union as a whole. I will suggest (see Chapter 1) that the European Union proposed and implemented a combination of regulations – such as, the 2011 revision of the Stability and Growth Pact, the 2013 Fiscal Stability Treaty, and the two-pack – designed to strengthen neoliberal governance in Europe. In the first place, as we shall see, the European Union has thus imposed strict fiscal discipline upon its member-states to address fiscal imbalances. In the second place, the European Union possesses a set of monitoring and sanctioning instruments which address any deviation from the just mentioned fiscal discipline. Owing to this, the European political and economic union has primarily

[23] See: Stephen Gill, 'New Constitutionalism, Democratisation and Global Political Economy' (1998) 10/1 Pacifica Review: Peace, Security & Global Change 23; 'European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe' (1998) 3/1 New Political Economy 5; Stephen Gill and A. Claire Cutler, *New Constitutionalism and World Order* (Cambridge University Press 2014).
[24] Gill, 'New Constitutionalism, Democratisation and Global Political Economy' (n 23) 23.
[25] ibid.
[26] ibid 23-24.
[27] ibid.
[28] ibid 26.

sought to maintain confidence of investors and credibility of governments by attempting to provide an appropriate business climate and thus to restore the process of capital accumulation.

2. The second hypothesis shifts the focus to the Italian context. I will argue that the Jobs Act (see Chapter 2), as well as the constitutional bill (see Chapter 3) involved a neoliberal restructuring of both labour market and institutional framework in Italy. Specifically, I advance the hypothesis that the European Union – through its current system of governance – committed Renzi Government to propose a neoliberal restructuring of both labour market, and institutional framework in Italy. With regards to the labour market reform, I argue that the Jobs Act sketched out a neoliberal reform of the Italian labour market. To be more precise, the Jobs Act sought to make the labour market more flexible – specifically by removing hiring and dismissal protections – in order to make the national labour market more amenable to investors' needs and, as a consequence, to boost the economic growth. I also suggest that the Jobs Act has involved the emergence of a specific workers' category, that is to say contingent workers. With regards to the institutional reform, the research hypothesises that the constitutional bill – had it been successful – would have involved a neoliberal re-organising logic of the Italian institutional framework. The bill would have strengthened the executive branch of government (the power of the Prime Minister, and the Minister of the Finance, for example) to the detriment of the legislative branch (i.e. the Italian Parliament).

In order to address the two above-mentioned hypotheses, this thesis will draw upon several legal and economic sources. In the first place, I will draw from official statements of the European Central Bank, directives of the Council of the European Union, regulations from the European Parliament, and studies and reports from the European Commission (such as, Annual Growth Surveys, In-Depth Reviews, Country Specific Recommendations, and Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances). In the second place, I will gather

information from both international media (such as The Guardian, and The Telegraph) and national media (including, Corriere della Sera, La Repubblica, and Il Fatto Quotidiano). Finally, I will draw from the Constitution of the Italian Republic, regulations (such as, Law 300/1970, Constitutional bill n. 1429-B, Law 183/2014), verdicts of the Italian Constitutional Court (e.g. verdicts n. 26/2017, and n. 28/2017), and reports and memoranda of Dipartimento per le Riforme Istituzionali, Ministero del Lavoro e delle Politiche Sociali, Confederazione Italiana Generale del Lavoro (CGIL), Istituto Nazionale della Previdenza Sociale[29] (INPS), Istituto Nazionale di Statistica[30] (ISTAT), Eurostat[31], Eurobarometer[32].

Both documentary and quantitative research aim to prove the impact of the European Union's system of economic governance on the political agenda setting (reform of both constitutional and labour laws) promoted by Renzi Cabinet between 2014-2016. In addition, this research will draw from the work of Stephen Gill and a large body of critical legal scholarship – inter alia, A. Claire Cutler, Adam Harmes, Saskia Sassen, Neil Brenner, Jamie Peck, and Nick Theodore – in order to understand and critically re-describe recent developments in Italy before reflecting on the implications of their understanding of the relationship between neoliberalism and law. My objective here is to enrich the existing body of knowledge concerning the role played by law in creating and preserving neoliberalism, by critically analysing the Italian reform process between 2014-2016.

The thesis is divided into three different chapters. The first chapters – *Between Neoliberalism, New Constitutionalism and the European Union* – sets the stage for a critical legal analysis of the Jobs Act, as well as the constitutional bill. In the first place, the chapter sketches a brief history of neoliberalism. More specifically, it focuses on its main features, and also how it is characterised by

[29] Istituto Nazionale della Previdenza Sociale (INPS) is the main social security body in Italy. It was established in 1898 with Legge 17 Luglio 1898, n 350.

[30] Istituto Nazionale di Statistica (ISTAT) is the main producer of official statistics in Italy. Its activities include the census of population, economic censuses and several social analyses. It is member of the European Statistical System (coordinated by the Eurostat).

[31] Eurostat is a Directorate-General of the European Commission located in Luxembourg. Its main responsibilities are to provide statistical information to the institutions of the European Union and to promote the harmonisation of statistical methods across its member states and candidates for accession as well as EFTA countries.

[32] Eurobarometer is a series of public opinion surveys conducted on behalf of the European Commission. The Eurobarometer results are published by the European Commission's Directorate-General Communication.

crisis of accumulation, which culminated in the 2007 global financial and economic crisis. The first chapter, furthermore, discusses the link between neoliberalism and new constitutionalism. It addresses aims, processes and legal measures that are related to this international governance framework. Then it identifies the legal changes that have been implemented in the EU to face the Eurozone crisis, by highlighting that these legal changes have reinforced the existing new constitutionalist framework. Moreover, it highlights the main consequence of the implementation of new constitutionalist measures in the EU by applying Jukka Snell's legal analysis to the EMU. Finally, it examines the relationship between European Union's regulations – associated with 'new constitutionalism' framework – and the rise of nationalist movements and parties in Europe.

The second chapter – *New Constitutionalism of Disciplinary Neoliberalism and the Liberalisation of the Italian Labour Market* – retraces the political and social background during which the working statute has been conceived. The second section highlights how the current European Union's system of governance has committed Italy in reviewing specific contents of the Law 300/1970, in order to make a favourable business climate for investors. In particular, this section highlights the role of the European economic governance system in shrinking the Italian decision-making system. The third section describes contents and provisions of the Jobs Act. In the first place, it shows that those provisions clearly dovetail the contents of those reports conducted by the European Commission. In the second place, it shows that the labour market reform reflects Gill's new constitutionalism of disciplinary neoliberalism discourse. Finally, the fourth section shows the strong popular reaction against the Jobs Act.

The third and final chapter – *New Constitutionalism of Disciplinary Neoliberalism and the Neoliberal Re-Organising Logic of the Italian Institutional Framework* – describes the main principles and contents of the Constitution of the Italian Republic. In particular, it highlights its antiauthoritarian and democratic spirit, coming from the backlash against Mussolini dictatorship of 1922-1943. The second section highlights how the European economic governance framework has fostered the revision of the Italian institutional framework, in order to face and restore the 2007 crisis of capital accumulation. In particular, this section stresses that the European Union governance

framework has reduced the room of manoeuvre of the Italian decision-making system in envisaging the constitutional bill. The third section not only describes the main contents and provisions of the constitutional bill but also shows that those contents and provisions reflect a neoliberal re-organising logic of the Italian institutional arrangement, within the greater framework of Gill's new constitutionalism of disciplinary neoliberalism. Finally, the fourth section shows the link between the constitutional bill – associated with the 'new constitutionalism' framework – and the constitutional referendum.

With this research, I thus attempt to analyse the reform process put in place within the EU, and in Italy from a new constitutionalist perspective. In particular, if the analysis concerning the Italian legal reform process is correct, the Jobs Act and the constitutional bill would confirm – as already argued by Gill concerning the European Union after the Maastricht Agreements, and the establishment of the EMU in 1992[33] – the tendency of new constitutionalist measures to shift Italy from a social democratic towards a neoliberal order.

[33] Gill, 'European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe' (23) 5.

1. Between Neoliberalism, New Constitutionalism, and the European Union

1.1. Introduction

Nearly two decades ago, the political scientist Stephen Gill argued that the European Union (EU) needed to be comprehended as commensurate to the 'new constitutionalism of disciplinary neoliberalism' framework. More specifically, he affirmed that the Maastricht Agreements[34] and the establishment of the Economic and Monetary Union (EMU) in 1992 sought to institutionalise a new currency, as well as mandate fiscal discipline in order to create a favourable business climate for investors and thus create capital accumulation.[35] This has shifted, he argued, the EU from a social democratic to a neoliberal and financial model of capitalism.[36] As Gill further observed in *Market Civilization, New Constitutionalism and World Order*[37], however, neoliberalism is punctuated by systemic crises of capital accumulation which require the deepening of new constitutionalist measures in order to restart the process itself.[38] These measures sought to remove economic policy and crisis management from almost any democratic pressure and popular accountability.[39] What I argue here is that the EU's response to face the 2007 financial and economic crisis in Europe has been to implement legal measures consistent with the new constitutionalist discourse, such as the 2011 revision of the

[34] Maastricht Agreements (formally, the Treaty on European Union) is an international agreement originally signed by 12 countries of the European Community in 1992 and entered into force in 1993. The treaty created the three pillars structure of the EU. The first pillar – European Communities – handled economic, social and environmental policies. The second pillar – Common Foreign and Security Policy (CFSP) – referred to foreign policy and military issues. The third pillar – Police and Judicial Co-operation in Criminal Matters (PJCCM) – dealt with co-operation in the fight against crime. The Treaty of Lisbon, signed by EU Member States and in 2007 and entered into force in 2009, amended the three pillars structure and set the distribution of competences in various policy areas between the EU and Member States as following: exclusive competence, shared competence, and supporting competence.

[35] Gill, 'European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe' (n 23) 8.

[36] ibid 9.

[37] Stephen Gill, 'Market Civilization, New Constitutionalism and World Order' in Stephen Gill and A. Claire Cutler (Ed), *New Constitutionalism and World Order* (Cambridge University Press 2014).

[38] ibid 40-41.

[39] ibid 41.

Stability and Growth Pact (SGP), the 2013 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), and the two-pack. These legal measures, as I show below, have sought to maintain investors' confidence and governments' credibility by attempting to provide an appropriate business climate and thus to restart the process of capital accumulation in Europe.

In this chapter, I will thus examine the deepening of the new constitutionalist framework in the EU. The first section sketches a brief history of neoliberalism. It focuses on its origins and definition, and also how the neoliberal form of capitalism is characterised by crises of accumulation, which culminated in the 2007 global financial and economic crisis. The second section discusses the link between neoliberalism and new constitutionalism. It addresses aims, processes and legal measures that are related to this international governance framework. The third section identifies the legal changes that have been implemented in the EU to face the Eurozone crisis, by highlighting that these legal changes have reinforced the existing new constitutionalist framework. The fourth section describes the implications of new constitutionalist measures in the EU by applying Jukka Snell's legal analysis to the EMU. The final section discusses the link between the EU's regulations – associated with the 'new constitutionalism' framework – and the rise of European nationalisms.

As I argue in Chapter 2 and 3, the framework of new constitutionalism of disciplinary neoliberalism has important implications for the understanding of the labour market reform and the constitutional reform put in place by Matteo Renzi Government between 2014-2016.

1.2. Neoliberalism: From its Origins To the 2007 Crisis of the Neoliberal Form of Capitalism

Since 1980s, neoliberalism (also referred to as 'neoliberal form of capitalism') has become a mainstream concept in both academic and political debates. Yet, there is no general agreement over its origins and definition. According to the political scientists Taylor C. Boas and Jordan Gans-Morse[40], for instance, the origin of the term neoliberalism lies in writings of some economists and

[40] Taylor C. Boas and Jordan Gans-Morse, 'Neoliberalism: From New Liberal Philosophy to Anti-Liberal Slogan' (2009) 44/2 Studies in Comparative International Development <https://link.springer.com/article/10.1007/s12116-009-9040-5> accessed 2 December 2016.

legal scholars associated with the Freiburg School during the First and the Second World War.[41] During the interwar period, many western countries – in the United States of America, as well as in Europe – experienced a severe economic and financial crisis that convinced many scholars and politicians that the liberal form of capitalism was not sustainable.[42] Yet a small group of 'new' liberals (inter alia, Alfred Müller-Armack, Walter Eucken, and Wilhelm Röpke)[43] sought to revive the liberal ideology by making a complete revision of classical liberalism.[44] In the first place, German neoliberals' ideology – based upon the liberal notion that competition among people pushes economic growth – stated that the state must play an active role for the functioning of the free market. To be more precise, they stressed, the state must create a proper legal system which prevent powerful private actors to limit the freedom of competition.[45] In the second place, Freiburg School economists gave equal importance to social values, as well as economic efficiency.[46] They, indeed, stressed the need to pursue both social security and social justice.[47] Finally, German neoliberals gave to neoliberalism a 'normative ideology'[48], that is to say how society should be organised around liberty and social values.[49] It is only from the 1980s, Boas and Gans-Morse argue, that the original neoliberal ideology was outranked by free-market fundamentalist ideas, such as deregulation, privatisation, and a limited role of the state in economy.[50]

An alternative interpretation of the origins and definition of neoliberalism – which helps in paving the way to address the hypotheses sketched in the introduction – can be found in David Harvey's study.[51] Harvey argues that neoliberalism found its theoretical roots in the economic and

[41] ibid 145.
[42] ibid.
[43] Alfred Müller-Armack was German professor of economics at University of Münster and University of Cologne, as well as member of the Christlich Demokratische Union Deutschlands (CDU); Walter Eucken was a German economist and soldier; and Wilhelm Röpke was German economist and professor at University of Marburg, Instanbul University, and Graduate Institute of International Studies.
[44] Boas and Gans-Morse (n 40) 145.
[45] ibid 146.
[46] ibid.
[47] ibid.
[48] ibid 147.
[49] ibid.
[50] ibid 150-152.
[51] David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2005).

philosophical works of Friedrich von Hayek.[52;53] He explains that Hayek (along with Ludwig von Mises and Milton Friedman[54]) referred to neoliberalism as a set of free market principles of neoclassical economies. They were – and still are – clearly in opposition to classical economic proponents (such as Adam Smith, John Maynard Keynes, and Karl Marx) which advocated economic interventionist or, in the case of the communist ideology, planned economy.[55] Based on Hayek's main book, *The Constitution of Liberty*[56], Harvey defines neoliberalism as

> a theory of political economy practices that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, freedom markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defence, police, and legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of the markets. Furthermore, if markets do not exist (in areas such land, water, education, health care, social security, or environmental pollution) then they must be created, by state action if necessary. But beyond these tasks the state should not venture. State interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signals (prices) and because of powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit.[57]

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[52] ibid 19-20.

[53] Friedrich von Hayek was an Austrian-British economist and philosopher. In 1974, he shared the Swedish National Bank's Prize in Economic Sciences in Memory of Alfred Nobel with Gunnar Myrdal for his work about the theory of money and economic fluctuations, and about the analysis of the interdependence of economic, social and institutional phenomena.

[54] Ludwig von Mises was an Austria-American economist. He is considered one of the major figures in the revival of the liberalism theory in the aftermath of the Second World War; Milton Friedman was an American economist, awarded with the Nobel Prize in 1976 for his research on consumption analysis, monetary history and theory, and the complexity of stabilisation policy.

[55] Harvey (n 51) 20-21.

[56] Friedrich von Hayek, *The Constitution of Liberty* (University of Chicago Press 1960).

[57] Harvey (n 51) 2.

Harvey's understanding of neoliberalism, however, goes beyond the mere analysis of its political economy practices. He thus stresses that neoliberalism should be understood as a more articulated political project. Since the beginning, its aim was to 're-establish the conditions for capital accumulation and to restore the power of economic elites' in the midst of the 1970s crisis of capital accumulation process.[58;59] During those years, indeed, the Keynesian principles on both fiscal and economic policies – widely applied during the post-war in the United States of America, the United Kingdom and many other European countries – were no longer working.[60] In addition to this, oil embargo by the Organization of the Petroleum Exporting Countries (OPEC)[61], as well as and the collapse of the Bretton Woods system[62] worsened the capital accumulation crisis. Within this framework, according to Harvey, left leaning parties (such as, the Italian Communist Party, the Communist Party of Great Britain and even the Democratic Party in the US), and social movements (including, workers' and students' organisations) demanded social reforms and deeper economic interventions from governments.[63] This socialist and communist 'season', he further observes, pushed economic elites and ruling classes to adopt neoliberal fiscal and economic policies in order to restart the process of capital accumulation, as well as to keep their political and economic positions which they obtained after the Second World War.[64] This issue, as Harvey puts it, is well exemplified by the support of Chilean upper classes to the government of the general Augusto Pinochet who aimed to stop the democratically elected and socialist President of Chile, Salvador Allende;[65] or the support of affluent society to the then UK Prime Minister, Margaret Thatcher, as well as to the then US

[58] Harvey argues that there is tension between the genuine neoliberal theory and its actual practices. For instance, he observes that many neoliberal practices (such as, monopoly powers and market failures) are in contrast with Hayek's neoliberal theory. See: Harvey (n 51) 21.
[59] Harvey (n 51) 19.
[60] ibid 12.
[61] The Organization of the Petroleum Exporting Countries (OPEC) is an intergovernmental organisation funded in 1960 in Baghdad and headquartered since 1965 in Vienna. OPEC's goal is to harmonise the petroleum policies of its member states and ensure the stabilisation of the oil markets.
[62] The Bretton Woods system was a complex of monetary management established the rules for commercial and financial relations among the US, Canada, Western Europe. Australia and Japan from 1950s.
[63] Harvey (n 51) 12-15.
[64] ibid 15-19.
[65] ibid 7-9.

President, Ronald Reagan.[66] Following these successful experiments not only of capital accumulation, but especially of class restoration, according to Harvey, the implementation of neoliberal fiscal and economic policies became standard among most of national states because of the role embodied by the International Monetary Fund (IMF) and the World Bank (WB). These international financial institutions, throughout 1980s and 1990s, became the main centres for the worldwide spreading and enforcement of market disciplines associated with the neoliberal form of capitalism.[67]

The economist David Kotz[68] suggests that both the United States' administration, under President Reagan, and the United Kingdom's government, under the Prime Minister Thatcher, applied a set of political economy measures that have created the proper conditions for the emergence of the 2007 global financial and economic crisis.[69] These measures, Kotz argues, consist of nine actions: (1) deregulation of business and finance; (2) privatisation of numerous public services; (3) the renunciation of discretionary fiscal policy; (4) sharp reduction in the welfare state; (5) reduction of taxes on business and wealthy individuals; (6) undermining of trade unions and professional powers; (7) a shift from long-term employees to temporary and part-time workers; (8) unrestrained and ruthless competition; and (9) the introduction of market principles inside large corporations.[70] These political and economic measures, he argues, gave rise to three different developments that 'contained the seeds of an eventual systemic crisis'.[71] Firstly, a growing inequality between wages and profit, and among households; secondly, the rise of speculative and risky activities of the financial sectors; lastly, the emergence of 'bubbles'.[72,73]

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[66] ibid 22-26.
[67] ibid 29.
[68] David M. Kotz, 'The Financial and Economic Crisis of 2008: A Systemic Crisis of Neoliberal Capitalism' (2009) 41/3 Review of Radical Political Economics <https://journals.sagepub.com/doi/abs/10.1177/0486613409335093> accessed 26 January 2017.
[69] ibid 306-307.
[70] ibid 307.
[71] ibid.
[72] ibid.
[73] A 'bubble' is an economic cycle characterised by the rise of asset prices – which exceeds the asset's intrinsic value – followed by a contraction.

The first development – growing inequality – was the product of the deregulation of specific sectors (such as transportation, communications, and powers), the privatisation of public services and the undermining of trade unions. As a result, these measures 'led to a sharp reduction in wages in those sectors […] and workers' bargaining power'.[74] The second development – the rise of speculative and risky activities by financial actors – was the product of the deregulation of business and finance, as well as unrestrained competition. Kotz states that these measures 'freed banks and other financial institutions to pursue whatever financial activity would bring the highest profits'.[75] The last development – emergence of asset bubbles – was 'the result of the first two developments'.[76] These economic developments, as Kotz puts it, have become untenable in US. Both the financial pressure on households, and the fragility of the financial system increased over a period of 30 years and reached its climax in 2008, with the outburst of the financial and economic crisis (also refer to as 'crisis of the neoliberal form of capitalism')[77] The most striking indicators that show the impact of the crisis are the Gross Domestic Product (GDP) and the unemployment rate. The former, according the US Department of Treasury[78], shrank by 3.7% in July 2008 and by 8.9% in October of the same year.[79] The latter, according to a 2012 report made by the US Bureau of Labor Statistics[80], reached its highest peak at 10% by the end of 2009 (the highest rate in US since 1982)[81].

From 2008 onwards, the spill-over of the US crisis into Europe was extremely rapid due to the connections of the US financial system and many European financial institutions (banks, credit unions, and investment banks, among others). As the legal scholar Caroline M. Bradley[82] puts it,

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[74] Kotz (n 68) 307.
[75] ibid.
[76] ibid.
[77] ibid 314.
[78] US Department of the Treasury, 'The Financial Crisis Response, Bureau of Economic Analysis, Bureau of Labor Statistics' (Federal Reserve Flow of Funds, 2012) <https://www.treasury.gov/resource-center/data-chart-center/Documents/20120413_FinancialCrisisResponse.pdf> accessed 30 January 2017.
[79] ibid.
[80] US Bureau of Labor Statistics, 'The Recession of 2007-2009' (BLS Spotlight on Statistics, 2012) <https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf> accessed 30 January 2017.
[81] ibid 2.
[82] Caroline M. Bradley, 'From Global Financial Crisis to Sovereign Debt Crisis and Beyond: What Lies Ahead for the European Monetary Union?' (2013) 22/9 Transnational Law & Contemporary Problems <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1014&context=fac_articles> accessed 22 October 2018.

many European financial institutions, after all, were heavily implicated in the US sub-prime crisis and experienced huge losses.[83] For this reason, she argues, European states and their central banks aimed to tackle monetary losses by financially supporting or, in the most severe cases, by nationalising financial institutions.[84;85] This decision, she further argues, shifted the burden of financial failures on public finances of EU member states and – for most of those countries with high sovereign debts – the situation became unsustainable.[86] For this reason, Greece (as I will show in this Chapter, Section 5), Spain, and Portugal sought financial assistance from the EU, the IMF, or both.[87] This uncertain economic and financial framework undermined investors' confidence affecting capital inflows.[88] These circumstances had a deep impact on the European Union as a whole: its GDP shrank by 4.3% in 2009[89], and the unemployment rate reached 9.7% – its peak throughout the crisis – in 2010.[90]

The following section, therefore, seeks to analyse the relation between law and neoliberalism, and – more specifically – how neoliberalism relies upon law to make its own 'requests' within a specific context. As I show, the 'new constitutionalism of disciplinary neoliberalism' framework developed by Gill and many others legal scholars and political scientists is particularly insightful when it comes to explain this relationship.

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[83] ibid 16.
[84] ibid 17.
[85] For instance, Germany, under Angela Merkel's government, nationalised the IKB Deutsche Industriebank. Similarly, the UK, under Gordon Brown's administration, bailed out the Royal Bank of Scotland, Lloyds TSB and HBOS, and nationalised part of the Bradford and Bingley.
[86] ibid (n 82) 17-18.
[87] ibid.
[88] See: Philip R. Lane, 'Capital Flows in the Euro Area' (European Economy Economic Papers, 2013) <http://ec.europa.eu/economy_finance/publications/economic_paper/2013/pdf/ecp497_en.pdf> accessed 18 September 2017.
[89] Eurostat, 'National Accounts and GDP' <http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP> accessed 18 September 2017.
[90] Eurostat, 'Unemployment Statistics' <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics> accessed 30 January 2017.

1.3. The Legal Dimension of Neoliberalism

As mentioned in the previous section, the concept of neoliberalism has become central in both academic and political arenas. Nevertheless, as the legal scholars Matthias Goldmann and Silvia Steininger[91] underline, law has often been ignored in the debate on neoliberalism.[92] Similarly, David Singh Grewal and Jedediah Purdy[93] argue that neoliberalism has always been mediated through law[94] and, consequently, understanding their relationship is essential.[95] Filling this academic lacuna has become central in current legal scholarship. It is worth mentioning, for instance, that in *The Constitutional Protection of Capitalism*[96], the legal scholar Danny Nicol observes that international law – in particular, since the end of 1970s – has constitutionalised the neoliberal ideology through the establishment of 'transnational regimes', such as the World Trade Organization[97] (WTO), the EU, and the European Court of Human Rights[98] (ECHR).[99] To be more precise, these transnational regimes – as Nicol puts it – have the power to draft and propose regulations that rule over national activities which 'were previously considered the exclusive domain of the state'.[100] In addition to this, the WTO, the EU, and the ECHR possess more effective legal instruments to enforce such regulations within nation states than ever.[101] For these reasons, Nicol argues, transnational regimes have

[91] Matthias Goldmann and Silvia Steininger, *Democracy and Financial Order: Legal Perspective* (Springer 2018).
[92] ibid 2.
[93] David Singh Grewal and Jedediah Purdy, 'Introduction: Law and Neoliberalism' (2014) 77/1 Law and Contemporary Problems,<https://heinonline.org/HOL/Page?public=true&handle=hein.journals/lcp77&div=42&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults#> accessed 14 February 2017.
[94] ibid 9.
[95] ibid.
[96] Danny Nicol, *The Constitutional Protection of Capitalism* (Hart Publishing 2010).
[97] The World Trade Organization (WTO) is an international organisation that regulates international trade. The WTO was established on 15th April 1994 with the Marrakesh Agreement – signed by 124 nation states – and commenced on the 1st January 1995. It regulates trade in goods, services, and intellectual property between its members. Moreover, the WTO provides a framework for negotiating trade agreements and to resolve disputes among its members. Currently, it includes 164 member-states.
[98] The European Court of Human Rights (ECHR) is an international court established by the European Convention on Human Rights in 1959. In 1998, the ECHR became a permanent institution and it includes all 47 member-states of the Council of Europe. It consists in 47 judges which are elected for a non-renewable nine-year term, and perform their duties in an individual capacity. The jurisdiction of the ECHR is divided into inter-states cases, applications by individuals against contracting parties, and advisory opinions.
[99] Nicol (96) 2-3.
[100] ibid 5.
[101] ibid 6.

importantly shrunk the room of manoeuvre of nation states 'narrowing the scope for legitimate, democratic politics'.[102]

A more radical proposal on the relationship between neoliberalism and law is offered by the legal scholars Thomas Biebricher[103], and Honor Brabazon.[104] Biebricher argues that this bond is so relevant – both at theoretical and empirical framework – that he refers to it as 'juridical neoliberalism'.[105] He argues, for instance, that practices of juridical neoliberalism (such as, the 2011 balanced-budget amendment) involves two specific outcomes. In the first place, they make any law against the neoliberal order, simply, illegal.[106] In the second place, they create a sense of 'moralisation' which prevent any criticism against the neoliberal ideology.[107] Even more drastically, Brabazon argues that neoliberalism should be considered a juridical project, in addition to an economic and political one.[108] As a matter of fact, she argues, law not only has created a neoliberal order but also it has created neoliberalism itself. More specifically, Brabazon observes that

> (it) is not only the content of neoliberal law that has helped to create the neoliberal order but also the very fact that law has been used in its creation. It is even possible to speculate that neoliberalism might not have become so powerful, at the current time, or in its current form if liberal legalism had not enjoyed a particular degree of hegemony in the same moment as the political conditions of neoliberalism occurred.[109]

Thus, in her view, law is constitutive of neoliberalism and not just an instrument through which neoliberalism has advanced its own demands.[110]

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[102] ibid 1.
[103] Thomas Biebricher, 'Neoliberalism and Law: The Case of the Constitutional Balanced-Budget Amendment' in Matthias Goldmann and Silvia Steininger (Ed), *Democracy and Financial Order: Legal Perspective* (Springer 2018).
[104] Honor Brabazon, *Neoliberal Legality. Understanding the Role of Law in the Neoliberal Project* (Routledge: Taylor and Francis Group 2017).
[105] Biebricher (n 103) 156.
[106] ibid 171.
[107] ibid 172.
[108] Brabazon (n 104) 1.
[109] ibid 2-3.
[110] ibid 6-7.

Section 1.3.1 covers the main features of one of the most relevant theoretical frameworks with regards to the relationship between neoliberalism and law, namely Stephen Gill's new constitutionalism of disciplinary neoliberalism.

1.3.1. New Constitutionalism of Disciplinary Neoliberalism

As underlined in the previous section, some legal scholars and political scientists have pointed out the relevance of law within the neoliberal argument. A notable theoretical framework that helps in understanding such relationship and, more specifically, the role of law to create and preserve the neoliberal order is the 'new constitutionalism of disciplinary neoliberalism' discourse, theorised by the political scientists Stephen Gill, often writing in collaboration with A. Claire Cutler. According to Gill, 'new constitutionalism' is the politico-legal mechanism associated with the neoliberal restructuring of the world order.[111] They thus argues that 'new constitutionalism' operates to create and preserve a neoliberal order, and to provide favourable legal and other protections for investors[112] so embedded in international and national laws that any attempt to change or challenge the rules themselves is very difficult. To put it in other words, the legal framework that Gill describes in terms of new constitutionalism seeks to maintain confidence of investors and credibility of governments by attempting to provide an appropriate business climate and thus to generate capital accumulation.[113] To this purpose, new constitutionalist measures insulate dominant economic forces from democratic pressure and popular accountability, as well as institutionalise the liberalisation of markets for capital, goods, and labour. The former seeks to make any political backlash against the neoliberal form of capitalism hard to achieve.[114] The latter seek to generate economic growth and extend capital accumulation.[115]

[111] Gill, 'New Constitutionalism, Democratisation and Global Political Economy' (n 23) 23.
[112] ibid.
[113] ibid 23-24.
[114] ibid.
[115] ibid 26.

More specifically, Gill and Cutler refer to the new constitutionalism of disciplinary neoliberalism as a combination of different processes: (1) 'the uneven emergence of a de facto constitutional governance structure for the world market (intended to operate regionally, nationally and globally) involving the interaction of public and private power, incorporating international organisations';[116] (2) 'the neo-liberal reshaping of political subjects and restructuring of particular state forms, partly through constitutional and legal means, extending the orbit and interpellation of the commodity form and its legal codification, in order to extend capitalist markets and the sway of market forces in social and political life';[117] (3) 'the specific locking-in mechanisms (laws, rules, regulations, procedures and institutions, such as independent central banks) associated with neo-liberal patterns of accumulation';[118] (4) and 'the "new informality" involving proliferation of soft, self-regulatory and "flexible" or "double" legal standards'.[119]

These processes involve different sets of measures – or what Gill names 'productive constraints'[120] – which shape the neoliberal governance of political economy. These measures consist of: those to reconfigure state apparatuses, those to construct and extend capital markets, and those for dealing with dislocations and contradictions of the neoliberal form of capitalism. Firstly, measures to reconfigure state apparatuses primarily separate economics from politics in order to avoid any popular-democratic or parliamentary backlash against neoliberal policies. As Gill notes, this is possible via specific legal mechanisms such as federalism and multilevel governance, which entail the separation of powers, both vertical (such as supranational and national levels) and horizontal (including the executive, legislature and judiciary branches).[121]

As Adam Harmes[122] notes, neoliberalism contains a normative project for multilevel governance typical of the American institutional framework.[123] More specifically, he argues that

[116] Gill and Cutler (n 23) 7.
[117] ibid.
[118] ibid.
[119] ibid.
[120] Gill (n 37) 38.
[121] ibid.
[122] Adam Hames, 'New Constitutionalism and Multilevel Governance' in Stephen Gill and A. Claire Cutler (Ed), *New Constitutionalism and World Order* (Cambridge University Press 2014).
[123] ibid 148.

multilevel governance (also referred to as market-preserving federalism)[124] is based on two main principles which determine law-making capabilities of both supranational and national levels.[125] The first principle refers to the necessity to centralise, at the supranational level, those policies that have a positive impact on capital accumulation, such as property rights and/or extension of markets.[126] As a consequence, nation-states do not possess the ability to interfere with the process of capital accumulation. The second principle refers to the necessity to decentralise, at the national level, those policies that the neoliberal form of capitalism does not support, for instance both redistributive taxing and social programmes.[127] Similarly, Saskia Sassen[128] asserts that the neoliberal project entails the shift of specific powers and norm-making capacities from national to supranational level on both macroeconomic (such as, financial and monetary) and microeconomic policies (including, labour and pension).[129] As a consequence, she argues, supranational institutions now are able to set the criteria for proper national policies, and – in the most severe cases – to force nation-states to adopt and implement specific measures, without any popular pressure and democratic accountability.[130] Neil Brenner, Jamie Peck and Nik Theodore[131] illustrate this point clearly. They thus argue that multilevel governance associated with the neoliberal project entails a 'U-turn' in the relationship between supranational and national, shifting the relationship itself from a bottom-up to a top-down model. Owing to this, they assert that supranational institutions – inter alia, the EU, the IMF, and the World Bank – are able to impose market disciplines on national states aiming to create those legal conditions necessary to extend and accelerate capital accumulation.[132]

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[124] See: Barry Weingast, 'The Economic Role of Political Institutions: Market Preserving Federalism and Economic Development' (1995) 11/1 Journal of Law, Economics & Organization <https://heinonline-org.chain.kent.ac.uk/HOL/Page?lname=Weingast&public=false&handle=hein.journals/jleo11&page=1&collection=journals> accessed 9 March 2017.
[125] Hames (n 122) 148.
[126] ibid.
[127] ibid.
[128] Saskia Sassen, 'When the Global Inhabits in the National: Fuzzy Interactions' in Stephen Gill and A. Claire Cutler (Ed), *New Constitutionalism and World Order* (Cambridge University Press 2014).
[129] ibid 117.
[130] ibid.
[131] Neil Brenner et al, 'New Constitutionalism and Variegated Neo-Liberalization' in Stephen Gill and A. Claire Cutler (Ed), *New Constitutionalism and World Order* (Cambridge University Press 2014).
[132] ibid 127-129.

Not only the vertical, but also the horizontal separation of powers is pivotal in the neoliberal project. A significant analysis and discussion on this argument is presented by Sassen. In particular, she disagrees with the common idea that the neoliberalisation process simply tends to empower supranational actors to the detriment of nation-states.[133] By contrast, she argues that this process redistributes power also from parliamentary institutions (such as, parliaments and courts) towards executive apparatuses (including, governments, central banks, and ministries of finance), shifting nation-states from a liberal to a neoliberal form of state.[134] In her view, thus, executive branches are constitutive of the neoliberal re-organising logic. This is because executive apparatuses now play an important role for two different, yet nonconflicting reasons: in the first place, supranational actors (such as the EU, and the IMF) negotiate the content of neoliberal measures exclusively with executive apparatuses,[135] in the second place the executive owns the institutional powers to enable those measures within national borders.[136] Owing to this, governments are strictly intertwined with supranational organisations in supporting the neoliberal project.[137] Sassen notes that this process took place between since 1980s and it is an ongoing transformation in a growing number of states (inter alia, the United States of America).[138]

Secondly, new constitutionalism of disciplinary neoliberalism involves measures to construct and extend capitalist markets (as I will show in Chapter 2). These measures, in particular, seek to institutionalise economic policies which involve the liberalisation and extensions of capital, labour, and goods in order to permit extended capital accumulation.[139] This consists, as Gill notes, in rewriting laws and statutes.[140] This set of new constitutionalist measures thus is justified on grounds that specific labour market institutions – such as, employment protections, union density, bargaining coordination, benefits, and labour tax wedge – prevent a quick and efficient allocation of factors

[133] Sassen (n 128) 120-121.
[134] ibid.
[135] ibid 122.
[136] ibid 124.
[137] ibid 122.
[138] ibid 121.
[139] Gill (n 37) 39.
[140] ibid.

(including, human and capital resources) affecting economic growth and thus capital accumulation. For instance, the economists Tito Boeri[141] and Pietro Garibaldi[142] argue that dismissal protections prevent an efficient shift of human resources from less productive to more productive sectors.[143] Along the same lines, the economist Edward Lazear[144] states that large unemployment benefits would reduce the employment rate, since social benefits would disincentive workers to find another job.[145] Finally, as argued by Stefano Scarpetta[146] and Thierry Tressel[147], high costs of dismissal affect firms' willingness to adopt and implement new technologies.[148]

Many other economists, however, critically assess the thesis that the removal of employment protections has a positive impact upon competitiveness and thus economic growth. For instance, a significant analysis and discussion on this argument is presented by Dean Baker, Andrew Glyn, David Howell, and John Schmitt. They thus support the general idea that there is not any evident link between the pattern of deregulation – implemented in the 1990s – and trends in unemployment rates.[149] In addition to this, they suggest that there is not any evidence of correlation between labour market institutions and rates of unemployment.[150] Similarly, Klaus Armingeon and Lucio Baccaro do not find in their data and administrative analysis any relationship between employment protections

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[141] Tito Boeri was former senior economist for the OECD, the EC, the IMF, and the World Bank. Currently, he is President of the Istituto Nazionale della Previdenza Sociale (INPS).

[142] Pietro Garibaldi was former consultant for the IMF.

[143] Tito Boeri and Pietro Garibaldi, 'Two Tier Reforms of Employment Protection: a Honeymoon Effects?' (2007) 117/521 The Economic Journal, 372-378 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-0297.2007.02060.x> accessed 20 June 2017.

[144] Edward P. Lazear is an American economist. He served as 24th Chairman of the Council of Economic Advisors and the Financial Crisis under the Presidency of George W. Bush between 2006-2009.

[145] Edward P. Lazear, 'Job Security Provisions and Employment, The Quarterly Journal of Economics' (1990) 105/3 The Quarterly Journal of Economics, 706-717 <https://www.jstor.org/stable/pdf/2937895.pdf?refreqid=excelsior%3A5e5768fbf3690b4be8084f7387144c2b> accessed 22 June 2017.

[146] Stefano Scarpetta is an Italian economist and current Director for Employment, Labour and Social Affairs at the OECD.

[147] Thierry Tressel is Lead Economist at the World Bank and former Senior Economist and Consultant at the IMF, and OECD.

[148] Stefano Scarpetta and Thierry Tressel, 'Boosting Productivity via Innovation and Adoption of New Technologies: any Role for Labor Market Institutions?' 29144/0406 Social Protection Discussion Paper Series, 10-16 <http://documents.worldbank.org/curated/en/101151468762892644/pdf/29144.pdf> accessed 24 June 2017.

[149] Dean Baker, Andrew Glyn, David Howell, and John Schmitt 'Unemployment and Labour Market Institutions: The Failure of the Empirical Case for Deregulation' (2004) 43 International Labour Organization, 41 <http://www.ilo.org/public/libdoc/ilo/2004/104B09_442_engl.pdf > accessed 28 June 2017.

[150] ibid.

and levels of unemployment.[151] Within this context, Peck and Theodore argue that the deregulation of the labour market has led to the rise of a specific social figure, that is to contingent workers. Since 1990s, as they note, employers have favoured the adoption of contingent work strategies in order to cut labour costs, as well as to keep away from legal liabilities usually associated with 'regular' workers.[152] In doing so, labour market restructuring has made workers precarious and insecure, employed on an as-needed basis, without any social security right, as well as low, irregular and insecure pay.[153]

The third set of measures which, according to Gill, seek to deal with dislocations and contradictions of the contemporary economic system, that is to say crises of capital accumulation.[154] In the first place, this is achievable by maintaining the separation of the economics from popular accountability and democratic pressure. In doing so, neoliberal leaders are free to manage the crisis.[155] In the second place, by the co-optation of international and national political threats to the neoliberal order. This is reflected, Gill argues, in those conservative, liberal, and even social democratic parties which are amenable to adopt and/or deepen neoliberal reforms in their political systems.[156] Finally, by the presentation of economic issues as merely 'technical questions beyond political contestability'.[157]

Having clarified what 'new constitutionalism' means in a general sense, the next section now turns to the task of identifying the legal changes that have been implemented in the European Union, specifically, in order to confront what I referred to as the 2007 crisis of the neoliberal model of

[151] Klaus Armingeon and Lucio Baccaro, 'Do Labor Market Liberalization Reforms Pay Off?' (2012) University of Geneva, 22-28 <https://www.researchgate.net/publication/267842361_Do_Labor_Market_Liberalization_Reforms_Pay_Off> accessed 2 July 2017.
[152] Jamie Peck and Nik Theodore, 'Politicizing Contingent Work: Countering Neoliberal Labor Market Regulation…from the Bottom Up?' (2012) 111/4 The South Atlantic Quarterly, 742 <https://read.dukeupress.edu/south-atlantic-quarterly/article-abstract/111/4/741/3607/Politicizing-Contingent-Work-Countering-Neoliberal> accessed 10 July 2017.
[153] ibid 744-745.
[154] Gill (n 37) 40.
[155] ibid 41.
[156] ibid.
[157] ibid.

capitalism. In particular, it will be argued that these legal changes have reinforced Gill's new constitutionalist discourse in the European Union and its neoliberal governance in particular.

1.4. New Constitutionalism and the European Union: Neoliberal Governance from the 1992 Maastricht Agreements to the 2007 Crisis of the Neoliberal Form of Capitalism

As shown above, drawing on the work of Gill, Cutler, and others, 'new constitutionalism' refers to a legal system which is designed to create and preserve a neoliberal order which generate capital accumulation, and provide legal protections for dominant economic forces. According to Gill, the European Union – since the Maastricht Agreement and the establishment of the Economic and Monetary Union in 1992 – aimed to provide and maintain a neoliberal order by institutionalising a new currency, and in doing so to mandate fiscal discipline upon Eurozone member countries.[158] For these reasons, Gill understands the EU as commensurate with the new constitutionalism of disciplinary neoliberalism discourse. [159]

Specifically, Gill notes that the logic of the European political and economic union is premised on a specific set of principles. These principles consist of: sound policy, debt sustainability, surveillance and normalisation, attenuation of democracy, and prioritisation of market efficiency.[160] In the first place, EU requires that Eurozone member-states adopt and implement 'sound policy' measures.[161] This means that Eurozone member-states must undertake political economy measures which maintain their national deficits 'sustainable' and, as a consequence, keep low inflation.[162] In the second place, the EU puts consistently under surveillance and monitoring governments' policies in order to avoid any deviation from the neoliberal discourse.[163] The fourth element is the attenuation

[158] Gill, 'European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe' (n 23) 8.
[159] ibid 5.
[160] ibid.
[161] ibid 15-16.
[162] ibid 16.
[163] ibid 16-17.

of democracy. Gill notes that the normalisation of the neoliberal discourse in Europe requires legal means which attenuate, or even suppress, any political backlash against the neoliberal ideology.[164] Finally, the European political and economic union prioritises market efficiency over equity, involving social uncertainty and insecurity.[165] As Gill has put it, the compliance with neoliberal principles provoke the erosion of other forms of social solidarity.[166] This form of governance, in Gill's terms, 'has shifted the European Union towards a neoliberal and financial, as opposed to a social market or social democratic, model of capitalism.'[167]

As I have shown in the first section of this chapter, however, the 2007 crisis of the neoliberal form of capitalism has caused the business climate in the EU to deteriorate. Consistently with Gill's new constitutionalist discourse, the EU's response to this crisis has focused on restoring confidence to investors and credibility to governments and, as a consequence, capital accumulation. This approach is exemplified in the words of the President of the ECB, then Jean-Claude Trichet, at the European American Press Club in 2009.[168] In this occasion, he argued that

> The intensification of the financial crisis […] was triggered by an abrupt loss of confidence striking simultaneously the financial system as well as the real economy, the industrialised countries as well as the emerging economies. Improving confidence is one of the necessary conditions to overcome the present woes. The European Central Bank and the Governing Council do everything to preserve, enhance, strengthen confidence. More than ever our institution has to be an anchor for stability, therefore an anchor for confidence, in these uncharted and turbulent waters.[169]

[164] ibid 17-18.
[165] ibid 18.
[166] ibid.
[167] ibid 9.
[168] Jean-Claude Trichet, 'The ECB's Response to the Crisis' (European Central Bank, 20 February 2009) <https://www.ecb.europa.eu/press/key/date/2009/html/sp090220.en.html> accessed 3 April 2017.
[169] ibid.

To this purpose, Trichet called for legal reforms in order to rejuvenate the EU's economic governance structures.[170] As he described, these reforms consisted of

> *First*, all surveillance procedures have to be faster and more automatic, including the new macroeconomic surveillance framework. […] *Second,* the enforcement tools also need to be more effective. For example, the new macroeconomic surveillance framework needs to provide clear incentives by envisaging financial sanctions already after the first instance of non-compliance. Discretion to reduce or suspend financial sanctions – either on grounds of exceptional economic circumstances or in response to a reasoned request by a Member State – strongly reduces the effectiveness and sets the wrong incentives. *Third,* the policy requirements should be more ambitious to match the current reality of the euro area […] As regards fiscal surveillance, ambitious benchmarks are needed when establishing an excessive deficit […] *Fourth and finally,* it is also crucial to guarantee the quality of and independence of fiscal and economic analysis. We proposed the establishment of an EU advisory body of recognised competence.[171]

Not only the imposition of fiscal discipline, but also the implementation of structural reforms by Eurozone member states is pivotal to provide a favourable business climate and thus restore capital accumulation. This argument seems to be evident in the words said by the President of the ECB, Mario Draghi, during a conference held at the Brookings Institution in Washington. In particular, he stated as following

> Put simply, I cannot see any way out of the crisis unless we create more confidence in the future potential of our economies […]. Governments in the euro area know well what they need to do to achieve this objective. They do not need our advice. They simply need to implement their specific national structural reforms. And the more vigorously they do this, the more credible

[170] Jean-Claude Trichet, 'Reforming EMU: Time for Bold Decision' (European Central Bank, 18 March 2011) <https://www.ecb.europa.eu/press/key/date/2011/html/sp110318_1.en.html> accessed 3 April 2017.
[171] ibid.

> an increase in growth potential will become, and the more quickly business and consumer confidence will return to the euro area.[172]

In line with these recommendations, the European Parliament (EP) and the Council of the European Union voted and adopted specific regulations, with profound effects on the European Union's system of economic governance. These legal instruments consisted of: the 2011 revisions of the Stability and Growth Pact (SGP), [173] as well as the 2013 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) and two regulations (also refer to as 'two-pack').[174] The Stability and Growth Pact, the Fiscal Stability Treaty, and the two-pack thus establish – in the context of the European Semester – the obligation that national budgets of contracting parties should be balanced or in surplus in order to keep low inflation and, thus, to maintain a favourable business climate for investors. The obligation is met when a contracting party has a structural deficit of no more than 0.5% Gross Domestic Product (GDP), which is up to 1% if the debt ratio is below 60% GDP.[175] The European Commission operates to ensure compliance with such fiscal discipline. Every year, the executive cabinet of the European Union conducts an Annual Growth Survey (AGS) concerning the economic performances and goals of the European Union as a whole, as well as Country-Specific Recommendations (CSRs) which include a detailed analysis of each country's plans for budget, macroeconomic and structural reforms. For their part, contracting parties submit National

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[172] Mario Draghi, 'Recovery and Reform in the Euro Area' (European Central Bank, 9 October 2014) <https://www.ecb.europa.eu/press/key/date/2014/html/sp141009.en.html> accessed 3 April 2017.

[173] Council Directive 2011/85/EU of 23 November 2011 on requirements for budgetary frameworks of the Member States [2011] OJ L 306; Regulation (EU) no. 1173/2011 of 23 November 2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area [2011] OJ L 306; Regulation (EU) no. 1174/2011 of 23 November 2011 of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L 306; Regulation (EU) no. 1175/2011 of 23 November 2011 of the European Parliament and of the Council amending Council Regulation (EC) no. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L 306; Regulation (EU) no. 1176/2011 of 23 November 2011 of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances [2011] OJ L 306; and Council Regulation (EU) no. 1177/2011 of 23 November 2011 amending Regulation (EC) no. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [2011] OJ L 306.

[174] Regulation (EU) no. 473/2013 of 27 May 2013 of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area [2013] OJ L 140; Regulation (EU) no. 472/2013 of 27 May 2013 of the European Parliament and of the Council on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability [2013] OJ L 140.

[175] Armstrong (n 13) 5.

Reform Programmes (NRPs) which include the contents of structural reforms necessary to meet both financial and economic parameters. These programmes are taken into account in the Country-Specific Recommendations, as well as the meeting between the European Commission and each country.[176]

In case a contracting party does not meet the above-mentioned parameters, the Macroeconomic Imbalance Procedure (MIP) is automatically activated. The MIP thus aims to identify, prevent and address macroeconomic imbalances that could affect contracting parties' economic growth, or the European Union as a whole. The starting point of the Macroeconomic Imbalance Procedure is the European Commission's Alert Mechanism Report (AMR), which analyse the economic outlook of all contracting parties. Countries whose financial and economic situation requires deeper analysis are subject to In-Depth Reviews (IDRs) by the Directorate-General of Economic and Financial Affairs (DG ECFIN) in the European Commission. If the DG ECFIN finds macroeconomic imbalances, its staff enters into dialogue with national governments and makes recommendations in order to boost economic growth. In case of excessive macroeconomic imbalances, the European Commission activates the Excessive Imbalance Procedure (EIP) which requires the submission of a corrective action plan to address challenges. In case the European Union member-state – facing any type of imbalances – fails to meet the obligations, the Macroeconomic Imbalance Procedure imposes automatic financial sanctions.[177]

The EU's system of economic governance also encompasses the European Stability Mechanism (ESM). This legal instrument involves a cash-for-reforms approach for over-indebted countries. That is to say, over-indebted countries receive a loan in exchange for specific macroeconomic and structural reforms. The contents of the economic reforms are listed in Memorandum of Understandings (MOUs) agreed by the country itself, and the European Commission, the European Central Bank and the International Monetary Fund (also known as Troika). It worth mentioning the significant role of the IMF within the European Union economic

[176] Caroline De La Porte and Elke Heins, *The Sovereign Debt Crisis, the EU and Welfare State Reform* (Palgrave Macmillian 2016) 18.
[177] ibid 16.

governance. Since the 2007 crisis global crisis of capital accumulation, the IMF has worked in cooperation with the EC and the ECB. It provides regular consultations, as well as technical assistance in several areas. These consist of: monetary and exchange rate policies, financial sector supervision and stability, trade and cross-border capital flows, and structural policies. [178]

What is argued here is that – consistently with the 'new constitutionalism' framework – the current system of governance reflects the strengthening of the European Union's legal capacity to enforce financial and economic measures associated with the neoliberal ideology. More specifically, the economic governance framework commits contracting parties to implement specific legal measures to restore a favourable business climate for investors and thus to restart the process of capital accumulation in Europe. What is more, in case of non-fulfilment of obligations and or recommendations, the EU possesses monitoring and corrective mechanisms which address any deviation from the neoliberal governance of the European Union.

The next section describes the main consequences of the latest revisions of the Stability and Growth Pact, the Fiscal Stability Treaty and the two-pack on contracting parties. The combination of such hard and soft laws thus has involved the erosion of national democratic decision-making processes, as well as the erosion of economic and social rights.

1.5. The Consequences of Post-2007 New Constitutionalism in the European Union

As I previously argued, the European Union – since the 2011 Stability and Growth Pact, the 2013 Fiscal Stability Treaty, and the two-pack – possesses specific legal instruments to create and lock-in a favourable business climate for investors, and thus generate capital accumulation. What it is argued here is that the European Union's system of economic governance has severely eroded democratic decision-making process of contracting parties. This issue is well exemplified in Jukka

[178] IMF Survey Online, '2011 Review of Conditionality' (2012) International Monetary Fund <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sopol091712a> accessed 7 April 2017.

Snell's[179] adaptation of Dani Rodrik's 'trilemma of globalisation'.[180] According to Rodrik's 'trilemma', it is not possible to seek a combination of international economic integration, nation-states (national sovereignty) and mass politics (democracy) within a specific national jurisdiction. Therefore, he argues, it is possible to choose only two out of the three elements: such as international economic integration and nation-states, or international economic integration and mass politics, or nation-states and mass politics.[181] Within this context, Rodrik argues that

> [The] Golden Straitjacket narrows the political and economic choice of those in power to relatively tight parameters. [...] Once your country puts on the Golden Straitjacket, its political choices get reduced to Pepsi or Coke - to slight nuances of tastes, slight nuances of policy, slight alterations in design to account for local traditions, some loosening here or there, but never any major deviation from the core golden rules.[182]

According to Snell – via the implementation of the 2011 revision of the Stability and Growth Pact, the 2013 Fiscal Stability Treaty and the two-pack[183] – the EU should be understood as a politico-legal framework which, in Rodrik's terms, have opted for international economic integration and nation-states, leaving 'mass politics' or democracy behind. In particular, these legal measures – which not only have imposed constraints on nation-states to ensure that national budgets remain within specific parameters, but also and have reinforced monitoring and sanctioning powers of supranational institutions – have limited 'what domestic mass politics can decide'.[184] More specifically, the above-mentioned regulations have reduced the ability of Eurozone member states to implement diverging national policies to the extent that their national domestic decision-making processes are kept only in

[179] Jukka Snell, 'The Trilemma of European Economic and Monetary Integration, and Its Consequences' (2012) 22/2 European Law Journal, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/eulj.12165> accessed 10 April 2017.
[180] Dani Rodrik, 'How Far Will International Economic Integration Go?' (2000) 14/1 Journal of Economic Perspective, <http://bev.berkeley.edu/ipe/readings/How%20Far%20Will%20International%20Economic%20Integration%20Go.pdf > accessed 10 April 2017.
[181] ibid 180.
[182] ibid 182.
[183] Snell (n 179) 164.
[184] ibid 166.

appearance.[185] As a result, as Snell further argues, 'whichever party or parties is in power, policies are going to be fairly similar'.[186]

The evidence of such restriction of democratic decision-making process of Eurozone member-states can be clearly seen in the case of what the mainstream economic literature calls the 'Greek government-debt crisis' (also refer to as 'Greek depression'). The most specific illustration's concerns Greece's 2015 general election and the popular referendum, called to decide whether Greece was to accept the bailout conditions included in the Memorandum of Understandings proposed within the European Stability System in the wake of the 2007 crisis (as discussed in the previous section). The Greek crisis began in earnest after the national election in 2009 and the disclosure of the real data on government debt levels[187], which showed the deficit at 12.7% of the GDP in 2009 and the national debt at 125% of the GDP in 2010.[188] Consequently, the ESM obliged Greece to enact specific legal reforms to remedy the economic 'imbalances' and make its deficit more 'sustainable'. Within this context, the Troika launched a €110 billion bailout loan to rescue Greece from sovereign default and cover its financial needs, conditional on the implementation of structural reforms, and privatisation of governments assets.[189] In spite of the implementation of such measures, the financial and economic conditions worsened. The result was that Greece needed also a second loan (€130 billion in 2011).[190]

In January 2015 – after the legislative election to elect all 300 members of the Hellenic Parliament – the Coalition of the Radical Left - Syriza won the election with the 36.34% of voters (the 27.81% voted for the ND), securing 149 out of the 300 seats. The Prime Minister, Alexis Tsipras,

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[185] ibid 164.
[186] ibid 165.
[187] Ambrose Evans-Pritchard, 'Greece rattled by 'hidden debt' controversy' *The Telegraph* (London, 2 February 2010) <http://www.telegraph.co.uk/finance/comment/ambroseevans_pritchard/7140233/Greece-rattled-by-hidden-debt-controversy.html> accessed 18 April 2017.
[188] Ioannis Glinavos, 'A Crisis Beyond Law, or a Crisis of Law? Reflection on the European Economic Crisis' (2014) 16/4 European Journal of Law Reform, 684 <https://heinonline.org/HOL/Page?handle=hein.journals/ejlr16&div=44&g_sent=1&casa_token=&collection=journals> accessed 18 April 2017.
[189] International Monetary Fund, 'IMF Survey: Europe and IMF Agree €110 Billion Financing Plan With Greece' (IMF Survey Online, 2 May 2010) <http://www.imf.org/en/News/Articles/2015/09/28/04/53/socar050210a> accessed 19 April 2017.
[190] Glinavos (n 188) 684-685.

during the national campaign was firmly critical towards the Troika's legal measures.[191] In particular, he called for a series of national interventions to stop austerity and foster national growth. These were: (1) writing-off the greater part of public debt's nominal value, in order to make it sustainable; (2) a significant grace period in debt servicing to save funds for growth; (3) excluding public investment from restriction of the SGP; (4) a 'European New Deal' financed by the European Investment Bank (EIB).

In June, the President of the EC, Jean-Claude Junker, the IMF and the ECB published a list of further action to be taken by the Greek government, such as fiscal structural reforms, pension and labour reforms, and public administration reforms.[192] As a result, the government broke off the negotiations and announced a popular referendum to decide whether Greece was to decide the proposal proposed by the above-mentioned supranational organisations.[193] On July 5, the bailout conditions were rejected by the 61% of Greek (39% voted in favour of it).[194] The Greek Prime Minister, however, buckled under the pressure made by creditors' deadlines[195], and reached an agreement over the content of the third economic adjustment programme with the Troika, which further privatisation and liberalisation of public services, cuts of public expenditures and radical reforms.[196]

The Greek case well exemplifies the erosion of democratic decision-making process of Eurozone member-states. Specifically – drawing from Snell's analysis – it is possible to argue that

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[191] Syriza, 'The Thessaloniki Programme' (2014) <http://www.syriza.gr/article/SYRIZA---THE-THESSALONIKI-PROGRAMME.html#.WZ32PK1aafc> accessed 19 April 2017.

[192] European Commission, 'Information from the European Commission on the Latest Draft Proposals in the Context of Negotiations with Greece' (Press Release, 28 June 2015) <http://europa.eu/rapid/press-release_IP-15-5270_it.htm> accessed 19 April 2017.

[193] Chris Morris, 'Greece Debt Crisis: Tsipras Announces Bailout Referendum' *BBC News* (Brussels, 27 June 2015) <http://www.bbc.com/news/world-europe-33296839 > accessed 20 April 2017.

[194] Ian Traynor, John Hooper and Helena Smith, 'Greek Referendum No Vote Signals Huge Challenge to Eurozone Leaders' *The Guardian* (Athens, 5 July 2015) <https://www.theguardian.com/business/2015/jul/05/greek-referendum-no-vote-signals-huge-challenge-to-eurozone-leaders> accessed 20 April 2017.

[195] Nick Squires, 'Bewildered Greeks Left Wondering What Happened to Referendum 'NO' Vote' *The Telegraph* (Athens, 11 July 2015) <http://www.telegraph.co.uk/news/worldnews/europe/greece/11733777/Bewildered-Greeks-left-wondering-what-happened-to-referendum-No-vote.html> accessed 20 April 2017.

[196] Graeme Wearden, 'Greece Bailout Agreement: Key Points' *The Guardian* (London, 13 July 2015) <https://www.theguardian.com/business/2015/jul/13/greece-bailout-agreement-key-points-grexit> accessed 20 April 2017.

the ability of Eurozone member-states to respond to democratic instances of their people has been reduced 'close to zero'.

The erosion of the democratic decision-making process of Eurozone member states like Greece and (as I show in the following two chapters) Italy and others, however, is only one side of the coin. The implementation of legal reforms based on neoliberal assumptions has been severely criticised in terms of the heavy social cost. The economist Paul Krugman has argued, on this basis, that 'in the face of the economic crisis, austerity has been a failure everywhere it has been tried'.[197] More recently, Joseph Stiglitz referred to the austerity as an 'utter and unmitigated disaster'.[198] Indeed, many analyses have shown that 'the ability of individuals to exercise their human rights, and that of States to fulfil their obligations to protect those rights, has been diminished. This is particularly true for the vulnerable and marginalized groups in society, including women, children, minorities, migrants and the poor […]'.[199] Therefore, the making of such environments 'have dismantled the mechanisms that reduce inequality and enable equitable growth. The poorest have been hit hardest, as the burden of responsibility for the excess of past decades is passed to those most vulnerable and least to blame'.[200] Sound market policies thus have had a negative impact on the right to work, the right to education and the right to healthcare – all which are guaranteed by both international treaties and national constitutions.

The 'zombie neo-liberalization' scenario sketched by Brenner, Peck and Theodore is a good illustration of the extension of the new constitutionalist framework, via the implementation of the above-mentioned legal measures I discussed above.[201] In their scenario, in spite of 'its disruptive,

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[197] Paul Krugman, 'Legends of the fail' *The New York Times* (New York, 10 October 2011) <http://www.nytimes.com/2011/11/11/opinion/legends-of-the-fail.html> accessed 24 April 2017.

[198] Joseph Stiglitz, 'Austerity has been an utter disaster for the Eurozone' *The Guardian* (London, 1 October 2014) <https://www.theguardian.com/business/2014/oct/01/austerity-eurozone-disaster-joseph-stiglitz > accessed 24 April 2017.

[199] Office of the High Commissioner for the Human Rights, 'Report of the United Nations High Commissioner for Human Rights on austerity measures and economic and social rights' (2013) United Nations, 7 <http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf > accessed 24 April 2017.

[200] Oxfam, 'A cautionary tale. The true cost of austerity and inequality in Europe' (2013) Oxfam Briefing Paper – Summary no. 174, 2 <https://www.oxfamireland.org/sites/default/files/upload/pdfs/austerity-inequality-europe-summary.pdf> accessed 24 April 2017.

[201] Brenner et al (n 131) 138.

destructive consequences'[202], the imposition of market-disciplinary parameters at both global and local levels remains strong.[203] More specifically, 'policy agendas continue to be subordinated to the priority of maintaining investor confidence and a "good business climate"; and policy agenda such as free trade, privatization, flexible labour markets and urban territorial competitiveness continue to be taken for granted'.[204]

As I show in the following section, the erosion of both democratic decision-making processes and social rights within Eurozone member-states has also had significant political consequences. Most obviously, it has provoked the rise (or reinvigoration) of Eurosceptic parties and movements across Europe, posing a threat to the entire European Union.

1.6. New Constitutionalism's challenge. The Relevance of Eurosceptic Parties During the 2007 Eurozone Financial and Economic Crisis

Although scholars argue that the Euroscepticism towards the European Union integration is a permanent phenomenon since the Maastricht Treaties in 1992[205], the erosion of both political and social rights has provoked what Gill and Cutler refer to as 'disintegration' of the EU.[206] What is argued here is that the risk of 'disintegration' has been proven by the increasing relevance of old and new eurosceptic parties and movements across Europe in the aftermath of the 2011 Eurozone financial and economic crisis. These include the Dansk Folkeparti (DF) in Denmark, the Partij voor de Vrijheid (PVV) in Netherland, the Alternative für Deutschland (AfD) in Germany, the Freiheitlich Partei Österreichs (FPÖ) in Austria, the UK Independence Party (UKIP) in Great Britain, the Front National (FN) in France, the 'Lega Nord' and the Movimento 5 Stelle (M5S) in Italy, the 'Syriza' and the 'Popular Association – Golden Dawn' in Greece, and many others.

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[202] ibid.
[203] ibid 140.
[204] ibid.
[205] Simon Usherwood and Nick Startin, 'Euroscepticism as a Permanent Phenomenon' (2012) 51/1 Journal of Common Market Studies, 3 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-5965.2012.02297.x> accessed 3 May 2017.
[206] Gill and Cutler (n 23) 10.

According to the mainstream political science literature[207], these eurosceptic parties and movements – from both the left and right wings of the political spectrum – cover 'a wide range of [political] positions'.[208] They fear the impact of the economic integration on national social rights, as well as the impact of the EU framework on national sovereignty (exemplified by the shift of competences from the national to the supranational level).[209] As a result, they both call for major reforms within the EU institutions or, in the most extreme cases, for 'an exit from the eurozone or even from the EU'.[210] This argument is further highlighted by the political scientist, Maria Daniela Poli. She, thus, states that these parties – albeit to varying degrees – seek to change the EU framework and its legal measures.[211]

Further evidence of the increasing influence that both old and new eurosceptic political parties and movements are having in the wake of the 2007 crisis, and the EU's austerity-driven response to it can also be seen in the 2014 European Parliamentary election.[212] The result attested the electoral success of eurosceptic parties and movements – from the left-right political spectrum – with an overall size of the group increased to more than 100 MEPs (e.g. European Conservatives and Reformists (ECR), European United Left/Nordic Green Left (GUE/NGL), and Europe for Freedom and Direct Democracy Group (EFDD)) to the detriment of the main three pro-EU parties (e.g. Group of the European People's Party (EPP), Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D), and Alliance for Liberals and Democrats for Europe (ALDE)).

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[207] See: Nathalie Brack, 'Radical and Populist Eurosceptic Parties at the 2014 European Elections: A Storm in a Teacup?' (2015) 2 The Polish Quarterly of International Affairs <http://cevipol.ulb.be/sites/default/files/Contenu/Cevipol/pq2-15_brack.pdf> accessed 8 May 2017; Nathalie Brack and Nicholas Startin, 'Introduction: Euroscepticism, from the Margins to the Mainstream' (2015) 36/3 International Political Science Review <https://journals.sagepub.com/doi/pdf/10.1177/0192512115577231> 8 May 2017; Maria Daniela Poli, 'Contemporary Populism and the Economic Crisis in Western Europe' (2016) 5 Baltic Journal of Political Science, <https://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwia3PKQ05XfAhUUsXEKHT-fBMAQFjAAegQICBAC&url=http%3A%2F%2Fwww.zurnalai.vu.lt%2Fbaltic-journal-of-political-science%2Farticle%2Fdownload%2F10335%2F8244&usg=AOvVaw0JLyjVx0wf0tiJyGvK7BT3> accessed 10 May 2017.

[208] Brack (n 207) 9.

[209] ibid.

[210] ibid.

[211] Poli (n 207) 46-50.

[212] See: European Parliament, 'European and National Election Figured Out' (Public Opinion Monitoring Unit, November 2014) <http://www.europarl.europa.eu/pdf/elections_results/review.pdf> accessed 15 May 2017.

However, as Brack and Startin further state, 'EU-related referendums have become a key feature of this [eurosceptic] mainstream process […]. Nowhere is this currently more pronounced than in UK'.[213] The risk of the EU's 'disintegration' can therefore be understood as having reached its peak in 2016 after the decision of the United Kingdom to leave the EU (after the popular referendum held in Great Britain in 2016[214]). According to George Monbiot, the neoliberal character of the EU has destroyed 'effective […] democratic power'[215]. As such, the 'Leave' campaign during the UK referendum sought to fill this lack of democracy by promoting the exciting idea to take back national sovereignty from European institutions. As a consequence, the combination of these elements 'have led people to look for an alternative to politics, and instead of seeking to solve issues through political arguments and debates, looking for slogans, symbols and sensations instead'.[216]

Along the same lines, the economist Paul De Grauwe agrees and stresses that the causes of this event are the 'lack of democratic accountability in the decision-making process at the European level'[217] and, even more importantly, the adoption of a 'uniquely neo-liberal discourse'.[218] Further, austerity and structural reforms have thus pushed all Eurozone member states 'into an austerity straightjacket'[219] that has produced economic stagnation, and erosion of the social security (low wages and quick dismissals).[220]

The rise of social movements and political organisations, however, has been investigated by Brenner, Peck and Theodore, before the outburst of the Eurozone financial and economic crisis. In the 'disarticulated counter-neo-liberalization' scenario, they argue the financial and economic crisis offers to social movements and political organisations new possibilities to promote counter-neoliberal reforms.[221] However, the 'new constitutionalism of disciplinary neoliberalism' framework remains

[213] Brack and Startin (n 207) 240.
[214] 51.9% (17,410,742) of the voters were in favour of the Brexit; the 48.1% (16,141,241) of the votes were against it.
[215] George Monbiot, 'Are Brexit and Trump Neoliberal?' (Verso Books, 16 March 2017), <https://www.youtube.com/watch?v=uRffgKRnLMU> accessed 15 May 2017.
[216] ibid.
[217] Paul De Grauwe, 'After Brexit, the EU must break with neo-liberalism and address the discontents of globalization' (LSE, 17 November 2016) <http://eprints.lse.ac.uk/72922/> accessed 18 May 2017.
[218] ibid.
[219] ibid.
[220] ibid.
[221] Brenner et al (n 131) 140.

sturdy since the 'such counter-neo-liberalizing projects remain disarticulated – they are largely confined to localized or nationalized parameters while still being embedded within geo-institutional contexts that are dominated by market-disciplinary regulatory arrangements and policy-transfer networks'[222]

Having said that, it is still an open question whether the EU decides to abandon some of these regulations – consistent with the Gill's 'new constitutionalism' – or, as argued by Gill and Cutler, face the disintegration of the EU.

1. 7. Conclusion

The present chapter was designed to critically analyse the 2011 Stability and Growth Pact, the 2013 Fiscal Stability Treaty, and the two-pack within the European Union from Gill's 'new constitutionalism' perspective. Within this context, very important implications came into view. In the first place, the above-mentioned regulations have strengthened European Union's legal capacity to enforce financial and economic measures associated with the neoliberal ideology. More specifically, the European Union – through its system of governance – is able to commit contracting parties to implement specific legal measures to restore a favourable business climate for investors and thus to restart the process of capital accumulation in Europe. What is more, in case of non-fulfilment of obligations and or recommendations, the EU possesses monitoring and corrective mechanisms which address any deviation from the neoliberal governance of the European Union.

In the second place, the erosion of the democratic decision-making process of Eurozone member states – like Greece – is only one side of the coin. The implementation of legal reforms based on neoliberal assumptions has been severely criticised in terms of the heavy social cost. As a consequence, this crisis has been proved by the rise of eurosceptic parties and political movements across European countries, as seen in the European elections in 2014, and after the UK referendum in 2016. In particular, these political movements have sought to get back national control over

[222] ibid.

political and economic policy that during last years has moved away from 'national' towards 'global' dimension.

This chapter tried to show that Gill's assumption concerning the European Union as a neoliberal order is still valid. Actually, it is even possible to argue that the European Union – through its system of governance – now possesses, like never before, effective monitoring and sanctioning instruments able to ensure compliance of its member-states. This argument will be further supported by the next two chapters of the thesis. I will thus argue that the European Union has committed the Renzi Government to implement a neoliberal restructuring of the labour market (see Chapter 2), as well as the institutional framework (see Chapter 3).

2. New Constitutionalism and the Italian Labour Market Reform. A Neoliberal Labour Market Restructuring

2. 1. Introduction

On 16 December 2014, the Italian Parliament voted and implemented the Law 183/2014 (also known as 'Jobs Act') proposed by the then Italian Prime Minister, Matteo Renzi, and the then Minister of Labour, Giuliano Poletti. The Jobs Act softened specific labour regulations of the Law 300/1970 (commonly known as 'Workers' Statute') comprehended as market 'rigidities', in order to tackle the rise of the unemployment rate during the 2007 Eurozone crisis. Although many scholars have conducted important studies and analyses, if we examine the Jobs Act from a 'new constitutionalism' perspective over very important implications of the labour market reform come into view. In this chapter, I will thus argue that the European Union – since the 2011 Stability and Growth Pact, the Fiscal Stability Treaty, and the two-pack – has committed the Renzi Government in revising specific contents of the 1970 Workers' Statute. In addition to this, I will argue that the contents of the Jobs Act reflect a neoliberal logic of the labour market system in Italy.

In order to justify this argument, I will first make a brief overview of legal changes implemented in Italy before the deep reform of the European Union's system of governance (as I showed in Chapter 1). Following, the first section describes the main principles and provisions of the Workers' Statute. In particular, it retraces the political and social background during which the working statute has been conceived. The second section highlights how European Union – through its system of governance – has committed the Renzi Cabinet to review specific contents of the Law Workers' Statute, aiming to make a favourable business climate for investors. In particular, this section highlights the role of the European economic governance system in shrinking the Italian decision-making system. The third section describes contents and provisions of the Jobs Act. Firstly, it shows that those provisions clearly dovetail the contents of those reports conducted by the European Commission. Secondly, it shows that the labour market reform reflects Gill's new constitutionalism

of disciplinary neoliberalism discourse. Finally, the fourth section shows the strong popular reaction against the Jobs Act.

2. 2. Italy in the Midst of the 2007 Eurozone Financial and Economic Crisis

Before going into detail of the contents of the labour market reform, for the purpose of the critical analysis presented here, it is useful to understand the economic and social conditions, as well as the legal reforms that had been implemented in the wake of the 2007 crisis in Italy. The crisis thus deeply affected Italy's economic and social performances. More specifically, economic data shows that the Gross Domestic Product shrank by 1.1% in 2008, and by 5.5% in 2009.[223] The overall economic picture got even worse between 2012-2013, during which the Gross Domestic Product shrank respectively by 2.8% in 2012 and by 1.7% in 2013.[224]

Within this context, the European Union started a strict dialogue - both confidentially and publicly – with the Italian Government in order to tackle the weak financial and economic performances during the crisis. For instance, on 5 August 2011, the European Central Bank's former president Jean-Claude Trichet, and the Bank's president *in pectore*, Mario Draghi, sent to the then Italian Prime Minister, Silvio Berlusconi, a confidential letter[225] (the content of which was leaked to the Italian newspaper *Corriere della Sera*). In the first place, the letter stressed the urgency to underpin the standing of Italian commitment to fiscal sustainability and structural reforms, in order to restore the confidence of investors.[226] To this purpose, the European Central Bank listed a series of legal measures which included both monetary and fiscal policies, and labour market and institutional reforms. The former, as Trichet and Draghi have put it, is particularly relevant to improve potential growth of the Italian economy. This refers to

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[223] Eurostat, 'Conti Nazionali e PIL' <http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Real_GDP_growth,_2006-2016_(%25_change_compared_with_the_previous_year;_%25_per_annum)_YB17.png> accessed 6 June 2017.

[224] ibid.

[225] 'Trichet e Draghi: un'azione pressante per ristabilire la fiducia degli investitori' *Corriere della Sera* (Milano, 29 September 2012) <http://www.corriere.it/economia/11_settembre_29/trichet_draghi_inglese_304a5f1e-ea59-11e0-ae06-4da866778017.shtml> accessed 9 June 2017.

[226] ibid.

> the collective wage bargaining system allowing firm-level agreements to tailor wages and working conditions to firms' specific needs and increasing their relevance with respect to other layers of negotiations. […] A thorough review of the rules regulating the hiring and the dismissal of employees should be adopted in conjunction of with the establishment of an unemployment insurance system and a set of active labour market policies capable of easing the reallocation of resources towards the more competitive firms and sectors.[227]

The latter, as further argued by Trichet and Draghi, is pivotal to improve administrative efficiency and business friendliness. Specifically, they encouraged the government

> […] to immediately take measures to ensure a major overhaul of the public administration in order to improve administrative efficiency and business friendliness. In public entities the use of performance indicators should be systemic […]. There is a need for strong commitment to abolish or consolidate some intermediary administrative layers (such as the provinces).

In the face of the ongoing economic crisis and the failure of attempts to solve via economic and social policy measures, Berlusconi resigned as Prime Minister on 16 November 2011 in favour of Mario Monti[228], which – to put it in Tony Barber's terms – 'is revered in Brussels as one of the most effective commissioners for competition and the internal market that the EU has known'.[229] Mario Monti was nominated by the President of the Italian Republic, Giorgio Napolitano, and voted in by the Members of Parliament. The approach of the Monti Cabinet was characterised by the partial implementation of the economic policies listed in above-mentioned letter, among many other pension

[227] ibid.

[228] Mario Monti served as Prime Minister of Italy between 2011-2013. Monti served as a European Commissioner from 1995 to 2004, President of Bocconi University, and last but not least member of the Research Advisory Council at the Goldman Sachs Global Market Institute.

[229] Tony Barber, 'Eurozone Turmoil: Enter the Technocrats' *Financial Times* (London, 11 November 2011) <https://www.ft.com/content/93c5cb36-0c92-11e1-a45b-00144feabdc0> accessed 12 June 2017.

system and labour market reforms. The Law 214/2011[230] – proposed by the then Minister of Labour, Social Policies and Gender Equality, Elsa Fornero[231] – raised the pensionable age and requirements for retirement on the basis of the number of years of social security contributions made, meeting the conditions of the ECB letter 'to intervene further in the pension system, making more stringent the eligibility criteria for seniority pensions and rapidly aligning the retirement age of women in the private sector to that established for public employees'.[232]

Labour reform went in the same direction. With the Law 92/2012[233] (also referred to as 'Legge Fornero'), Monti Government softened some dispositions of the Workers' Statute and in particular Art. 18 which protects workers – employed with open-ended contracts – from illegal and/or invalid dismissals. modified Article 18 of the Workers' Statute to review 'the rules regulating the hiring and dismissal of employees'.[234] Specifically, it allowed both public and private companies to give out a compensation payment if they had laid off their employees, for disciplinary or economic reasons, in a manner that was considered illegitimate or unjustified. In this case, companies were no longer forced to automatically reinstate their employees if their dismissal had been proved to be 'illegal' unless the court ordered otherwise. The implementation of pension system, as well as labour market reforms has been severely criticised in terms of the heavy social cost. Quantitative data thus shows that between 2008-2016 people at risk of poverty or social exclusion in Italy raised from the 25.5% to 28.7%.[235]

In the following section, I will describe the further legal changes that have been implemented in Italy, by Renzi Cabinet, within the current European Union's system of governance.

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[230] Legge 22 Dicembre 2011, n. 214 in materia di 'Conversione in legge, con modificazioni del decreto-legge 6 dicembre 2011, n. 201, recante disposizioni urgenti per la crescita, l'equità e il consolidamento dei conti pubblici. Testo del decreto-legge 6 dicembre 2011, n. 201, coordinato con la legge di conversione 22 dicembre 2011, n. 214, recante: "Disposizioni urgenti per la crescita, l'equità e il consolidamento dei conti pubblici" GU 300 del 27 dicembre 2011.

[231] Elsa Fornero served as Minister of Labour, Social Policies and Gender Equality between 2011-2013. She is also Vice President of the Italian bank Intesa San Paolo and Professor at University of Turin.

[232] Corriere della Sera (n 225).

[233] Legge 28 Giugno 2012, n. 92 in materia di 'Disposizioni in Materia di Riforma del Mercato del Lavoro in una Prospettiva di Crescita' GU 153 del 3 luglio 2012.

[234] ibid.

[235] Eurostat, 'Downward Trend in the Share of Persons at Risk of Poverty or Social Exclusion in the EU' <http://ec.europa.eu/eurostat/documents/2995521/8314163/3-16102017-BP-EN.pdf/d31fadc6-a284-47f3-ae1c-8212a581b0c1> accessed 15 June 2017.

2.3. The Law that Brought the Constitution of the Italian Republic into the Factories

Having briefly described the economic and social outlook in Italy in the midst of the financial and economic crisis, this section describes the provisions, as well as the historical background of the main document that mediates the relationship between workers, companies, trade unions and the government. The Workers' Statute[236] is the most important piece of legislation regarding labour law in Italy. It was proposed and then implemented, on 20 May 1970, by centre-left parties, such as the *Democrazia Cristiana*[237] (DC), the *Partito Socialista Italiano*[238] (PSI), the *Partito Repubblicano Italiano*[239] (PRI), and the *Partito Liberale Italiano*[240] (PLI). The law consists of forty-one articles which apply to work units in the industrial and commercial sectors with more than fifteen employees and to agricultural enterprises with more than five employees. These articles are arranged in six parts: freedom and dignity of workers (art. 1-13), freedom of association (art. 14-18), trade union activities (art. 19-27), various and general provisions (art. 28-32), placement (art. 33-34), final and penal provisions (art. 35-41).

The Workers' Statute forbids the abuse of disciplinary power (art. 7), investigations into employees' personal opinions (art. 8) and discriminatory behaviour on the grounds of union membership (art. 15). In addition, the Workers' Statute establishes the mechanism for reinstatement after invalid dismissals (art. 18), as well as the judicial procedure dealing with the repression of

[236] Legge 20 maggio 1970, n. 300 in materia di "Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell'attività sindacale, nei luoghi di lavoro e norme sul collocamento" GU 131 del 27 maggio 1970.
[237] Democrazia Cristiana was Christian democratic political party in Italy. The DC was founded in 1943 and played a central role until 1994. Among its leaders, it is worth mentioning Alcide De Gasperi (founder), Aldo Moro, Amintore Fanfani, Francesco Cossiga, Arnaldo Forlani, and Ciriaco De Mita.
[238] Partito Socialista Italiano was a social democratic political party in Italy. The PSI was founded in 1892 and disbanded in 1994. Its main political leaders were Filippo Turati (founder), Nicola Bombacci, Pietro Nenni, and Sandro Pertini.
[239] Partito Repubblicano Italiano is a social-liberal party in Italy. Its main members were Ugo La Malfa, and Giovanni Spadolini.
[240] Partito Liberale Italian was a liberal and conservative political party in Italy. It was founded in 1922 and disbanded in 1994. Its main members were Giovanni Giolitti, Benedetto Croce, Luigi Einaudi, and Enrico De Nicola.

employers' anti-union behaviour (art. 28). These provisions, therefore, shape the relationship between workers and firms, guaranteeing to the former dignity and freedom.

The Workers' Statute was the result of a long-standing legal and political process that started in the aftermath of the approval of the Constitution of Italian Republic in 1947. A member of the Constituent Assembly and *Confederazione Generale Italiana del Lavoro*[241] (CGIL) leader, Giuseppe Di Vittorio, presented the proposal *'Lo Statuto dei diritti dei cittadini lavoratori'* (n. 43/1952)[242] during the CGIL assembly in Napoli. Di Vittorio pointed out that provisions of the Italian Constitution – the right to have equal social dignity (art. 3), the right to form association freely (art. 18), the right to freely express thoughts in speech, writing, or any other form of communication (art. 21), among many others – had never been applied within factories. Therefore, he argued, it was necessary to 'bring the Constitution within factories'.[243] As he put it:

> la Costituzione della Repubblica, la quale garantisce a tutti i cittadini, lavoratori compresi, una serie di diritti che nessun padrone ha il potere di sopprimere o di sospendere, nei confronti di lavoratori. Non c'è e non ci può essere nessuna legge la quale stabilisca che i diritti democratici garantiti dalla Costituzione siano validi per i lavoratori soltanto fuori dall'azienda. È vero che le fabbriche sono di proprietà privata, ma non per questo i lavoratori divengono anch'essi proprietà privata dell'azienda. Il lavoratore, anche sul luogo del lavoro, non diventa una cosa, una macchina acquistata o affittata dal padrone, e di cui questo possa disporre a suo piacimento. […] Anche sul luogo del lavoro, l'operaio conserva intatta la sua dignità umana, con tutti i diritti acquisiti dai cittadini della Repubblica Italiana. […] Naturalmente, le minacce e gli abusi di cui sono vittime quotidianamente numerosi lavoratori, danno spesso luogo a proteste collettive, ad agitazioni, a scioperi. Se si

[241] The Confederazione Generale Italiana del Lavoro (CGIL) is the main Italian trade union. It was formed in 1944 by socialist and communist forces. The CGIL is affiliated with the International Trade Union Confederation (ITUC), and the European Trade Union Confederation (ETUC). It is also part of the Trade Union Advisory Committee (TUAC) to the OECD.

[242] Giuseppe Di Vittorio, 'Lo Statuto dei diritti dei cittadini lavoratori' (1952) 43 <http://old.cgil.it/Archivio/EVENTI/40%20anni%20dallo%20Statuto%20dei%20Lavoratori/Articolo%20Di%20Vittorio.pdf > accessed 10 July 2017.

[243] ibid.

> continuasse ad andare avanti nel senso deplorato, queste agitazione sarebbero destinate a moltiplicarsi e a generalizzarsi […].[244]

> [The Constitution of the Republic, which guarantees to all people, including workers, a set of rights that no boss has the right to abolish or suspend, towards workers. There is no law, nor can there be any law, which establishes the guarantee of democratic rights of the Constitution only outside factories. It is true that factories are private, but that does not mean that workers are private, too. A Worker, also within factories, it is not a commodity, a machinery bought or rented by the boss, of which can be disposed of at will […]. Even within factories, a worker maintains his human dignity, along with all the rights guaranteed by the Italian Republic. […] Naturally, daily threats and abuses towards workers, often lead to collective protests, strikes, and unrest. Keeping this behavior would multiply and spread such civil unrest […].

As foreseen by Di Vittorio, during 50s and 60s worker movements and trade confederations organised many strikes and demonstrations in favour of the adoption of normative rules regarding working conditions, such as the right to form association freely, and the right to freely express thoughts and opinions. In 1969, the dissatisfaction spread from the north to the south of the country, involving the biggest, most prolonged strike wave in history (known as 'hot autumn'). During this period, workers occupied the main Italian companies, such as Fabbrica Italiana Automobili Torino (FIAT), Pirelli, and Marzotto among many others.

Owing to this social unrest, the then socialist Labour Minister, Giacomo Brodolini, on the 5-6 March 1969 appointed a commission, chaired by the socialist and jurist, Gino Giugni, aiming to adopt a brand-new labour legislation. The commission – tracing Di Vittorio's proposal n. 43/1952 – drew up a report defining the profile of what would have been the future Workers Statute. On the 20

[244] ibid.

June, Brodolini proposed the bill to the Italian Parliament. After the parliamentary debate, in May 1970, the two chambers approved the Law 300/1970, due to the vote of the centre-left coalition.[245]

The following section highlights how the European Union – through its economic governance framework – has committed Renzi Cabinet to further soften specific provisions of the Workers' Statute.

2. 4. Making a Favourable Business Climate in Italy – Part I. The European Union and the Italian Labour Market Reform

Since the establishment of its current system of governance – stemming from the combination of the 2011 Stability and Growth Pact, the 2013 Fiscal Stability Treaty and the two-pack – that the European Union has been raised further concerns over the adequacy of the Italian labour market to tackle the unemployment rate during the ongoing financial and economic crisis. Specifically, the EU has held responsible dismissal protections – established by the 1970 Workers' Statute – to effectively tackle unemployment and, as a consequence, to restore economic growth. What I argue here, thus, is that the European Union has fostered to further liberalise the Italian labour market, very much in line – as I suggest below – with the kinds of measures predicted by the framework of Gill's new constitutionalism. In order to support this argument, I will draw from the Annual Growth Surveys (AGSs), Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances (RMIs), and other analyses conducted by the European Commission (EC) and the Directorate-General for Economic and Financial Affairs (DG ECFIN) in particular. In addition, I will take from National Reform Programme (NRPs) conducted by the then Italian Prime Minister, Matteo Renzi, and the then Minister of Economy and Finance, Pier Carlo Padoan.

As I previously showed (see Chapter 1, Section 1.4), the Annual Growth Survey – setting out legal priorities necessary to promote growth and thus capital accumulation – kick-starts the EU's

[245] It is worth noting that, among centre-left parties, only the Partito Comunista Italiano (PCI) abstained from voting the bill, due its willingness to apply the labour regulations also to work units in the industrial and commercial sectors with less than fifteen employees, as well as to agricultural enterprise with less than five employees.

system of governance. To the purpose of this analysis, I will take into consideration the 2014 AGS[246] which listed five specific priorities to meet during the year. These priorities consisted of: (1) pursuing differentiated, growth-friendly fiscal consolidation;[247] (2) restoring lending to the economy;[248] (3) promoting growth and competitiveness;[249] (4) tackling unemployment and the social consequences of the crisis;[250] and (5) modernising public administration. The fourth point – i.e. tackling unemployment and the social consequences of the crisis – is particularly relevant for the analysis conducted here.

To be more precise, the EC – in the 2014 Annual Growth Survey – stressed that

> Unemployment rates remain historically high, at 11% on average in the EU (in July 2013), with a youth unemployment rate of 23.4%. […] The crisis has had a particularly negative impact on the most disadvantaged and the share of people at risk of poverty has risen to 25% in the EU. This also includes a growing risk of structural unemployment and increased exit from the labour market, which could have significantly negative effects on EU potential growth. […] The immediate priority [thus] should be given to ambitious implementation and follow up of reforms regarding the functioning of the labour market so that participation can be increased.[251]

Following the 2014 Annual Growth Survey[252], the Italian Government proposed its 2014 NRP in which assured the implementation of

> fully consistent with the European framework. More specifically, the reforms are consistent with the priorities of the 2014 Annual Growth Survey; with the recommendations of the European Commission; with the priorities

[246] European Commission, 'Annual Growth Survey 2014' COM (2013) 800 final.
[247] ibid 3.
[248] ibid.
[249] ibid.
[250] ibid 4.
[251] ibid 11.
[252] Ministero dell'Economia e delle Finanze, 'Economic and Financial Document 2014. The National Reform Programme – Part I. National Strategies and Key Initiatives' (2014) <https://ec.europa.eu/info/sites/info/files/file_import/nrpp12014_italy_en_0.pdf,> accessed 13 July 2017.

> established within the European Semester; and with the seven flagship initiatives of the Europe 2020 Strategy. […] In essence, the strength of this transformation agenda is found not only in the content of the reforms, but, more importantly, in the capacity to translate reforms promptly into legislation and implement them rapidly and with certainty. Reforms must be planned and carried out effectively, including with the systematic monitoring of implementation of ministerial decrees and the subsequent enabling legislation.[253]

Therefore, the Italian Government assured that the implementation of the Jobs Act would have produced

> a more inclusive and dynamic system to overcome the remaining segmentation and rigidity and [it would have contributed] to structurally increasing both employment (especially youth employment) and labour productivity. Greater flexibility will result from the creation of a single contract with forms of progressive protection. Greater protection refers to employees, but also includes more broad-based support of private initiatives, through special programmes for self-employment, venture capital, and in particular youth entrepreneurship. Decentralised contract bargaining will be strengthened, further empowering the individual parties to the contract, to ensure worker involvement in companies and link compensation to the common goal of productivity.[254]

The European Commission has monitored Italy's progress on the institutional reform even in the midst of the law-making process very closely. In its 2014 Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances[255], the EC stressed that

[253] ibid i.
[254] ibid iii.
[255] Directorate-General for Economic and Financial Affairs, '2014 Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances' (2014) European Commission <https://ec.europa.eu/info/sites/info/files/file_import/2014-11-07_italy_mip_specific_monitoring_report_to_epc_en_1.pdf> accessed 6 November 2017.

> the Parliament is now discussing an enabling law ('Jobs Act') which would allow the government to take action by decree within 6 months after parliamentary adoption (foreseen for end-2014) on a wide range of fronts […] The direction of the reform is broadly consistent with that of the 2012 reform, in particular as it also aims to address labour market segmentation, increase exit flexibility (at least for workers with lower seniority) and move further towards an integrated social safety net, with a strong emphasis on governance reforms and administrative simplification. The potential gains in the area of active and passive labour market policies seem particularly promising, but the improved functioning of the public employment services is a long-awaited precondition. The proposed new permanent contract for new entrants with progressive entitlements could improve labour market prospects for young people. A contentious issue is the extent to which it should entail reduced room for reinstatement in case of dismissals judged unfair.[256]

In conclusion, the EC gave favourable response to proposed actions, if adopted without major changes, since they appear

> adequate to address Italy's labour market challenges, notably with regard to facilitating the reallocation of labour towards growing sectors and firms, reducing segmentation and fostering labour market participation, particularly of women. The effectiveness of the reform will depend much on the design of the constituent measures and their subsequent implementation on the ground.[257]

If we examine the relationship between EU and Renzi Cabinet from a 'new constitutionalism' perspective certain over very important implications come into view. More specifically, the EU seems to possess – as Sassen has put it – the 'norm-making capacities' to set criteria concerning fiscal and monetarist policies (see Chapter 1, Section 1.4), as well as other form of legal reforms, such as the

[256] ibid 9-10.
[257] ibid 10.

labour market reform (see Chapter 2) and institutional reform.[258] To put it differently, as Brenner, Peck, and Theodore have put it, this framework reflects a 'U-turn' in the relationship between supranational institutions and nation-states, shifting the relationship itself from a bottom-up to a top-down model.[259]

In the following section, I try to show that not only the Jobs Act – proposed by then Italian Prime Minister, Renzi, and the then Minister of Labour, Giuliano Poletti – dovetailed the EC's recommendation, but also its contents reflect a neoliberal logic of the labour market.

2. 5. The Jobs Act. The Completion of the Neoliberal Restructuring of the Labour Market in Italy

Following the strict dialogue between the European Union and the Italian Cabinet, on 3 April 2014, the then Italian Prime Minister, Matteo Renzi, and the Minister of Labour, Giuliano Poletti, proposed the Jobs Act.[260] The bill traced the main legal changes envisaged by the European Commission both in the 2014 Annual Growth Survey and the 2014 Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances, e.g. softening of hiring and dismissal regulations. On 3 December 2014, the Italian Parliament voted and approved the Jobs Act.[261] The labour market reform consisted of a set of provisions that reformed the regulation of 'open-ended' and temporary contracts, seeking a twofold aim: to boost employment (in particular for women and young people) and to reduce the use of temporary and atypical type contracts.[262]

With regards to the 'open-ended' contract type, the Jobs Act introduced a brand-new contract type for new hires – i.e. *contratto a tutele crescenti* (contract with gradually increasing protection) – replacing the standard 'open-ended' contract established by the Law 300/1970. In particular, the

[258] Sassen (n 128) 117.
[259] Brenner et al (n 131) 127-129.
[260] Senato della Repubblica, 'Disegno di Legge N. 1428', n. 1428 XVII Legislatura, 3 aprile 2014.
[261] Legge 10 dicembre 2014 n. 183 in materia di "Deleghe al Governo in materia di riforma degli ammortizzatori sociali, dei servizi per il lavoro e delle politiche attive, nonché in materia di riordino della disciplina dei rapporti di lavoro e della attività ispettiva e di tutela e conciliazione delle esigenze di cura, vita e lavoro" GU 290 del 15 dicembre 2014.
[262] Fana, Guarascio, and Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (n 14) 15-17.

'contract with gradually increasing protection' does not provide any obligations for firms to reinstate workers after invalid dismissals, unless the latter are discriminatory or orally communicated. On the contrary, the brand-new contract type obliges firms to simply reimburse workers with a minimum economic compensation, which is an amount equal to two wages per each year of work tenure and not less than four wages. In addition, in the case of small firms – i.e. less than 15 employees – the compensation is reduced by fifty per cent.[263]

With regards to the temporary and atypical contracts, the Jobs Act abrogated workers right to get a permanent contract if firms exceed the limit of temporary contracts, which previously consisted of 20% of the permanent ones. What is more, the 'Jobs Act' extended the use of vouchers. The vouchers are non-standard type of employment relationships. In particular, they are hourly tickets used to compensate workers, which the net hourly salary amounts to 7.5 euros.[264] The Law Jobs Act increased the maximum amount of revenues that workers could receive in vouchers from 5.000 to 7.000 euros. Furthermore, workers under this job relationship do not have any social security right, such as paid sick days, maternity leave, or annual leave.[265]

It is worth mentioning that the Italian Parliament also introduced – under the 2015 Annual Financial Statement[266] – a significant monetary incentive for firms hiring workers under the 'contract with gradually increasing protection'. Each firm, thus, hiring a worker under the above-mentioned 'open-ended' contract, as well as all transformations from a temporary to an 'open-ended' contract is excluded from paying contributions to social security up to 8.060 per year for three years. In doing so, the Italian government aimed to speed up a quick diffusion of the brand-new contract type.[267]

Very much in line with the kinds of measures predicted by the framework of Gill's 'new constitutionalism', the Jobs Act seeks to liberalise the labour market by rewriting specific contents of the Workers' Statute. Specifically, the Jobs Act reflects a further liberalisation of the labour market

[263] Fana, Guarascio, and Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (n 14) 15.
[264] ibid 16.
[265] ibid.
[266] Legge 23 dicembre 2014, n. 191 in materia di 'Bilancio di previsione dello Stato per l'anno finanziario 2015 e bilancio pluriennale per il triennio 2015-2017' GU 300 del 29 dicembre 2014.
[267] Fana, Guarascio, and Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (n 14) 16.

as understood in many studies associated with the neoliberal ideology. As it was argued before (see Chapter 1, Section 1.3.1), the economists Tito Boeri and Pietro Garibaldi argue that dismissal protections prevent an efficient shift of human resources from less productive to more productive sectors.[268] In the second place, as notes the economist Edward Lazear, large unemployment benefits would reduce the employment rate, since social benefits would disincentive workers to find another job.[269] Finally, as argued by Stefano Scarpetta and Thierry Tressel, high costs of dismissal affect firms' willingness to adopt and implement new technologies.[270]

The following section highlights economic and social outcomes of the Jobs Act in Italy. In particular, drawing on empirical investigations, it attempts to show that the implementation of the Jobs Act – consistently with the implications of the 'new constitutionalism' framework –has severely worsened economic and social conditions of workers in Italy.

2. 6. Economic and Social Outcomes in Italy after the Labour Market Reform

As argued in the previous section, the Jobs Act was directed towards a twofold aim: to boost employment (especially among women, and young people), as well as to reduce the use of temporary and atypical contracts (inter alia, contracts that include voucher-paid payment scheme). Up to now, several studies[271] have evaluated the impact of the labour market reform in Italy. Marta Fana, Dario Guarascio, and Valeria Cirillo, in particular, conducted a very interesting empirical investigation on the impact of the Jobs Act. To this purpose, they gathered both statistical and administrative data in 2015 on the flow of labour force, as well as on the flow of different type of contracts. The main data sources for their analysis were the Istituto Nazionale di Statistica (ISTAT), the Istituto Nazionale della Previdenza Sociale (INPS), and the Directorate-General of the European Commission (Eurostat).

[268] Boeri and Garibaldi (n 143) 372-378.
[269] Lazear (n 145) 706-717.
[270] Scarpetta and Tressel (n 148) 10-16.
[271] Fana, Guarascio, and Cirillo (n 14); Dell'Arringa (n 14).

With regards to the flow of labour force, Fana, Guarascio, and Cirillo noted that the Jobs Act is failing in stimulating occupations.[272] In particular, data showed a notable transition from unemployment to inactivity (35.7%), while the transition from unemployment to employment (16%) is lower than the European average (18.6%).[273] Going into a more detailed analysis, ISTAT data showed that the employment rate in the cohort 15-64 years old is 56,3%, deeply lower the EU average (65.6%).[274] During 2016, the employment rate raised to 57,3% in Q3, mainly because of the rise of temporary and atypical contracts.[275]

With regards to the flow of different type of contracts, Fana, Guarascio, and Cirillo noted that - in spite of Italian Government's willingness to reduce the use of temporary and atypical contracts – since the implementation of the Jobs Act temporary and atypical relationships between workers and employers have quickly raised. In particular, data showed that '63% of new workers […] in the first nine months of 2015 have a temporary contract'.[276] Hourly tickets have had a notable impact on the flow of temporary contracts. Data, indeed, showed that – the expansion of the use of vouchers under the Law 183/2014 – 'during the first nine months more than 81 millions of 'jobs ticket' have already been sold, at an annual rate equal to 70%'.[277] This trend has been confirmed even throughout the 2016, during which more than 109.500.000 millions of hourly tickets have been sold, 34.6% more than 2015.[278]

As a result, what has emerged is a general worsening economic conditions of Italian workers. As a report conducted by the ISTAT showed, during 2015 1.582.000 people lived in abject poverty,

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[272] Fana, Guarascio, and Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (n 14) 19.
[273] ibid.
[274] ISTAT, *Annuario Statistico Italiano 2016,* 29.12.2016, available at https://www.istat.it/it/files/2016/12/Asi-2016.pdf (last visited 12.12.2017).
[275] ISTAT, 'Note trimestrale sulle tendenze dell'occupazione' (2016) <https://www.istat.it/it/files/2016/12/Nota-trim.congiunta-III-2016.pdf?title=Nota+trimestrale+sull'occupazione+-+28%2Fdic%2F2016+-+Testo+integrale.pdf> accessed 1 September 2017.
[276] Fana, Guarascio, and Cirillo, 'Labour Market Reforms in Italy: evaluating the effects of the Jobs Act' (n 14) 19.
[277] ibid 21.
[278] ISTAT, 'Note trimestrale sulle tendenze dell'occupazione' (2016) <https://www.istat.it/it/files/2016/12/Nota-trim.congiunta-III-2016.pdf?title=Nota+trimestrale+sull'occupazione+-+28%2Fdic%2F2016+-+Testo+integrale.pdf> accessed 1 September 2017.

while 2.678.000 (10.4%) lived in a state of 'relative poverty'.[279] The economic conditions of Italian workers have been even more dramatic during 2016. Data showed, indeed, that the rate of people who risk social exclusion or to live in a state of 'relative poverty' raised from 28.7% to 30%.[280]

These statistical and administrative data seem to confirm the thesis that there is not always a positive impact of liberalization of labour market and levels of employment. For instance, a significant analysis and discussion on this argument is presented by Dean Baker, Andrew Glyn, David Howell, and John Schmitt. They thus support the general idea that there is not any evident link between the pattern of deregulation – implemented in the 1990s – and trends in unemployment rates.[281] In addition to this, they suggest that there is not any evidence of correlation between labour market institutions and rates of unemployment.[282] Along the same line, Klaus Armingeon and Lucio Baccaro do not find in their data and administrative analysis any relationship between employment protections and levels of unemployment.[283]

The liberalisation of the Italian labour market, thus, not only failed in achieving its main goals, but also increased the number of precarious and insecure workers employed on an as-needed basis, without any social security right, as well as low, irregular and insecure pay. This argument seems to confirm Jamie Peck's and Nik Theodore's claim that neoliberal national labour market restructuring has led to the rise of a specific type of workers, i.e. contingent workers. As they have put it – especially since the 2008 global crisis of the neoliberal form of capitalism – contingent workers represent 'an extreme form of the type of flexible employment arrangements that increasingly are favoured by employers'.[284] These arrangements have been central to reduce 'labor costs, to evade legal liabilities

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[279] ISTAT, 'La povertà in Italia. Anno 2015' (2016) <https://www.istat.it/it/files/2016/07/La-povertà-in-Italia_2015.pdf?title=La+povertà+in+Italia+-+14%2Flug%2F2016+-+Testo+integrale+e+nota+metodologica.pdf> accessed 1 September 2017.

[280] ISTAT, 'La povertà in Italia. Anno 2016' (2017) <https://www.istat.it/it/files/2017/12/Report-Reddito-e-Condizioni-di-vita-Anno-2016_WEB_REV.pdf?title=Condizioni+di+vita+e+reddito+-+06%2Fdic%2F2017+-+Testo+integrale+e+nota+metodologica.pdf> accessed 1 September 2017.

[281] Baker, Glyn, Howell, and Schmitt (n 149) 41.

[282] ibid.

[283] Armigeon and Baccaro (n 151) 22-28.

[284] Peck and Theodore (n 152) 742.

[…] associated with employing "regular" workers, and to undermine the foundations of collective action in the workplace'.[285]

The following section argues that the neoliberal restructuring of the labour market and its social and economic consequences have provoked contestation among Italian workers and trade confederations.

2. 7. Popular Contestation Against a Neoliberal Restructuring of the Labour Market

As argued in the previous section, several empirical investigations have evaluated the impact of the Law 183/2014 upon the Italian labour market. In particular, the analysis conducted by Fana, Guarascio and Cirillo have showed that the Jobs Act failed in achieving its main goal, that is to say the boost of employment and the reduction of the use of temporary and atypical contracts. On the contrary, these investigations have stressed the emergence of an increasing number of contingent workers (i.e. employed on an as-needed basis, without any social security right, and low, irregular and insecure pay), which represent an extreme form of flexible employment arrangements.

The Jobs Act, and its neoliberal implications, were resisted by the main Italian trade union, that is to say the *Confederazione Generale Italiana del Lavoro* (CGIL). More specifically, the CGIL primarily sought to improve conditions of contingent workers seeking legal remedies to the increasing flexibility, shortage of social security rights, and wage theft, stemming from the Law 183/2014. Not long after the adoption of the labour market reform, thus, the CGIL collected 3.3 millions of signatures of Italian voters to officially propose to the Supreme Court of Cassation[286] two abrogative referendum questions.[287] These questions aimed to eliminate two specific provisions of the Jobs Act,

[285] ibid 744.
[286] The Supreme Court of Cassation is at the top of the ordinary jurisdiction. One of its key duty is to ensure certainty in the interpretation of the law. It also performs non-judicial functions related to elections, and referendum for the abrogation of laws.
[287] CGIL, 'Ordine del giorno conclusivo del comitato direttivo CGIL', 21.03.2016.

respectively: the brand-new contract type (i.e. contract with gradually increasing protection) and hourly tickets (i.e. contracts that include voucher-paid payment scheme).[288]

The Supreme Court of Cassation, however, ruled the first of the two questions inadmissible. According to the judges, in case of positive response to the abrogative referendum question, the result would not have simply re-instated the standard 'open-ended' contract established by the Workers' Statute, but would have extended the application of the Workers' Statute also to work units in the industrial and commercial sectors with less than fifteen employees. This judicial interpretation, they decided, would have violated Article 75 of the Constitution of the Italian Republic, which simply establishes 'to repeal, in whole or in part, a law or a measure having the force of law'.

By contrast, in the same ruling[289], the court declared the question concerning hourly tickets admissible. The judges argued that the Law 183/2014 establishes the use of vouchers not only for *occasional* 'accessory jobs', but also for stable and long working relationship between workers and employers. For this reason, the Law 183/2014 violates the Law 276/2003[290], art. 70, which allows the use of hourly tickets only for those workers that risk social exclusion, or for those that are not part of the labour market system.

The decision of the Supreme Court of Cassation to hold the popular consultation over the elimination of the hourly tickets had an impact on the political agenda of the Italian Government. The Italian Prime Minister, Paolo Gentiloni, eliminated the contracts that include voucher-paid payment scheme via Decree Law 25/2017, on 18 March 2017.[291] According to the Italian newspaper *Il Fatto Quotidiano,* Gentiloni had confidentially admitted that his decision was motivated by the desire to avoid another popular referendum over a highly divisive social issue.[292] According to the CGIL

[288] CGIL, 'Carta dei Diritti Universali del Lavoro. Il Documento Approvato dal Direttivo', 21.03.2016.
[289] Corte Costituzionale, 'Sentenza n. 26/2017', 27.01.2017.
[290] Decreto Legislativo 10 settembre 2003 in materia di 'Attuazione delle deleghe in materia di occupazione e mercato del lavoro' GU 235 del 09 ottobre 2003.
[291] Decreto-Legge 17 marzo 2017 in materia di 'Disposizioni urgenti per l'abrogazione delle disposizioni in materia di lavoro accessorio nonché per la modifica delle disposizioni sulla responsabilità solidale in materia di appalti' GU 64 del 17 marzo 2017.
[292] 'Voucher, il governo cancella per decreto per non fare referendum. Gentiloni: così evitiamo strumentalizzazioni' *Il Fatto Quotidiano* (Rome, 17 March 2017) <https://www.ilfattoquotidiano.it/2017/03/17/voucher-governo-li-cancella-per-decreto-per-non-fare-il-referendum-gentiloni-evitiamo-strumentalizzazioni/3457699/> accessed 7 September 2017.

leader, Susanna Camusso, the backing away of the government was 'an amazing result' made possible by millions of workers that wanted to bring dignity and freedom back within work places.[293]

2. 8. Conclusion

The present chapter was designed to critically analyse the Jobs Act and its implications from Gill's 'new constitutionalism' perspective. In the first place, I attempted to show how the European Union – through its system of governance – has committed Renzi Cabinet to reform the labour market in Italy. More specifically, the EU has conducted several reports and analyses in which they have increasingly considered hiring and dismissal protections – stemming from the Workers' Statute – as obstacles that have hampered employment and thus economic growth in Italy. In the second place, I tried to emphasise that the Jobs Act reflects a neoliberal restructuring of the labour market. Indeed, it has involved an extreme form of liberalisation of the labour market which not only has created a new category of workers – i.e. contingent workers – but also it has provoked the erosion of economic and social conditions of workers.

To conclude, in line with the 'new constitutionalism' framework, the Jobs Act has sought to erode (partially failing) one of the main legal sources – i.e. Workers' Statute – which has been the political and legal result of social democratic forces in the aftermath of the Second World War.

[293] 'Voucher, il Senato Approva il Decreto che li Abolisce. Camusso: "Risultato Importante"' *Il Messaggero* (Rome, 20 April 2017 <https://www.ilmessaggero.it/primopiano/politica/voucher_senato_approva_decreto_abolisce-2389866.html> accessed 7 September 2017.

3. New Constitutionalism and the Italian Constitutional Reform. A Neoliberal Re-Organising Logic

3. 1. Introduction

On 4 December 2016, almost sixty percent of the Italian voters reject a constitutional bill that had been proposed by the then President of the Council of Ministers, Matteo Renzi, and the then Minister of Constitutional Reforms and Relationship with the Parliament, Maria Elena Boschi. The bill, if it had been approved, would have brought about the abolition of the symmetric bicameralism, as well as the reform of Title V of the Constitution.[294] Because of this, they argued, the bill would have restarted the process of capital accumulation by making a favourable business climate for investors. Although the highly divisive political and academic debate, the constitutional bill has not been explored adopting a more critical perspective. For this reason, in this chapter, I will analyse the constitutional bill using Gill's 'new constitutionalism' framework. I thus argue that the European Union has committed Renzi Cabinet to propose and implement (failing) a neoliberal re-organising logic of the national institutional framework, which imply the redistribution of internal powers from the legislative to the executive branch.

In order to support this argument, the first section describes the main principles and contents of the Constitution of the Italian Republic. In particular, it highlights its antiauthoritarian and democratic spirit, coming from the backlash against the Fascist dictatorship led by Benito Mussolini of 1922-1943. The second section highlights how the EU – through its system of governance – has committed the Italian Government to revise its institutional framework, in order to face and restore the 2007 crisis of capital accumulation. The third section describes the main contents and provisions

[294] In addition, the constitutional bill included the abolishment of the Consiglio Nazionale dell'Economia e del Lavoro (CNEL). The CNEL has been set by art. 99 of the Constitution of the Italian Republic and established in 1957. The CNEL is an assembly made up by 65 experts and representatives of economic categories which propose recommendations to the Italian Cabinet, the Parliament, and local authorities (e.g. Regions) on economic and social affairs. The President of the CNEL is nominated by the President of the Italian Republic, and its members are elected for five years.

of the constitutional bill, as well as how those contents and provisions reflect a neoliberal re-organising logic of the Italian institutional framework. Finally, the fourth section shows the link between the neoliberal implications of the reform of the institutional framework and the constitutional referendum.

With this chapter, I thus seek to complete the critical legal analysis of the reform process put – during the 2007 Eurozone crisis – in the European Union and in Italy in particular.

3. 2. The 1947 Constitution of the Italian Republic. A Set of Democratic and Socialist Founding Principles

Any critical legal analysis of the contents of the recent constitutional bill should be preceded by a retracing of the historical background, in order to understand both social and political reasons that led the founding fathers of the 1947 Constitution of the Italian Republic to conceive the current national institutional framework. The Constitution of the Italian Republic (*Costituzione della Repubblica Italiana*) was approved by the Constituent Assembly of the Italian Republic[295] (*Assemblea Costituente della Repubblica Italiana*) on 22 December 1947. Promulgated by the Provisional Head of State Enrico De Nicola and published in the extraordinary edition of Italian Official Journal (*Gazzetta Ufficiale della Repubblica Italiana*) no. 298 on 27 December, the constitution came into force on the 1 January 1948.[296] Due to the historical context, its contents and

[295] The Constituent Assembly of the Italian Republic was a parliamentary chamber between 1946-1948. It had the task to write the Constitution of the Italian Republic after Mussolini Dictatorship and the Second World War. Its president was Giuseppe Saragat (also fifth President of the Italian Republic) and its vice-president was Umberto Terracini (member of the Communist Party). Its main deputies, inter alias, were Piero Calamandrei, Palmiro Togliatti (secretary of the Communist Party), Leonide Iotti (member of the Communist Party and first female President of the Chamber of Deputies), Giovanni Gronchi (third President of the Italian Republic), Oscar Luigi Scalfaro (ninth President of the Italian Republic), Alcide De Gasperi (Italian Prime Minister and secretary of the Christian Democracy Party), Luigi Einaudi (second President of the Italian Republic), Pertini Sandro (seventh President of the Italian Republic).

[296] The 1947 Constitution of the Italian Republic consists of 139 articles and 18 transitional and final provisions arranged in three main parts: Fundamental Principles, part one concerning Rights and Duties of Citizens and part two on the Organisation of Republic. The Fundamental Principles recognise the dignity of both individuals and social groups, expressing the notions of solidarity and equality without distinction of sex, race, language, religion, political opinion, and social conditions. Finally, the Fundamental Principles not only recognise a central government and the territorial integrity of the State, but also promote local authorities. Part one – Rights and Duties of Citizens – establishes civil relations, ethical, as well as social, economic and political rights. In conclusion, Part Two – Organisation of Republic – establishes the institutional framework.

structure are profoundly influenced by the desire of the new republic to break with the norms of the Mussolini dictatorship and the Second World War. This influence was strongly remarked by the soldier, jurist and politician, Piero Calamandrei, during a set of conferences held in 1955 in Milan. In particular, he said the following:

> Quanto sangue, quanto dolore per arrivare a questa Costituzione! Dietro ad ogni articolo di questa Costituzione, o giovani, voi dovete vedere giovani come voi caduti combattendo, fucilati, impiccati, torturati, morti di fame nei campi di concentramento, morti in Russia, morti in Africa, morti per le strade di Milano, per le strade di Firenze, che hanno dato la vita perché la libertà e la giustizia potessero essere scritte su questa carta. Quindi, quando vi ho detto che questa carta è morta, no, non è una carta morta, questo è un testamento, un testamento di centomila morti. Se voi volete andare in pellegrinaggio nei luoghi dove è nata la nostra Costituzione, andate nelle montagne dove caddero i partigiani, nelle carceri dove furono imprigionati, nei campi dove furono impiccati. Dovunque è morto un italiano per riscattare la libertà e la dignità, andate lì, o giovani, con il pensiero, perché è lì che è nata la nostra Costituzione.[297]
>
> [How much blood, how much pain to get this Constitution! Behind each article of this Constitution, young people, you must see young people like you that died fighting, executed, hanged, tortured, starved to death in concentration camps, dead in Russia, dead in Africa, dead over the streets of Milano, over the streets of Firenze, that gave their lives in order that freedom and justice could be written in this charter. So, when I told you that this charter is dead, no, it is not a dead charter, this is a will, one hundred thousand dead people's willingness. If you want to go to a pilgrimage to the place our Constitution was created, go to the mountains where partisans fell, to the prisons where they were incarcerated, to the field where they were hanged. Wherever an Italian died to redeem freedom and dignity, go there, young people, with your thought, because that was where our Constitution was born.]

[297] Piero Calamandrei, 'Difendere la Costituzione Ieri e Oggi, Italia Resistenza' (1955) <http://www.italia-resistenza.it/rete/wp-content/uploads/2016/01/26.1.2016-LIBRETTO-Calamandrei-def-1.pdf> accessed 2 October 2017.

The dialectical influence of the fascist regime over the Constitution of the Italian Republic is evident not only in its founding fathers' words but also in the rights and structure which the constitution establishes.[298] With respect to rights, the founding fathers established the above-mentioned Fundamental Principles, which are characterised by strong antiauthoritarian and democratic elements. It is worth mentioning, for instance, Article One which establishes that Italy is a democratic Republic, in which the sovereignty belongs to the people and it's exercised by them in the forms and within the limits of the Constitution. Article Two recognises the dignity of both individuals and social groups and express the notions of solidarity and equality without distinction of sex, race, language, religion, political opinion, personal and social conditions. Article Three establishes that it is the duty of the Republic to remove those obstacles that might prevent the effective participation of all workers in the political, economic and social organisation of the country.

With respect to the structure, the framers decided to give a leading role to the parliament to the detriment of the government, after the relegation to the powerless position it has experienced under Mussolini's dictatorship.[299] As a result, they established two chambers (art. 55) – the Chamber of Deputies (*Camera dei Deputati*) and the Senate of the Republic (*Senato della Repubblica*) – with the same duties and powers. In legal terms, this means that both chambers must approve identical bills in order for these to become law[300] (art. 70).

The founding fathers, further, not only assigned to the parliament a central role in the frame of the government, but also for the definition of the relationship between the State and Regions, i.e. Title V of the Constitution. In particular, this set of provisions appointed local institutions with several legislative and administrative powers (art. 117). According to many scholars, this reflects – again – the framers' choice to mark an ideological and institutional distance from the fascist regime, that had

[298] See: Norberto Bobbio and Franco Pierandrei, *Introduzione alla Costitutzione Italiana. Testo di Educazione Civica per le Scuole Medie Superiori* (Editori Laterza 1975).
[299] Graziella Romeo, 'The Italian Constitutional Reform of 2016: An 'Exercise' of Change at the Crossroad Between Constitutional Maintenance and Innovation' (2017) Special Issue, The Italian Law Journal, 36 <http://theitalianlawjournal.it/data/uploads/pdf/1-2017/romeo.pdf> accessed 11 October 2017.
[300] ibid.

been characterised by strong centralisation of both legislative and administrative procedures upon the Government and the Parliament.

Furthermore, the Constitution of the Italian Republic reflects its antiauthoritarian and antifascist spirit with respect to art. 138 and 139, which make the process of constitutional reform very long and detailed. The former sets the constitutional procedure to modify the constitution. In particular, it requires two readings of the bill and an absolute majority of the members of the Chamber of Deputies and the Senate of the Republic. However, if one-fifth of the members of a chamber or five hundred thousand voters or five Regional Councils request a popular referendum, the bill needs the positive response of the Italian people for its final approval. The latter, however, states that the form of the Republic shall not be a matter for constitutional amendment.

The following section highlights the national and international debate on the Italian institutional framework. In particular, it focuses on what many legal scholars and political scientists consider the inherent weaknesses of this institutional framework, namely the relationship between the Chamber of Deputies and the Senate of the Republic, as well as the relationship between central state and local authorities. Finally, it analyses the impact of the institutional framework on the national economic system.

3. 3. Making of a Favourable Business Climate in Italy – Part II. The European Union and the Italian Institutional Framework

As described in the previous section, the 1947 Constitution of the Italian Republic assigned to the Parliament a central role in the frame of the Government, as well as the shift of specific legislative and administrative powers from central state towards local authorities. After the 2007 crisis of capital accumulation hit, however, concerns began to be raised about the adequacy of the Italian institutional framework in responding effectively and quickly to the crisis. To date, a small number of scholars have argued a cause-and-effect relationship between the financial and economic crisis and

the Italian institutional reform process.[301] For instance, a significant analysis and discussion on this argument is presented by the political scientist, Silvia Bolgherini. She thus considers the 2007 financial and economic crisis as the turning point for the recent bid to speed up the reform of Italy's institutional structures.[302] More specifically – drawing from study conducted by John Alan Robinson[303] – Bolgherini argues that economic crises often have an impact on institutional structures, and that the more hard-bitten the crisis, the deeper is the impact.[304] These reforms – or in Bolgherini's view 'crisis-driven reforms'[305] – are meant to respond rapidly and effectively to the crisis.[306]

Bolgherini's study, however, does not demonstrate this trend empirically. In this chapter, however, I will seek to go a step further arguing that the European Union – through its system of governance – has directly committed Renzi Cabinet to revise the Italian institutional framework in order to reduce the 'red tape', and thus to create a favourable business climate for investors. For this reason, I will argue that – in line with Gill's 'new constitutionalism' framework – the whole Italian institutional reform process reflects a neoliberal re-organising logic. In order to support this argument, I will draw from the Annual Growth Surveys (AGSs), Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances (RMIs), and other analyses conducted by the European Commission (EC) and the Directorate-General for Economic and Financial Affairs (DG ECFIN) in particular. In addition, I will take from National Reform Programme (NRPs) conducted

[301] See: Sergio Fabbrini, 'Intergovernmentalism and Its Limits Assessing the European Union's Answer to the Euro Crisis' (2013) 46/9 Comparative Political Studies <https://poseidon01.ssrn.com/delivery.php?ID=759099099100076030021027065020090025023080034035049002106080106067071089022109095005019106107032112124109124115092114015031014061037071049081096026071017070098081026065017064112066071112104116103105003022116028067023118099103069095001081024000115006024&EXT=pdf> accessed 16 October 2017; Silvia Bogherini, 'Crisis-driven Reforms and Local Discretion: an Assessment of Italy and Spain' (2016) 46/1 Italian Political Science Review <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/21A6738234A23225F4273C7B7C0532A9/S0048840215000234a.pdf/crisisdriven_reforms_and_local_discretion_an_assessment_of_italy_and_spain.pdf> accessed 16 October 2017.

[302] Bogherini (n 298) 73.

[303] John Alan Robinson, 'Crisis' in David L. Sills and Robert K. Merton (Ed), *International Encyclopedia of Social Sciences,* New York (Macmillan 1968) 510-514.

[304] Bogherini (n 301) 73.

[305] ibid 74.

[306] ibid 73-77.

by the then Italian Prime Minister, Matteo Renzi, and the then Minister of Economy and Finance, Pier Carlo Padoan.

As I previously showed (see Chapter 1, Section 1.4; or Chapter 2, Section 2.4), the Annual Growth Survey – setting out legal priorities necessary to promote growth and thus capital accumulation – kick-starts the EU's system of governance. To the purpose of the analysis conducted here, I will take into consideration the 2014 AGS[307] which listed five specific priorities to meet during the year. These priorities consisted of: (1) pursuing differentiated, growth-friendly fiscal consolidation;[308] (2) restoring lending to the economy;[309] (3) promoting growth and competitiveness;[310] (4) tackling unemployment and the social consequences of the crisis;[311] and (5) modernising public administration.[312] The last point – i.e. modernising public administration – is pivotal for our analysis. Specifically, the EC stressed the necessity to 'modernise' EU member-states' public administrations, by clarifying the competences at all levels of government. Because of this, the EC further highlighted, EU member-states would have been able to simplify the business environment, reduce the red tape[313], and improve the quality of legislation.[314] Following the 2014 Annual Growth Survey, the Italian Government proposed its 2014 National Reform Programme[315] which detailed the set of policies that Renzi Cabinet would have implemented to comply with the priorities set out by the European Commission. The government thus assured that the adoption and the implementation of legal reforms would have been

> fully consistent with the European framework. More specifically, the reforms are consistent with the priorities of the 2014 Annual Growth Survey; with the recommendations of the European Commission; with the priorities established within the European Semester; and with the seven flagship

[307] European Commission (n 246).
[308] ibid 3.
[309] ibid.
[310] ibid.
[311] ibid 4.
[312] ibid 11.
[313] The 'red tape' refers to an excessive complexity of official procedures which usually results in delay or inaction.
[314] European Commission (n 246) 13.
[315] Ministero dell'Economia e delle Finanze (n 252).

> initiatives of the Europe 2020 Strategy. […] In essence, the strength of this transformation agenda is found not only in the content of the reforms, but, more importantly, in the capacity to translate reforms promptly into legislation and implement them rapidly and with certainty. Reforms must be planned and carried out effectively, including with the systematic monitoring of implementation of ministerial decrees and the subsequent enabling legislation.[316]

Owing to this, the government emphasised that

> Fiscal and economic measures may yield concrete result only if combined with a sound modernisation process of the republican institutions. The institutional and constitutional reforms can provide the measures to cut public spending and boost competitiveness with the added value necessary to make them fully effective. Through institutional reform, citizens will be able to appreciate the benefits of more extensive and effective economic measures, while the government achieves results in terms of growth, employment and welfare.[317]

The European Commission has also monitored Italy's progress on the institutional reform even in the midst of the law-making process. More specifically – with the 2014 Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances[318] – the EC specifically pointed out Italy's public administration and governance inefficiency as one of the main factors responsible for hampering the quality of business environment. Indeed, the staff stated as following

> the effective implementation of policy measures adopted recently and in previous years remains the country's Achilles' heel. Important institutional challenges still exist at least at three levels. First, law-making processes are often lengthy and cumbersome. The fragmentation of measures over different

[316] ibid i-ii.
[317] ibid 2.
[318] Directorate-General for Economic and Financial Affairs (n 255).

> legal instruments leading to piecemeal legislation, the frequent use of speedy decree laws favouring a wide range of partial measures over more profound structural reforms, and lags in the adoption of required implementing legislation tend to create legal uncertainty for all actors involved. Second, in the field of implementation, the overlapping of competences between state and regions, the lack of coordination in the division of responsibilities between central and local public administrations and the continued existence of bureaucratic rules and procedures at local level hamper measures from reaching their full potential, especially in competition and business environment simplification. Sometimes, the lack of adequate capabilities and capacity within local public administrations impair the efficient execution of public tasks. Third, the actual enforcement of new policy measures is being hampered and discouraged by Italy's ineffective judicial system characterised by a large backlog of cases and very long duration of court proceedings.[319]

For these reasons, the European Commission hoped for a smooth and well implemented adoption of the constitutional reform. In particular,

> In March 2014, the government tabled an ambitious draft constitutional bill that intends to accelerate the parliamentary approval of legislation, reduce the cost of politics and increase political and regulatory certainty and efficiency through a reduction of the size and a reform of the role of the Senate, the abolition of provinces as constitutionally recognised authorities and a clarified distribution of competences between state and regions (as governed by Title V of the Constitution). The draft constitutional bill needs to undergo at least four readings with final parliamentary approval envisaged by end-2015 (mid-2016 if less than two thirds of the Parliament approves the final text and therefore a referendum is needed). The Senate completed the first reading in August 2014, and the bill is now in the Chamber which is expected to vote by end-2014. If not weakened during the parliamentary adoption process and well implemented, the constitutional reform could contribute to smoother processes of adoption and implementation of reforms.[320]

[319] ibid 14-15.
[320] ibid 15-16.

It seems clear that – in line with Gill's 'new constitutionalism' framework – the European Union possesses, in Sassen's view, the 'norm-making capacities' to set criteria concerning fiscal and monetarist policies (see Chapter 1, Section 1.4), as well as other form of legal reforms, such as the labour market reform (see Chapter 2) and institutional reform.[321] To put it differently, this process reflects what Brenner, Peck, and Theodore have considered a 'U-turn' in the relationship between supranational institutions and nation-states, shifting the relationship itself from a bottom-up to a top-down model.[322]

In the following section, I will argue that not only the cause-and-effect relationship between the EU and the institutional reform process, but also the contents of the constitutional bill reflect Gill's 'new constitutionalism' framework.

3. 4. The Constitutional Reform. A Neoliberal Re-Organising Logic of the Italian Institutional Framework

Following the dialogue between the European Union (and the EC in particular) and the Italian Cabinet, the constitutional bill n. 1429 – B[323], voted and approved by the Italian Parliament on 12 April 2016, reflected the contents of both the 2014 Annual Growth Survey and the 2014 Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances quite precisely. The bill thus called for altering the current relationship between the executive and the parliament, as well as the relationship between national and subnational levels. In legal terms, this consisted of: (1) the abolishment of symmetric bicameralism; and (2) the revision of Title V of part II of the Constitution. The abolishment of symmetric bicameralism[324] was the core of the national

[321] Sassen (n 128) 117.
[322] Brenner et al (n 131) 127-129.
[323] Senato della Repubblica, 'Disegno di Legge Costituzionale n. 1429 – B' <http://www.senato.it/service/PDF/PDFServer/BGT/00906778.pdf> accessed 20 November 2017.
[324] The Italian symmetric bicameralism (also refer to as 'perfect bicameralism') is a unique example of legislative process in which two chambers – the Chamber of Deputies and the Senate of the Republic – carry out the same functions. Within this context, a legislative act has to be passed in an identical form in both assemblies.

institutional framework reform. The bill would have reduced the members of the Senate of the Republic from 315 to 100 (made up as following: of 21 mayors, 74 members of regional councils and five presidential nominees). With regards to its duties and powers, the Senate of the Republic would have been excluded from the vote of confidence (art. 55). The Chamber of Deputies, therefore, would have been the only one to control Government's political accountability (art. 55). With regards to the legislative power, the two chambers would have shared the legislative function only concerning laws on constitutional issues, the Senate's electoral system, popular referenda, and local authorities (art. 70, 71, 72). In all other cases, the only Chamber of Deputies would have exercised the legislative power. Further, the bill would have included the right of the Government to meet specific timing and deadlines for the final approval of national laws. The Senate of the Republic, from its side, would have been allowed only to propose changes, although the Chamber of Deputies 'would have kept the last word'.[325]

Apart from this, the framers of the constitutional bill sought not only the abolition the symmetric bicameralism, but also to revise Title V of part II of the Constitution. This revision, they argued, would have solved a long-standing lack of efficiency and stability of the executive, by reorganising the legislative competences between the State (such as the Government and the Parliament) and the Regions (including local governments and regional councils). In particular, the reform would have brought back to the State some key competences that the 2001 revision of Title V of part II moved towards local governments, *inter alia* labour policies, anti-trust regulation, strategic infrastructures and foreign policies. What is more, the executive would have been able to propose legislation to the Parliament on matters that originally were not reserved to the State (also referred to as 'supremacy clause'), when required to protect the juridical and economic unity of Italy, or to protect national interests. Finally, the revision of Title V of part II of the Constitution would have amended the already existing 'power to replace' regional and local institutions when their action (or inaction) 'would have violated international (including EU) obligations or compromised public

[325] Romeo (n 299) 38.

safety, legal and economic unity or the guarantee of essential conditions for the exercise of rights'[326], or in case of budget imbalances.

In addition to this, the constitutional bill would have reshaped the system of constitutional guarantees (*inter alia* popular legislative initiative, as well as referendum). In particular, the bill would have raised from 50.000 to 150.000 the minimum number of signatures requested for enabling such instruments of direct democracy. What is more, if the signatures collected would have been 500.000, for the validity of the consultation would have been necessary the majority of people entitled to vote. By contrast, if the signatures collected would have been 800.000, the consultation would have been valid with the majority of voters.

In order to understand the real essence of the constitutional bill proposed by the Matteo Renzi administration between 2014-2016, however, it is necessary to analyse the electoral law n. 52 of 2015[327] (also referred to as 'Italicum') proposed by the same government. In particular, the Italicum promoted the formation of absolute majorities in national election, by means of an 'electoral prize' in case a political party (not a coalition) obtained more than 40% of the votes in the first round, or, in case of a second ballot, the sheer simple majority of voters. As one might expect, the electoral law would have applied only to the Chamber of Deputies. In doing so, as often stated by the then Italian Prime Minister[328], the combination of the reform of the constitutional law, as well as the electoral law would have ensured efficiency and stability to the entire institutional framework and the decision-making process in particular.

The institutional reform as whole has provoked, as Giacomo Delledonne and Giuseppe Martinico have put it, a very long – more than two years – and highly divisive debate over its consequences within the Italian political system.[329] Many legal scholars and political scientists

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[326] ibid 43.

[327] Legge 6 maggio 2015, n. 52 in materia di 'Disposizioni in materia di elezione della Camera dei deputati' GU 105 del 8 maggio 2015.

[328] 'Renzi: Mezza Europe Copierà la Nostra Legge Elettorale' *Corriere della Sera* (Milano, 23 marzo 2015) <http://www.corriere.it/politica/15_marzo_23/renzi-mezza-europa-copiera-nostra-legge-elettorale-2bee7a9e-d17e-11e4-8608-3dead25e131d.shtml> accessed 27 November 2017.

[329] Giacomo DelleDonne and Giuseppe Martinico, 'Yes or No? Mapping the Italian Academic Debate on the Constitutional Reform' (2016) Special Issue, The Italian Law Journal, 49-51 <http://theitalianlawjournal.it/data/uploads/pdf/1-2017/delle-donne-martinico.pdf> accessed 28 November 2017.

stressed the necessity of such reform to remove the bottleneck of the law-making process. For instance, George Tsebelis has suggested that the currently the symmetric bicameralism adds an additional veto player, the Senate of the Republic, to the Italian law-making process. Because of this, he has further argued, the set of bills that could be useful to 'the set of bills that could conceivably beat the *status quo* shrinks, and policy change abates […] and the role of the agenda setter (deployed by the government) is reduced under bicameralism'.[330] By contrast, he has further argued, the abolishment of the symmetric bicameralism would reduce 'the number of institutional veto players in the Italian system of governance. As a result, [...] the power of the government will increase (given that it controls the agenda, in a system where the number of veto players decreases)'.[331] In doing so, the Italian institutional framework would improve its institutional capacity to allow more policy change, as well as government stability, for the good of economic growth.[332;333]

By contrast, many other legal scholars and political scientists have argued that the bill would have involved the risk to an authoritarian and anti-democratic drift in Italy, due to the extreme centralisation of powers among the government. For instance, Professor Alessandro Pace argued that the constitutional bill n. 1429 - B – if read together with the electoral law n. 52/2015 – was an 'subversive act', which privileged the stability and efficiency of the government to the detriment of the parliament.[334] Along the same lines, Professor Stefano Rodotà highlighted the danger of transferring a range of powers from the legislative to the executive branch. In particular, the constitutional bill harmed the separation of powers established by the Constitution of the Italian

[330] Tsebelis (n 14) 89.
[331] ibid 96.
[332] ibid.
[333] The Italian institutional capacity to implement reform has been the subject of a very interesting and important study conducted by the political scientist, Vincent Della Sala. Della Sala, drawing from Vivien Schmidt, argues that the implementation of specific legal measures coming from global and/or European pressures depends on the national 'institutional capacity' (among other elements, such as economic vulnerability, policy legacies, policy preferences and discourse) to absorb the legal measures themselves. Although Italy's institutional capacity, as Della Sala asserts, has improved since 1990s – due to the necessity to meet the budgetary and monetary conditions coming from the establishment of the European Single Market, as well as the creation of the single currency – it is still weak, due to the institutional arrangement coming from the political context after the Second World War. See: Vincent Della Sala, 'The Italian Model of Capitalism: on the Road Between Globalization and Europeanization?' (2004) 11/6 Journal of European Public Policy <https://www.tandfonline.com/doi/pdf/10.1080/1350176042000298093?needAccess=true> accessed 4 December 2017.
[334] Alessandro Pace, *Referendum 2016 sulla Riforma Costituzionale. Le Ragioni del NO* (Milano Giuffré 2016) 1-4.

Republic, involving what Rodotà referred to as an 'oligarchic logic'.[335] To put it in other words, the bill sought to create a government in which a small group holds the executive power, as well as possesses great influence over the parliament.[336] Similarly, Professor Gustavo Zagrebelsky expressed his concerns over the constitutional reform proposed by Matteo Renzi Government. In particular, he expressed his concerns about the constitutional reform, highlighting its negative effects on the legal system in Italy. Interestingly, he made a more comprehensive analysis and criticism on the possibility to deprive the democratic state of its role, to the extent that the Prime Minister would have been considered a political commander-in-chief'.[337]

As just described, this second strand of analyses has emphasised the risk to an authoritarian and anti-democratic drift in Italy, due to the centralisation of powers among the government to the detriment of both the parliament and local institutions. Such studies, however, remain narrow in focus dealing only with the national framework. However, if I examine the constitutional bill from a 'new constitutionalism' perspective very important implications of the reform process come into view. Specifically, the ways in which the constitutional bill was justified by the government and others reflects, I suggest, what Sassen describes as a neoliberal re-organising logic of nation-states, which entail the redistribution of powers from the legislative branch (including, parliaments and courts) to the executive one (such as, governments, central banks and ministries of finance).[338] Within the greater 'new constitutionalism of disciplinary neoliberalism' framework, as Sassen has put it (see Chapter 1, Section 1.3.1) the executive branch must possess the institutional power to enable within national borders new constitutionalist measures – both macroeconomic (such as financial policies) and microeconomic (including labour and pension policies) – the content of which are usually negotiated with the EC, the ECB, and the IMF. Italy's constitutional bill seems to confirm this trend in that, as I have just described, the bill sought to centralise the power in the hands of the government,

[335] Stefano Rodotà, *Democrazia e Costituzione. Perché Dire No alla Riforma Boschi e Costruire una Politica Costituzionale* (Castelvecchi 2016) 24-25.
[336] ibid.
[337] Zagrebelsky (n 19) 96-97.
[338] Sassen (n 128) 120-122.

in order to ease and speed up the implementation of legal mechanisms coming from the European Union.

The next section will show that the rejection of the constitutional bill should be understood not only as the refusal of a specific institutional framework reform, but also as the refusal of a greater neoliberal process envisaged by the European Union and Renzi Government between 2014-2016.

3. 5. Popular Contestation Against a New Constitutionalist Reform

As showed throughout this chapter, the European Union – via its current system of economic governance – have fostered a neoliberal re-organising logic of its institutional framework. In the aftermath of the approval of the constitutional bill, indeed, one hundred and sixty-six members of the Chamber of Deputies, as well as one hundred and three members of the Senate of the Republic (all of them part of the opposition bloc, which includes Movimento 5 Stelle, Fratelli d'Italia, Lega Nord, and Sinistra Italiana) officially proposed to the Supreme Court of Cassation[339] a constitutional referendum to approve or reject the contents of the constitutional bill.[340] On 6 May 2016, the Supreme Court of Cassation declared the deputies' and senators' request to set the constitutional referendum admissible.[341] On 4 December 2016, Italian voters were asked to decide whether accept or reject the constitutional bill, and voted to reject it by a majority of 59.11% (19.420.271) to 40.89% (13.431.842) approving.

The electoral data of the 2016 constitutional referendum seems to confirm a cause-and-effect relationship between the electoral behaviour of Italian voters and what this thesis understands as a neoliberal governance of the ongoing European financial and economic crisis. Data gathered by the

[339] The Supreme Court of Cassation is at the top of the ordinary jurisdiction. One of its key duty is to ensure certainty in the interpretation of the law. It also performs non-judicial functions related to elections, and referendum for the abrogation of laws.

[340] 'Riforme, Raggiunto alla Camera Quorum per Richiesta Referendum' *Corriere della Sera* (Milano, 19 aprile 2016) <http://www.corriere.it/politica/16_aprile_19/166-voti-camera-referendum-riforme-costituzionali-5e2c8c76-0620-11e6-98ad-d281ab178a74.shtml> accessed 8 January 2018.

[341] Corte di Cassazione, 'Ordinanza Ufficio Centrale per il Referendum' del 6 maggio 2016.

Ipsos Group S. A.[342], indeed, show that higher had been people's dissatisfaction of their social and economic condition due to the crisis, higher had been their inclination to reject the constitutional bill. In particular, the majority of 'no' voters were young and low-income people, who had been the hardest hit the most by the implementation of neoliberal measures (see Chapter 2, Section 2. 1.) during the 2007 Eurozone financial and economic crisis. Specifically, the 64 per cent of people between 18 and 34 years old, as well as the 78 per cent of unemployed people, voted 'no' to the reform bill. By contrast, a majority of 'yes' voters are elderly and high-income individuals. 49 per cent of people over 64 years old, and 41 per cent of businessmen and managers fell into this camp. This interpretation is further backed up by the 'geography of the vote'. The Ipsos Group S. A. further estimates that the 'no' vote was especially strong in the South and the Islands – where the impact of neoliberal measures had been more dramatic – with about 70 per cent in Sicilia and Sardegna, and about 65 per cent in Calabria and Puglia. By contrast, majority of 'yes' vote prevailed in the North, with about 60 per cent in Toscana and Trentino Alto-Adige, and about 50 per cent in Piemonte and Lombardia.[343]

Further data gathered by the Ipsos Group S. A. suggest that Italian voters had perceived the constitutional bill more as a *structural reform* – fostered by the European Union – rather than a mere institutional revision. The study, hence, shows that Italian voters consistently followed the line of the country's eurosceptic parties and political movements, which obtained great successes during the 2014 European Parliament election. For instance, the 83 per cent of voters of the 'Lega Nord' voted against the constitutional bill, and only the 10 per cent voted in favour of it. Similarly, the 76 per cent of electors of 'Fratelli d'Italia' strongly rejected the reform, and only the 9 per cent voted in favour of its final approval. Likewise, the 78 per cent of voters of 'l'Altra Europa con Tsipras', and the 86 per cent of electors of the 'Movimento 5 Stelle' voted against the constitutional reform.[344]

[342] The Ipsos Group S. A. is an Italian research company which conducts marketing research, media and advertising research, opinion and social research, and client and employee relationship management. See: Ipsos Group S. A., 'Referendum Costituzionale 2016' Ipsos Public Affair (2016) <http://www.ipsos.it/pdf/Ipsos_Referendum_costituzionale_2016_Analisi_post_voto.pdf> accessed 15 January 2018.
[343] ibid.
[344] ibid.

This argument is well exemplified by many Italian scholars, which argue that the rejection of the constitutional bill should be understood as a reaction against the neoliberal practices fostered by the European Union since the ongoing financial and economic crisis in Europe.[345] For example, the philosopher Cinzia Arruzza argues that the result of the constitutional referendum was the product of the Matteo Renzi government's attempt to implement neoliberal social and economic legislations, as well as to erode the democratic contents of the Constitution of the Italian Republic, by centralising the power in the hands of the executive.[346] Along the same lines, the political scientist Vittorio Amato states that Italian electors rejected not only the constitutional bill, but also a greater 'intention to modernise Italy making it converge with the Anglo-Saxon neoliberal model'.[347]

3. 6. Conclusion

The present chapter was designed to analyse the constitutional bill from a 'new constitutionalism' perspective. Firstly, and similarly to the labour market reform (as I shown in Chapter 2) the European Union has committed Renzi Government to modify the Italian institutional framework. In particular, I tried to emphasise that the bill did not imply a mere national revision of the institutional framework, but a neoliberal re-organising logic which imply a central role of the government to the detriment of the parliament.

To conclude, along the same lines of the labour market reform (as I described in the previous chapter), the constitutional bill has sought to erode (unsuccessfully) the main legal sources – i.e. the 1947 Constitution of the Italian Republic – which has been the political and legal result of social democratic forces in the aftermath of the Second World War.

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[345] See for example Cinzia Arruzza, 'Italy's Refusal' (2017) 103 New Left Review <https://newleftreview.org/II/103/cinzia-arruzza-italy-s-refusal> accessed 22 January 2018; Vittorio Amato, 'Are Globalization and Economic Crisis Fueling Populism? Some Evidence from the Voting Behavior in the Italian Constitutional Referendum' (2017) Filodritto Editore – Proceedings <https://www.academia.edu/33664153/Are_Globalization_and_Economic_Crisis_Fueling_Populism_Some_Evidence_from_the_Voting_Behavior_in_the_Italian_Constitutional_Referendum> accessed 22 January 2018.

[346] Cinzia Arruzza (n 345) 117-118.

[347] Vittorio Amato (n 345) 207.

Conclusion

In the aftermath the outburst of the 2007 financial and economic crisis in Europe, legal scholars and political scientists have conducted striking legal studies concerning the major legal changes that had been implemented in the European Union (EU), as well as in Italy. Most of these studies deal with the implications of the 2011 revision of the Stability and Growth Pact (SGP), the 2013 Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), and the two-pack within the European Union. Or they deal with the implications of the Jobs Act, and the constitutional bill within the Italian legal system. The strength of these legal studies lies in their capacity to well describe the legal changes that had been implemented and their political and legal implications. For instance, some of them agree that the European Union's regulations have strengthened its own legal capacity to ensure compliance, among its member-states, with financial and economic parameters, as well as to address any deviation from such parameters by enabling monitoring and sanctioning mechanisms. Similarly, other legal scholars and political scientist agree that the Jobs Act made the labour market system more flexible in order to face unemployment and thus to restore economic growth. Or that the constitutional bill – if approved – would have made the institutional framework more efficient aiming to encourage both international and national investors to invest capitals in Italy.

As I argued in the introductory part of this thesis, however, these studies adopted a 'problem-solving' perspective. To put it in other words, they dealt with specific regulations accepting the existing order within both the EU and Italy. By contrast, this study adopted a rather different perspective to critically analyse the reform process put in place within both the European Union and Italy in particular. A notable theoretical framework that helped in writing a critical analysis is Gill's 'new constitutionalism of disciplinary neoliberalism'. According to Gill, 'new constitutionalism' is the politico-legal mechanism associated with neoliberal restructuring of the world order. 'New constitutionalism' thus operates to create and preserve a neoliberal order which provides favourable legal and other protections for investors in order to generate capital accumulation. To this purpose,

new constitutionalist measures, he argues, insulate dominant economic forces from democratic pressure and popular accountability, as well as institutionalise the liberalisation of markets for capital, goods, and labour. The former seeks to make any political contestation against the neoliberal form of capitalism hard to achieve. The latter seek to generate economic growth and extend capital accumulation.

Within this theoretical framework, this thesis assumed two different but non-conflicting hypotheses. The first hypothesis assumed that the European Union proposed and implemented a combination of regulations – such as, the 2011 revision of the Stability and Growth Pact, the 2013 Fiscal Stability Treaty, and the two-pack – consistent with the new constitutionalist perspective. These regulations thus designed to strengthen neoliberal governance in Europe. In the first place, the European Union has imposed strict fiscal discipline upon its member-states to address fiscal imbalances. In the second place, the European Union possesses a set of monitoring and sanctioning instruments which address any deviation from the just mentioned fiscal discipline. Owing to this, the European political and economic union has primarily sought to maintain confidence of investors and credibility of governments by attempting to provide an appropriate business climate and thus to restore the process of capital accumulation.

In addition, this thesis advanced the hypothesis that not only the above-mentioned regulations, but also the Jobs Act, as well as the constitutional bill reflected the new constitutionalist perspective. Specifically, the European Union – through its current system of governance – committed Renzi Government to propose a neoliberal restructuring of both labour market, and institutional framework in Italy. With regards to the labour market reform, I argued that the Jobs Act sketched out a neoliberal reform of the Italian labour market. To be more precise, the Jobs Act sought to make the labour market more flexible – specifically by removing hiring and dismissal protections – in order to make the national labour market more amenable to investors' needs and, as a consequence, to boost the economic growth. I also suggest that the Jobs Act has involved the emergence of a specific workers' category, that is to say contingent workers. With regards to the institutional reform, the research assumed that the constitutional bill – if had been approved – would have involved a neoliberal re-

organising logic of the Italian institutional framework. The bill thus would have strengthened the executive branch of government to the detriment of the legislative branch in order to free the Italian Government to smoothly implement European Union's legal reforms within its national legislation.

In order to support this argument and thus address the two different but non-conflicting hypotheses, this thesis was divided into three chapters. The first chapter – *Between Neoliberalism, New Constitutionalism, and the European Union* – I tried to demonstrate that the 2011 revision of the Stability and Growth Pact, the 2013 Fiscal Stability Treaty, and the two-pack sought to deal with dislocations and contradictions of the neoliberal form of capitalism. These regulations – based upon neoliberal market-monetarist assumptions – impose strict fiscal discipline establishing that national budgets of contracting parties should be balanced or in surplus (structural deficit must be more than 0.5% Gross Domestic Product, which is up to 1% if the debt ratio is below 60% GDP). In case contracting parties do not fulfil such obligations, the above-mentioned regulations set both monitoring instruments (such as, the Annual Growth Survey, and Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances) and sanctioning instruments (including, Macroeconomic Imbalance Procedure, as well as European Stability Mechanism), which keep constantly under surveillance and monitoring governments' policies in order to avoid any deviation from the neoliberal discourse.

Following, this chapter argued that the implications of such regulations are evident – in its most dramatic form – in the Greek case. Due to the severe debt crisis that affected Greece, the European Union enabled the European Stability Mechanism. This mechanism required the implementation of specific legal measures (inter alia, fiscal reforms, and economic reforms) to meet both financial and economic parameters set by the above-mentioned regulations, prioritising market efficiency over any other instance. The Greek Government, however, broke off the negotiations and announced a popular referendum to decide whether Greece was to decide the proposal proposed by the above-mentioned supranational organisations. The bailout conditions were rejected by the 61% of Greek (39% voted in favour of it). The Greek Prime Minister, however, buckled under the pressure made by the creditors and assured to meet the conditions set out in the third economic adjustment

programme, making clear the use of the European Stability Mechanism to attenuate, or even suppress, any political backlash against the neoliberal ideology.

Finally, this chapter tried to demonstrate that the implementation of the above-mentioned new constitutionalist measures has provoked what Gill and Cutler refer to as a general crisis of legitimacy for the European integration project. This idea has been proven by the increasing relevance of old and new eurosceptic parties and movements across Europe in the aftermath of the 2007 financial and economic crisis (inter alia, the Dansk Folkeparti, the Partij voor de Vrijheid, the Alternative für Deutschland, the Freiheitlich Partei Österreichs, the UK Independence Party, the Front National, the Lega Nord, the Movimento 5 Stelle, the Syriza, and the Popular Association – Golden Dawn). Specifically, the 2014 European Parliamentary election attested the electoral success of eurosceptic parties and movements – from the left-right political spectrum – with an overall size of the group increased to more than 100 Members of the European Parliament (e.g. European Conservatives and Reformists, European United Left/Nordic Green Left, and Europe for Freedom and Direct Democracy Group) to the detriment of the main three pro-European Union parties (e.g. Group of the European People's Party, Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, and Alliance for Liberals and Democrats for Europe).

In the second chapter and third chapter the thesis, I shifted the focus of the critical analysis to the Italian context. To be more precise, I argued that the European Union – through the 2014 Annual Growth Survey and the 2014 Review of progress on policy measures relevant for the correction of Macroeconomic Imbalances – committed Renzi Government to propose a neoliberal restructuring of both labour market, and institutional framework in Italy. Both legal documents included a list of both general priorities and specific structural reforms to be put in place in Italy to create a favourable business climate for investors and thus restore capital accumulation. This framework proves, as argued by Brenner, Peck, and Theodore, the 'U-turn' in the relationship between supranational institutions and nation-states, shifting the relationship itself from a bottom-up to a top-down model.

In the second chapter – *New Constitutionalism of Disciplinary Neoliberalism and the Liberalisation of the Italian Labour Market* – I thus argued that the Jobs Act should be understood as

commensurate to the new constitutionalist framework. The Jobs Act thus consisted of a set of provisions that reformed the regulation of 'open-ended' and temporary contracts, seeking a twofold aim: to boost of employment and to reduce the use of temporary and atypical type contracts. As I described, the 'contract with gradually increasing protection' does not provide any obligations for firms to reinstate workers after invalid dismissals, unless the latter are discriminatory or orally communicated. On the contrary, the brand-new contract type obliges firms to simply reimburse workers with a minimum economic compensation. In addition to this, the Jobs Act allowed firms to use both temporary and atypical contracts, exceeding the limit of 20% set by previous legislations. The temporary and atypical contract type do not provide any social security (such as paid sick days, maternity leave, or annual leave) for workers. This argument thus confirmed Gill's statement concerning the role of new constitutionalist measures to further extend capital accumulation by the liberalisation of labour.

In addition to this, I also described how the Jobs Act failed in reaching its goals. Many quantitative and administrative data, in the first place, showed that the Law 183/2014 failed in stimulating occupations. In the second place, data showed that temporary and atypical relationships between workers and employers have quickly raised. As a result, what has emerged is a general worsening economic conditions of Italian workers. These statistical and administrative data confirmed the thesis that there is not always a positive impact of liberalization of labour market and levels of employment. In addition to this, the liberalisation of the Italian labour market, thus, not only failed in achieving its main goals, but also increased the number of precarious and insecure workers employed on an as-needed basis, without any social security right, as well as low, irregular and insecure pay. This argument confirmed Peck's and Theodore's claim that neoliberal national labour market restructuring has led to the rise of a specific type of workers, i.e. contingent workers.

Finally, I tried to demonstrate that the erosion of labour security and the worsening of social conditions of workers in Italy has provoked a popular backlash against the Jobs Act. This is evident in the CGIL's willingness to officially propose to the Supreme Court of Cassation two abrogative referendum questions. In particular, these questions aimed to eliminate two specific provisions of the

Jobs Act: the brand-new contract type (i.e. contract with gradually increasing protection) and some of atypical contract type (i.e. hourly tickets). The Supreme Court of Cassation, however, rejected one of the two abrogative referendum questions. This had an impact on the political agenda of the Italian Government. The Italian Prime Minister, Paolo Gentiloni, indeed, agreed over their elimination via decree law on 18 March 2017.

The third and final chapter – *New Constitutionalism of Disciplinary Neoliberalism and the Neoliberal Re-Organising Logic of the Italian Institutional Framework* – argued that not only the Jobs Act but also the constitutional bill should be understood as commensurate to the new constitutionalism perspective. The bill called for the abolishment of symmetric bicameralism, as well as for the revision of Title V of part II of the Constitution. Concerning the former, the bill would have excluded the Senate of the Republic would have been excluded from the vote of confidence. The Chamber of Deputies, therefore, would have been the only one to control Government's political accountability. Further, the bill would have included the right of the Government to meet specific timing and deadlines for the final approval of national laws. Concerning the latter, the constitutional bill would have brought back to the State some key competences that the 2001 revision of Title V of part II moved towards local governments, *inter alia* labour policies, anti-trust regulation, strategic infrastructures and foreign policies. What is more, the executive would have been able to propose legislation to the Parliament on matters that originally were not reserved to the State (also referred to as 'supremacy clause'), when required to protect the juridical and economic unity of Italy, or to protect national interests. Finally, the revision of Title V of part II of the Constitution would have amended the already existing 'power to replace' regional and local institutions when their action (or inaction) 'would have violated international (including EU) obligations or compromised public safety, legal and economic unity or the guarantee of essential conditions for the exercise of rights, or in case of budget imbalances.

In addition to this, the constitutional bill would have reshaped the system of constitutional guarantees (*inter alia* popular legislative initiative, as well as referendum). In particular, the bill would have raised from 50.000 to 150.000 the minimum number of signatures requested for enabling

such instruments of direct democracy. What is more, if the signatures collected would have been 500.000, for the validity of the consultation would have been necessary the majority of people entitled to vote. By contrast, if the signatures collected would have been 800.000, the consultation would have been valid with the majority of voters.

In order to understand the real essence of the constitutional bill proposed by the Matteo Renzi administration between 2014-2016, however, I also critically analysed the electoral law n. 52 of 2015 (also referred to as Italicum) proposed by the same government. In particular, the Italicum promoted the formation of absolute majorities in national election, by means of an 'electoral prize' in case a political party (not a *coalition*) obtained more than 40% of the votes in the first round, or, in case of a second ballot, the sheer simple majority of voters. As one might expect, the electoral law would have applied only to the Chamber of Deputies.

I thus argued that the ways in which the constitutional bill was justified by the government and others reflects what Sassen described as a neoliberal re-organising logic of nation-states, which entail the redistribution of powers from the legislative branch (including, parliaments and courts) to the executive one (such as, governments, central banks and ministries of finance). The executive branch thus must possess the institutional power to enable within national boarders new constitutionalist measures – both macroeconomic (such as financial policies) and microeconomic (including labour and pension policies) – the content of which are usually negotiated with the European Central Bank, the European Commission, and the International Monetary Fund. Italy's constitutional seems to confirm this trend in that, as I have just described, the bill sought to centralise the power in the hands of the government, in order to ease and speed up the implementation of legal mechanisms coming from the European Union.

Similarly to the Jobs Act, I argued that also the constitutional bill provoked a strong popular reaction. In the aftermath of the approval of the constitutional bill, indeed, one hundred and sixty-six members of the Chamber of Deputies, as well as one hundred and three members of the Senate of the Republic (all of them part of the opposition bloc, which included Movimento 5 Stelle, Fratelli d'Italia, Lega Nord, and Sinistra Italiana) officially proposed to the Supreme Court of Cassation a

constitutional referendum to approve or reject the contents of the constitutional bill. On 4 December 2016, Italian voters were asked to decide whether accept or reject the constitutional bill, and voted to reject it by a majority of 59.11% (19.420.271) to 40.89% (13.431.842) approving.

Finally, through the analysis of the electoral data, I tried to demonstrate the cause-and-effect relationship between the electoral behaviour of Italian voters and what this thesis understands as a neoliberal governance of the 2007 European financial and economic crisis. Data gathered, indeed, show that higher had been people's dissatisfaction of their social and economic condition due to the crisis, higher had been their inclination to reject the constitutional bill. In particular, the majority of 'no' voters were young and low-income people, who had been the hardest hit the most by the implementation of neoliberal measures. This interpretation is further backed up by the 'geography of the vote'. Electoral data showed that the 'no' vote was especially strong in the South and the Islands, where the impact of neoliberal measures had been more dramatic. Further data suggested that Italian voters had perceived the constitutional bill more as a structural reform – imposed by the European Union – rather than a mere institutional arrangement. Data, hence, showed that Italian voters consistently followed the line of the country's eurosceptic parties and political movements, which obtained great successes during the 2014 European Parliament election.

The new constitutionalist analysis of the Jobs Act, as well as the constitutional bill – conceived by the European Union in the aftermath of the 2007 financial and economic crisis – made 'visible' the neoliberal logic of the regulations themselves. I argue that this argument is relevant for two main reason. Firstly, it shows that both the Jobs Act and the constitutional bill have sought to converge the Italian politico-legal system towards a more US and UK neoliberal model[348] by revising two of the main legal documents in Italy: the 1947 Constitution of the Italian Republic, as well as the Workers Statute. Secondly, it stresses the law plays a leading role in creating and preserving.

Exactly twenty years ago, Gill asserted that specific legal measures – that is to say, the Maastricht Agreements and the establishment of the EMU in 1992 – had shifted the European Union

[348] US and UK neoliberal model consist of – among many other features – the extreme liberalisation of the labour market system, as well as the empowerment of executive apparatuses to the detriment of the parliamentary institutions.

from a social democratic towards a neoliberal order. This thesis attempted to prove a similar assessment concerning both the constitutional bill and the Jobs Act within the Italian politico-legal system. First, the constitutional bill – had it been approved – would have severely affected the quality of the Italian democracy by centralising both administrative and legislative powers among the executive 'hands'. Second, the Jobs Act has almost completed the liberalisation of the Italian labour market system by eliminating specific dismissal protections and other social securities. Because of this, living conditions of workers in Italy have severely worsened, spreading social uncertainty and insecurity across the country.

It is not surprising that both the constitutional bill and the Jobs Act have been countered by the Italian population. This spread of malcontent, however, is not enough to propose an alternative vision of the existing order. The task of understanding how to organise what Gill and Cutler refer to as 'resistance by means of law'[349] is still open, and, I suggest, should be the focus of next analyses of Italian legal scholars and political scientists.

[349] In particular, Cutler argues that resistance and insurgent power against the new constitutionalist regime can be channelled into the use of law. Drawing from work undertaken by the anthropologist Sally Engle Merry, she distinguishes three different type of resistance in and through law: first, resistance against law; second, resistance by means of law; and third, resistance which redefines the meaning of law. See: A. Claire Cutler, 'New Constitutionalism and the Commodity Form of Global Capitalism' in Stephen Gill and A. Claire Cutler (Ed), *New Constitutionalism and World Order,* (Cambridge University Press 2014); Sally Engle Merry, 'Resistance and the Cultural Power of Law' (1995) 29/1 Law & Society Review <https://www.jstor.org/stable/3054052?seq=1#page_scan_tab_contents> accessed 2 February 2018.

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