

Research article

# The Hourly Minimum Wage and the *vouchers* system in the 2014 Italian Reform and the economic policy background

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## Abstract

Act n. 183/2014, approved by the Italian Parliament on December the 10th<sup>1</sup> (so called Jobs Act) states that a minimum hourly wage shall be newly introduced, on an experimental base eventually, wherever national collective bargaining is not applicable. That is going to regard any dependent worker (hopefully, not only subordinate workers); moreover, the *vouchers* system of work payment (another form of legally fixed minimum hourly wage, introduced in 2003) is meant to be extended.

This is comment to the new statutory provisions after placing them in their broader legal context; it has the purpose of linking the legal analysis to its economic grounds, particularly by extrapolating a couple of legal nexus/categories. The concept of “equal treatment” and “personal scope” are focused “to filter” the macro and micro economic premises/hypothesis that are supposed to be at the base of the State economic strategy on wages.

Conclusively, observations are given in order to examine the effects of both HMW and the *vouchers* system towards the achievement of a higher level of equal treatment, as well as of an enlarged personal scope for regular employment recognition. **Copyright © IJEBF, all rights reserved.**

**Key words:** Minimum wage, Italy, Personal scope, Equal treatment

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<sup>1</sup> Art. 1 co. 7, lett. g).

## 1. The Italian 2014 Jobs Act and its normative context

Italian Parliament released Act n. 183/2014 is delegating the Government to accomplish its objectives for a severe impact on labor law; the Parliament provisions are meant to answer to the European call for structural reforms.

Urgency for structural reforms in the Italian labor market was denounced in 2012, particularly from the European Central Bank, although it dates back to 1992 when the OCSE<sup>2</sup>, and thereafter the European Commission, took the point of easing the employment protection legislation (EPL) in order to ease the economic growth.

The European pressure, together with the evidence of the economic crises in 2008-2009, came along with the political crisis (which firstly lead to a new Government, having Mario Monti as prime Minister in place of Silvio Berlusconi, and secondly lead to the political elections in 2013, which were won by the democratic party).

In such a context, Italy opted for severe intervention on both labor market and social security, resulting very controversial, and bringing traditional collective relations to facing big challenges and possible divisions.

Before that time, several innovative reforms tried to update and re-fresh the labor market rules, most important of which was the Biagi Reform in 2003 – that had the merit to re-formulate labor law categories and employment contracts by giving an innovative perspective of plurality (in terms of contracting models) which was told to be more adherent to a post-ford's type of labor organization.

None of those Reforms reached the objective of going straight to the hard core of the discipline in such a general manner as the 2014 Jobs Act is declaring to do. The Act is going to be so straight ahead by a change that is not supposed to stop at the margins of the traditional employment categories.

Back in 2011, Monti's Government decree n. 201 wanted to favor investments based on enterprises own capital rather than based on risk-capital, it aimed at fiscally encourage female and young workers hiring, and, most importantly for State revenue, it changed the pensions system method of calculation (it enlarged application of the contributive calculation in place of last-salary-based calculation, looking for a better balance between retired/who receive pensions and new generations of workers/who pay pensions<sup>3</sup>).

Later on, Act 192/2012 (Legge Fornero) intervened in the labor market and set new rules liberalizing individual economic dismissals in case of redundancies, introducing an indemnity to be paid by the employer who fails to lawfully dismiss, in place of the traditional automatic re-integration in the working plant; it made more expensive for the employer to hire on temporary purposes<sup>4</sup>; it tried to encourage apprenticeship and, as for self-employment, it stated that to be genuine the self employment contract doesn't have to gain from the same employer more than 80% of the workers annual income<sup>5</sup>. The 2012 Act focused also on "accessory job" (*lavoro accessorio*) to be paid by (tax free) *vouchers*, like the 2014 Job Act is going to do as well.

The 2014 novel (Jobs Act n. 183/2014) has been commented as a "dramatic shift in paradigm", challenging the traditional main core of labor law in order to oblige to the mainstream of "going for what is more economically convenient".

It surely has the purpose to newly formulate the whole employment legislation for individual labor relations (collective labor laws are positively considered but not directly ruled by the Statute). It declares it is about the 'regular personal work contract' in the functioning of the labor market, and about the 'public support' just in case the labor market itself is not granting regular employment.

Labor law personal scope, in such a perspective, is supposed to be extended systematically to all workers relying on their personal activity, not only to subordinate workers, and therein different contracting models would receive consideration in accordance to few cornerstone principles that shall protect everyone<sup>6</sup>.

At this stage of the Reform implementation, waiting for all the Decrees to be released, the main objectives we can find in reading the Act of the Parliament can be briefly listed in the following four points<sup>7</sup>:

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<sup>2</sup> OCSE is an international body composed today by 34 Countries, doing what the OECE was meant to do according to the post War Marshall Plan.

<sup>3</sup> See P. SANDULLI, *Il sistema pensionistico tra una manovra e l'altra*, Rivista della Sicurezza sociale, 1/12.

<sup>4</sup> A 1,4% plus on wages must be paid, to cover future unemployment benefits.

<sup>5</sup> On condition that 2) she/he is continuously working for him no less than 8 months or 3) she/he is having a job office within the employer's premises (exception is made for intellectual professionals and high skilled job competences, who never can be told subordinate to the employer).

<sup>6</sup> Contrarily to this purpose, the draft for the Government Decree on employment contracts, to this day, is considering the "subordinate" contract as the "regular one" – which would be really frustrating on the intentions to enlarge the scope of employment legislation.

<sup>7</sup> Prof. Riccardo Del Punta's synthesis on the Reform main objectives is referring to: 1) increasing the market efficiency as linked to the increase of employment, 2) overcome the dualism between protected and not protected workers, 3) favouring harmonization of work and life equilibrium included encouragement of maternity, 4) transversal need of normative simplification. The two main tools used to achieve these goals are the social security exonerations and the personal employment contract with increasing protections at Lectures on "*Le nuove regole del lavoro, linee generali della riforma e primi decreti attuativi*", Bari, 2015, 17th April.

- 1) growing protections with growing duration of employment,
- 2) tendency to make employee and employers contribute to unemployment benefits (social security as a private/assurance more than State subsidies),
- 3) flexibility in management,
- 4) recognition of equal treatments and support to parental needs.

Such ambitious goals will hardly be achieved apart from a pressure on implementation of communications and information policies. Disclosure of information as a level to cope with uncertainty, wherein information and certainty is linked to people expectations, means to think about employment “organization” not as an alternative to the free market, rather as an instrument that can optimally accomplish the market-based-allocations (as it will be clearer from going deeper into the economic theories standing underneath the Act).

Here below I report a brief synthesis of the Jobs Act main content, which is reported in one single article (art. 1) having 8 *comma*. It must be précised that understanding the overall impact of the Act includes the consideration of also the Government provisions on a three years lasting social security credit (exoneration) for employers hiring on a regular base in 2015<sup>8</sup>, as well as the easing in usage of not permanent contracts (but for a higher cost of labor to be paid).

The Act is declaring that uniform support to (not voluntary) unemployed people shall be assured, but based on the workers contributive history rather than on an automatic subsidy by the State; normatively, the public support for unemployment shall be rationalized, by favoring active measures involving workers directly, simplification of bureaucracy, as well as by reducing labor costs others from salaries. Government should elaborate decrees according to few fixed principles and criteria, some of which are particularly direct on the management of labor surplus (redundancies).

As for intervention within the labor market (art. 1 *co.* 2, lett. a), State support for enterprises’ economic crises (*Cassa Integrazione*) will only be justified until the enterprise is not definitively closed (while so far the State intervenes on closed enterprises too); every contractual solution aimed at working time reduction and/or other ‘solidarity bargains’ shall be experimented first; increased participation of hiring enterprises will be required and re-modulation of contributions according to effective performances shall be pursued; State intervention (*Cassa Integrazione*) shall be revised in its personal scope and in the management of its funds; revision of rules on solidarity contracts is required as well.

As for the intervention out of the labor market (art. 1, *co.* 2 lett. b)), the Act prescribes a re-modulation of the current unemployment benefits (the new regime is called *Naspi*) that will favor workers with longer contributions and that will extend benefits to self employed workers who perform continuously for the same employer (this shall be experimented on a two years period, as well as on limited funds base); it introduces a benefit to be used by the poorer workers – having had the *Naspi* already – on condition of their participation to activities as offered by the competent offices; it favors active research of new occupations, especially by encouraging self-employment, also in the public sector (but not as an easier access to a public service position), proposes a sanctioning system to make all the benefits available to only those who are actually available to occupation – formative activity and public service as mentioned, which is based on enforced obligation for workers to communicate any relevant information<sup>9</sup>

Several dispositions are aimed at providing in all the national territory a unique, efficient, active Service for labor placement (art. 1 *co.* 3, *co.* 4), which is going to rationalize existing incentives for hiring, self employment, placement of disabled workers, by empowering the informative system, monitoring. Such a task shall be undertaken especially by a national Agency<sup>10</sup> which role is meant to be that of coordination amongst Regions, National Social Security Institute (INPS), Minister of Labor, territorial agencies, bilateral bodies and agreements, also considering coordination of benefits, monitoring of job vacancies and thus allocating to new occupations. This new type of (challenging) national service shall be re-placing the existing provincial services (*Direzioni Provinciali del Lavoro*)<sup>11</sup> which are now referring to the Regional system, by essentially focusing on

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<sup>8</sup> Stability Act n. 190/2014, art. 1 *co.* 118.

<sup>9</sup> See on Government Decree n. 22 released on 4th March 2015.

<sup>10</sup> Forward in the Jobs Act there is the need of a national unique Agency also for inspections (art. 1 *co.* 7, lett. l)).

<sup>11</sup> According to D.L. DL 112/1998, the State was competent at the national level for passive intervention on the labor market, typically via the social security system, while the Regions and the Provinces were competent for “active” policies within the territory. That system is peacefully recognized to be far from efficient.

more efficiency and centralization – but together with transparency (which is about to become a Constitutional principle for public administration<sup>12</sup>).

The Act (art. 1 *co.* 5, *co.* 6) is then setting objectives in terms of simplification and rationalization of norms and procedures for hiring and work management, health and safety; it prescribes few criteria that the Government is called to operate accordingly. Deliberately it allows the Government to eliminate now-in-force-laws to achieve its goals and to solve the many interpretative contrasts; normative sanctions and prizes are to be re-defined on meritocratic purposes – distinguishing formal violations from substantial ones (art. 1 *co.* 6, lett.f), but endeavoring the rule of law and fighting undeclared work (art. 1 *co.* 6 lett. l). Simplification is meant to be achieved by focusing on informatics, unification of informative tools showing the citizens' formative status, and accounting the public bodies' active/passive interventions. It prescribes to grant the workers' genuine will but in a simpler manner, whenever he/she is waiving to any of his/her rights, especially at the moment of ending the employment relationship.

Art. 1, *co.* 7 is perhaps the most challenging part of the Act in terms of “cultural dynamics” ; it is declaring the importance of achieving coherence with European and international standards and sets dispositions trying to strengthen jobs opportunities and to encourage better quality of employment contracts, both by increasing the access of the unemployed and by re-define the ruling over the existing employment contracts.

The (many) contractual models as existing now will be overcome in order to keep “the regular employment relationship” as the preferable, more convenient, and prevalent model. A “regular employment relationship” is meant as a permanent relationship – not necessarily subordinate – with increasing protections, wherein protections should increase along with employment duration<sup>13</sup>.

The biggest challenge for the Government is to answer to the call for extending the main protections (on dismissals, impediments, hiring on a temporary base, hours and holidays) to not only subordinate workers but to those who find themselves in an economically dependent position – and such a challenge cannot be faced apart from a severe ruling on workers' (particularly) and employers' duty to reciprocally keep informed about projects and alternative sources of income<sup>14</sup>.

Accessing the new type of contract will benefit the employer, firstly, because of a cutting on labor costs (the State covers the public social security contribution for the early three years of employment on a regular base), and secondly because of the possibility to dismiss in case of economic difficulties more easily (by paying an indemnity which amount is certain and related to the worker's employment duration). This is the main shift from the so called “property rule” to the “liability rule”, where the traditional “property rule” was preventing from dismissing insofar it enabled the worker to judicially challenge the dismissal for economic reasons<sup>15</sup>. Also, this is going to reduce the gap between the American “employment at will” rule and the European/Italian tradition of a highly protected labor market, where the employer's will has to be in equilibrium with a ‘public point of view’, as represented by statutory laws as well as by the trade unions.

Moreover, the workers' shifting between time to work and time to formative activities (and apprenticeship for the youngest) is pursued, more flexibility in jobs positions management<sup>16</sup> shall be implemented, also via an active participation of trade unions at all levels.

As for what is specifically in point in this study, art. 1 *co.* 7 introduces a minimum hourly wage on an experimental base, and the “accessory job” (*lavoro accessorio*) is encouraged and meant to be extended – as I will illustrate in the following pages – .

Last, but not least, in art. 1 *co.* 8, is highly remarked the State support to parental needs. Tax credit for female workers is proposed too, coherently with the overall purpose of achieving equal treatments.

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<sup>12</sup> See the n. 1429/B Bill Draft for Constitutional Reform, already passed by the Parliament on March, the 11st, 2015 (new art. 97 Constitution).

<sup>13</sup> See note 3.

<sup>14</sup> See few arguments at : <http://thejournalofbusiness.org/index.php/sitearticle/view/462/372>.

<sup>15</sup> Act n.192/2012 set this new regime, while the Jobs Act confirmed it. Discriminatory dismissals are still receiving full protection: the worker can ask to come back to his job in such cases. Some cases of disciplinary dismissals, once proved to be unfair, are receiving the same full protection.

<sup>16</sup> Particularly on distant control by the employers, art. 1 *co.* 7 lett. f) is taking into account of the technological development while pursuing a new regulation being coherent with both productive aims and personal dignity and privacy.

## 2. Equal treatment via the Hourly Minimum Wage (HMW) and the *vouchers*

The legal national minimum wage has been studied repetitively through the years, since the beginning of the 1900 (important investigations dated mid-1890s and are from the British Fabian Society<sup>17</sup>), but several factors in the modern economies are now leading to a new focus on this topic. The increased 1) risk of a social dumping, 2) the increased use of atypical and precarious work, 3) the weakening of the associative representation leading to collective bargaining, and 4) a decline in wage as part of the total income to be shared. These four factors are well known to be fundamental<sup>18</sup> for admitting that the old debate on statutory wage needs to be re-examined in depth.

The minimum wage can be here defined as the minimum compensation legally recognized to the worker for every hour of her/his job<sup>19</sup>; it is thus essentially the wage rate what we are dealing with. In such a meaning we are considering an authoritative intervention of the State over the labor market free adjusting on fixing the price for a given labor activity.

According to the Italian legal tradition, the wage is not fixed by Statutory law, it is rather fixed traditionally via collective bargaining, eventually implemented via judicial claiming ( *ex art. 2099 Civ. Cod. Art. 36 Constitution*).

According to a recent study, Italian “minimum” wages (as just bargained at the national level), which is around 11 euro per hour, is told to be appreciable within a European comparative perspective; nevertheless, such a result is not coherent with many data showing that “medium” Italian wages, instead, are amongst the lowest in Europe (Kats index<sup>20</sup>). That is to be explained together with the Italian Constitutional tradition being focused not “on the minimums”: the Italian Constitution is granting the sufficient and proportionate wage – which is a concept that is far from that of a minimum wage. In other words, the Italian system, contrarily to its constitutional purposes, is better at granting minimum levels than at granting sufficient and proportionate levels<sup>21</sup>.

If we do analyze the reason of such inconsistency, then we see how the couple of sources of law supposed to grant the level of wage (collective bargaining-plus-jurisprudence) is only covering the entire scope of subordinate work, while the medium wage is made of, more and more frequently, atypical work and working agreements that are standing out from collective bargaining coverage. In both agriculture and constructions fields, the percentage of people standing out from the application of any (contractual) minimum is more than 40% and, in food service, entertainment and arts percentages are around 13-20%<sup>22</sup>.

Another reason for such inconsistency is in the fact that what collective bargaining is granting theoretically, is not often enhanced; this is the problem with undeclared work, and with the several cultural gaps and lacks of information that preside employment relations.

It is so perhaps clearer that what the Italian Government is now trying to do, here, is not to increase the level of wages actually, nor the road toward a sufficient and proportionate wage seems to be directly followed. The Government is rather trying to gradually extend wage protection to not only subordinate workers, as well as to take out from the shadow of undeclared work many activities that are now standing there. It follows that, going back to the four main objectives the Jobs Act is pursuing, as listed above, the HMW is a tool that fits the need to grant equal treatments, facing the challenge of increased usage of atypical and precarious work.

The result of increasing medium wages could come along, insofar it will be considering an enlarged range of working force, made by self-employment too, not only subordinate employment, and by accessory jobs as well. HMW is going to attract into the regular workforce many people that, to this day, are not included, and who can be this way encouraged to join trade unions or other workers’ representative agencies to achieve better conditions (art. 1 *co.* 7 lett. g)); the *vouchers* system is then going to attract into the regular workforce several activities that would otherwise be left outside as well (art. 1 *co.* 7 lett. h)).

Different is the need to grant to all workers a proper ‘continuing’ compensation for their staying in the labor market in time of difficulties and mismatching in demand and supply of jobs. This is coped with a subsidiary

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<sup>17</sup> The Case for a legal minimum wage – Fabian Society 1906. Reference can be found in D. METCALF, On the impact of the British national minimum wage on pay and employment, draft work.

<sup>18</sup> S. LEONARDI, *Salario minimo e ruolo del sindacato: il quadro europeo tra legge e contrattazione*, in *Lavoro e diritto*, 1/2014.

<sup>19</sup> As for the different concept of Minimum Income we can refer, for example, to the European Parliament “Role of minimum income in combating poverty and promoting an inclusive society in Europe”, Resolution adopted on 2010, 20<sup>th</sup> October.

<sup>20</sup> A. GARNERO, *Quanti lavoratori senza salario minimo*, in *Lavoce.info*, maggio 2013.

<sup>21</sup> The Jobs Act is receiving the critic of being not in accordance with the Republican 1942 Constitution in its overall structure, in order to respond to the mainstream economic (liberal) theory; such a critic came for example from Prof. Marco Barbieri, intervention at Lectures on “*Le nuove regole del lavoro, linee generali della riforma e primi decreti attuativi*”, Bari, 2015, 17<sup>th</sup> April.

<sup>22</sup> A. GARNERO, cited above.

State intervention (art. 1 *co.* 2 lett. b)), that is just partially of a subsidy nature, relying on employment earlier contributions. As far as statistics will be considering that as a part of the workers' income – macroeconomic perspective – there we can say the Job Act is also going to produce some re-distribution of income effect. But this is no news.

News is that, if we agree that the HMW and *vouchers* are tools to pursue equal treatments amongst all workers, than we can observe that they are rather coherent with recent trends in collective bargaining, not only in Europe, willing to achieve the main remunerative results at the enterprise level – while leaving determination of minimum standards at the national level.

The Government (in its implementing decrees) is here assuming the role of an economic actor directly – while it uses to influence the labor market indirectly. This will force trade unions to (politically) adjust, wherever they are not granting the same level of compensation and, mostly, wherever they are not covering such an enlarged personal scope. And it will force to active other representative agencies to do the same.

Going into details, art. 1 *co.* 7 lett. g) – a provision that is collocated right in the contracting models management section<sup>23</sup> – states that wherever national bargaining would not be present, which ever the sector, a decree will be setting a HMW. So far, no matter the type of contract: employment can be subordinate or not subordinate, but it requires having, at least, the nature of personal, continuing and coordinated relationship. Again, only if the Government will really take the challenge to not stop the Reform to only subordinate contracts.

Evidently, this is not about a citizenship allowance, nor about a minimum subsidy for workers, neither about a minimum income, it is just the way the Parliament is pursuing the usage of the work compensation Italian 'minimum' level – notwithstanding the fact that this is logically going to provoke the increasing of the Italian 'medium' level of wages too, which is told to be nowadays far below the European medium.

The Parliament will to implement the usage of the already experimented “*vouchers-job-payment*” for peculiar occasional employment, called accessory job (*lavoro accessorio*) is the second tool the State is using to directly set the price in the labor market. This was introduced in 2003 by the L. 30/2003 (Legge Biagi) for only occasional employments: tax free *vouchers* are credit titles, including safety and social security contributions, already paid by the employer before the worker performs his/her job.

*Vouchers* were originally conceived to cover specific, simple, type of jobs, typically domestic jobs like occasional nursing, garden keeping, simple home-works etc., insofar the total amount gained by the worker would not be more than 5.000 euros in a solar year; the Government idea is to now increase the level of the maximum up to 7.000 euros. It is worthy to highlight that what is meant to be limited is not the maximum the worker is receiving as total income from accessory jobs (which could also be a relevant amount) but the maximum the employer can use it in place of the regular contract.

The original idea has been repetitively modified and extended by the legislator: now all the sectors are considered (agriculture included in a limited personal scope)<sup>24</sup> and the public employers too can use them. Employers can use *vouchers* also to pay workers who are receiving some public subsidies<sup>25</sup> insofar the worker will not be receiving more than 3.000 *vouchers*/euros in the solar year. In 2013 the possibility to use *voichers* from also disadvantaged people has been considered in order to specifically rule some added conditions and *vouchers* nominal amount. Regular *vouchers* include 13% of social security contributions and 7% for safety at work contributions, and their value is out from any tax consideration – nor it is influencing the status of employment of the person.

Evidently what has been kept from the 2003 statutory novel is to declare work that would otherwise remain in the black – unrecognized (and not protected) work, while the legislator is seeking to consider this model as a way to multifaceted occupations. It also seems a way to escape from difficulties in qualification of many occupations standing between self employment and subordination, just focusing over an economic type of index. Since *vouchers* are not part of a salary to be taxed, another objective is to decrease the burden of tax deduction from the employers contribution to State revenue. This latter represents the main difference compared to the HMW. *Vouchers* are a uniform way of payment for several, unlisted type of jobs; apparently, taking some distance from the HMW, they are supposed to provide a uniform level of hourly wage, while the HMW, instead, is supposed to vary according to different job positions and it can recognize different type of skills as well as a

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<sup>23</sup> The decree ruling the employment contract has not been approved yet, so the study cannot go into details that will show their full relevance once the normative scenario will be plainly set.

<sup>24</sup> In agriculture *voichers* can be used in seasonal occupations by workers having less than 25 years who are following some regular course of studies, or by retired people.

<sup>25</sup> Only in 2013 and 2014.

proportionate wage. HMW differentials according to skills and competences is going to be a matter of policy for the State, management and trade unions.

Being this the legal context, it appears that the statutory law, although meant to take a step backward in assuring employment protection, and letting the parties playing their role more actively, does not waive to give its support wherever the social parties would find themselves not able to solve the matter autonomously. The introduction of the HMW, wherever collective bargaining would not be able to set itself, does represent an example of such a reading key.

### 3. The economic policy context: is there a distance between economy and law?

The main critic the Jobs Act is receiving is that it reduces traditional statutory rights, as already recognized, while seeking a purely economic result for enterprises.

This does mean much; nowadays we need to consciously deal with both legal and economic entities while considering any law, whereas to keep economy separated from law, appealing to the fact that they deal with different categories and different level of values, does not bring us any further. Particularly, the main institutional category that is supposed to rule the modern society, that is the contract<sup>26</sup>, concerns both legal and economic aspects. Neither employment relations can escape from such a coexistence.

This is a point that emerges in the idea of many most influential economists; for example, Coase's contribution (1910-2013) is plainly focused on legal institutions. He was convinced that any choice should be done by comparing the costs of "organizing" the supply-and-demand system, with the market system costs (while traditional theories use to give for granted the alternative between "organization" and "market"): he focused on the fact that what is in object while managing any industry is not just a good, it is rather a set of rights, and because of this, the legal system will inevitably play the main part in controlling negotiations and organizations (thereof, in also setting any transaction costs).

Therefore, while searching for the legal categories that could better explain, and later be used to verify the tenure of an economic hypothesis *ex post*, it is essential to have an insight on those economic hypothesis.

It is the European idea of the "flex-security", wherein flexibility in the job management should be mixed with a sustainable level of security in the labor market, the one which is declared to be the fundamental theoretical assumption basing the Italian Job Act; that idea has grown, to some extent if not fully, within the so called "neoclassical framework".

The neoclassical approach is the one that is mostly influencing our times of 'economic politics' – which is ironically called by someone the discipline that studies the varying appendixes to the *laissez-faire* one-only principle, as proposed by Smith in the middle of 1700.

Not pretending to be so accurate, we can figure the idea of the flex-security like something staying somewhere in the middle between a liberal model and a directed model of economy. By representing a complex compromise model of social intervention within a free market, it is an application of the marginalism approach to a keynesian type of public intervention, seeking for some social justice where the market cannot realize it by itself. Perhaps, what jurists can do to examine legal institutions that are called to interact within economic structures and legal assumptions (the HMW and the *vouchers* system, for this study) is to verify the compromising points, and to investigate whether they represents usable vehicles, rather than obstacles, towards the achievements that the legislator is following.

While searching relevant nexus between the legal and the economic system, in the nowadays context, the reading of Hayek's book "Road to serfdom"<sup>27</sup>, can result particularly meaningful, because of its foresight in the philosophical connection of the idea of freedom (law) to economics.

Hayek's book dated 1944 specifically contains a chapter analyzing the "rule of law" in an economy that can be more or less controlled. There we find confirm that anything defines clearer a free country from a country controlled by an arbitrary government than the perceived compliance to law principles: a proper compliance is only present in a free country. This means that discretionary power, as exercised by the executive bodies in their duty to make people be compliant, shall be reduced at the minimum for a society to be told liberal: the

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<sup>26</sup> Make a note on the thesis by which, nowadays, we need to consciously deal with both legal and economic entities while dealing with the main institutional category that is supposed to base any modern society, that is the contract (Lecture by Prof. Nicolo Lipari on "*Il problema della giustizia nel contratto*" 2015 April the 14<sup>th</sup> Naples).

<sup>27</sup> F. HAYEK, *La via della schiavitù* (original title: The road to serfdom), Rusconi, University Chicago Press, 1995 .

framework of laws should be stable and, therein, any productive activity should be led by individuals, whereas on the other side of a controlled economy, any productive activity is led by a central authority and the rule of law is put into details from many administrative provisions. At the same time, laws that are formally stable and previously accepted/recognized do not necessarily lead toward uncertain applications: *results in the future application of the law are as much uncertain as much the law is stable and clearly stated*. Any reasonable mind would take this last assumption as not that scaring, because the State action is supposed to intervene independently from circumstances. If it scares, it is because of the modern attitude wherein passion for the greatest control is a main character.

Hayek precised that it is not a paradox to say that ignorance of people on how to compel to the law will contribute to the State's more efficient control, and this is happening because of two main reasons. Firstly, the State set the rules for general kind of situations, while any details regarding time and places, are left to the consideration of the interested people (since they can only be known by the interested people indeed). By not doing so, the State would not leave to the interested people any substantial choice, politically relevant: it would be the State itself to make the relevant choice. This is the meaning of being an impartial legislator: not giving *a priori* answers to those problems that can only be solved by throwing the coin in the air. Those having a more proximate interest in the matter, furthermore, could be not the best judges for the society in its broader complexity, and it is precisely the example of the conflict between capital and labor that is given by the author to reflect over such an opportunity to leave the interested people to decide within their own circumstances. The need to not limit the vision on the employment bilateral relationship, the need to consider the position of consumers as well as any other circumstances the situation might arise<sup>28</sup> is told to be inevitable, together with the need of giving a principle like that of "fairness" a proper application. Hayek, unambiguously, remarks that any governmental activity aimed at re-distribution of resources is conflicting and not consistent with the principle of the single person being formally equal to any other person before the law. Nevertheless he refers to any circumstantial context to highlight exceptional ways in implementing the law, considering the specificities of the working agreements.

Hayek criticized any form of collectivism, since he didn't trust the central authority might ever have the so many information needed to govern a society in all its relevant aspects, while in order to achieve the more information as possible, any authority will search for the highest control over the single people. Here, again, information turns to be indubitable the key concept to understand society (the most important economists of our times are coping with uncertainty by focusing essentially on recognition of deficiencies of information<sup>29</sup>).

Now, the National system for employment that the Italian Jobs Act is going to rely on (art. 1, *co.* 3 *co.* 4), for coordination of public bodies and private enterprises at all levels, is far from being built to this day. The Parliament sought consensual procedures to achieve implementation, in the first place, but relations amongst the central Government and the local once becomes rather difficult in the more recent Italian politics and, very often, they give floor to the struggle for implementation of European policy in its broader objectives. The Parliament also sought "smart type of regulation" tending towards simplification, valuing exchange of information and synergies rather than a bureaucratic model, meaning that the whole of the system implementation will rely upon competence and good will of the involved bodies<sup>30</sup>. Surely such a higher freedom for economic/social actor to decide over their own activity encounters a higher level of public call for communication and information by the Government.

The welfare state is something that can be achieved in several methods, and not every one is granting the society to stay in liberty – sometimes governments might use fast tracks to get faster results, which are not consistent with the establishment of an enduring freedom in a society, and especially labour law, historically, represents a filed apart from general considerations on markets.

Labour law is a field wherein the operation of the market shown unavoidable faults, and where exogenous interventions have been constantly required therefore to fill in the gap.

Now the Jobs Act tendency is not that of putting the State in position to directly protect workers in their job position – unless they are unwillingly out from the market – but to encourage business, enterprises and self employment, for these be the sources of labour and labour rights. So the aim is to avoid administrative measures and bureaucracy in place of few changes in legislations that might give – in a longer period of time – the same results in terms of enlarged personal scope; aim is not to rely on a direct control by the State or on the creation of monopolistic institutions, wherever financial measures might lead to spontaneous movements instead.

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<sup>28</sup> "When we need to choose amongst higher salaries for nurses and physicians, or more service for ill people, more milk for the babies or higher salaries for agricultural workers, a job for the unemployed or higher salaries for those who already have a job, then in such cases the reply can only come from a complex system of values in which every single person and every group of interest has a place of their own" Hayek, cited, p. 129.

<sup>29</sup> This is Stiglitz's point of perspective too, for example, who is convinced that information is a limited source, thus costly.

<sup>30</sup> The public sector management and performance evaluation has been reformed toward a more meritocratic models recently; see lastly Government Decree n. 90/2014, dated 24<sup>th</sup> June 2014.

This reminds me to a comment on the National Labor Relation Act dated 1935<sup>31</sup>: that Act was told to be intended not to establish mutual harmony between the employer and the employee (nor to eradicate discrimination and economic disparity) but to “have a pressure valve on the flow of commerce”<sup>32</sup>, meaning to establish a management over the flow of commerce, rather than to rise the social position of workers or equalize disparities. Well, only insofar the Government will consider equal treatments and need for information as goals to be really pursued, there the Jobs Act will represent a step forward compared to that 1935 example.

#### **4. The neoclassical perspective standing underneath; assumptions from a free market economy and from a controlled economy**

Recalling the basic differences between a free economy and a directed/socialist economy could sound redundant in the mind of the many, especially in the mind of those having an economic background, nevertheless I suspect that the biggest confusion around the perplexities on Italian labor policies comes from common misunderstandings on the last century consideration of these basics. The socialist approach represented the mainstream for economic policy and labor market for decades, till the main crises in the late 1980s-90s. It essentially relied over Keynes’ (1883-1946) ideas, it was generally accepted as pursuing workers’ highest freedom and well-being (while collective labor rights were mainly recognized as a – countervailing – voice speaking against the enterprise need for profit and organization), but at the same time it was an approach funded upon severe bureaucratic structures (and legal categories) that used to keep workers and their lives in a sort of iron made box.

Now the neoclassical mainstream in economy – and in labor law – reversely, is accused to give too much space for precarious relations and uncertainty. Many commentators to the Italian Jobs Act agree that the economic paradigm is shifted back to a scenario where workers cannot count on fixed statutory rights anymore, for being they obliged to follow the market waves and the unpredictable attitude of employers therein.

Keynes, far from forgetting the problem of uncertainty, gave particular attention to this social factor determining the market equilibrium (and unemployment). He found that any rational calculations had seriously misled the comprehension of reality. Keynes’ contribution was particularly appreciated during the years of War II, and later in time of Cold War, when the deep negative effects of the Big Depression showed plainly the market fault; his ideas came as a reliable middle path between the free market theory and the communist ideas that were then consolidating amongst the folks worldwide.

According to those that Keynes called “orthodox” economists, future would be meant as a predictable data, future mutations would be not seriously considered and the Bentham’s ‘calculations’ over pains and pleasures, vantages and disadvantages would be retained satisfactory<sup>33</sup>; instead, he argued, real people use to act considering their own sense of mistrust, mistrust in the future, as in the reliability of their own calculation whenever they are acting (opting for savings money rather than consuming, or investing etc.)<sup>34</sup>.

Keynes’ contribution actually represented a reply to the main critic that put the free market principle under attack, that is Marx’s critic.

Marx’s vision (1818-1883), staying on a classical perspective as for considering the composition of the total income, wanted to reverse it via a political revolution. It is not uncertainty about the future what interested him, but the certainty that workers are abused by the capitalists. Since in a capitalist economy, the social value is translated into the goods, then work itself is considered as a good, and in such a context, only a political intervention over the purely market base logics can save from alienation. The social character of any activity, as well as the social form of any product and participation of the person in the productive process, is described like something objective and external in relation to people; economy is not involving a reciprocal approach amongst human beings, it is a human beings subordination to relations which are existing independently from them, and it comes out from a defeating fight amongst human beings who are indifferent to each other. The frustrating condition of workers derives from the capitalist structures that keep separated means of production (land, capital) from workers, so the only way to save the human condition from alienation, would have been to give back to workers ownership of capital and lands.

<sup>31</sup> It is the main Act on Trade Unions policy in the USA, but for the reforms that changed it to this day.

<sup>32</sup> J. M. RETTLER, Women’s work: finding new meaning through a feminist concept of unionization, 22 Golden gate U.L. Rev. (1992), see at: <http://digitalcommons.law.ggu.edu/vol22/iss3/6>.

<sup>33</sup> J. Bentham, Introduction to principles of morals and legislation, first published in 1789.

<sup>34</sup> Translated into economic policy, such a consideration over the human being economic behaviours, means a greater attention to the monetary policy and to the interest’s rates. Thereafter, 1) the required amount of money that is circulating is not that just needed to exchange goods, it is also the amount needed to cope with people’s uncertainty, 2) the interest rates are moving along with this attitude to save money: the more people are saving money (the less they are investing) the less the money is costing (low interest rate), 3) this is creating a natural unemployment rate, since not all the money is returned into the economic productive cycle.

It is clear that Marx's vision implies an atheism that can only be coped with an authority – necessarily other than God – on whom any human being, ultimately, can materially rely upon for feeling protected against any harm from others. The only (social) hope the Marxist really rely upon is the hope that this “father” will be a good father. But Marx went even well beyond the moral of the “good father”; in the Capital he considered as morally unacceptable the coexistence of both the instinct of accumulation (of the capital) and the instinct of pleasure (he recalled Goethe and the Faust's conflict<sup>35</sup>). Thereafter, the collectivist idea grew in the consideration of the effort by every human fighting for their own surviving within the capitalist system; herein, the strongest once are elected to represent the rest of the people, and, while this way would surely lead to the strongest protection the workers might achieve, it is far from sure whether this would bring to freedom of everyone.

In the struggle between the main assumptions of the classical theories, and taking its roots prevalently in the original thought of the *laissez-faire*, the so called neoclassical approach has taken the leadership in economic policy of the last decades: as reported in the main handbooks, it is a mixing of the classical macroeconomic perspective with the marginalism perspective (focusing on microeconomic).

Nevertheless, the classical and the marginalism theories offer two different views about value and its distribution: the classical view proposes a possibly conflictual approach with a total income to be distributed according to the bargaining strength of the social parties, while the marginalism is not much focused on distribution (nor re-distribution) of the value as a whole, it rather responds to the question of what is better to achieve from a relative standing point. The marginalism, not differently from the classical theories, relies on competition as a source of energy leading towards new economic and social assets, but the former, differently from the latter, do not necessarily imply a conflict (and a consequent political intervention), and as such, it adheres to earlier liberal thinkers in 1700<sup>36</sup>.

The neoclassical view technically finds its main tool-concept in “the margin”: it is in the margins, rather than in the total aggregate data, that any relevant economic choice can be understandable, meaning that what is giving the market a real perspective is the (relative) utility that any good can offer to the consumers once the supply is increased/decreased by one unity. So far as we read a unique data showing both the total income and the market value, there we can opt whether to focus over tools for sharing the income amongst the owners of the producing factors (capitalists, workers, land owners, the State in socialist economies), or to focus on what the consumers are offering to pay for one more good or service to have. The price of goods (and services), in this second (marginal) perspective, is set with the marginal utility that they can offer to the final user: it comes out that the more the goods are available on the market, the less their utility to anyone will be, explaining why necessities can have very low prices while luxuries stay expensive.

In such a frame, the scope of economic policy, before that of considering distribution of the income, is *the human behaviour as a matter of relationships between aims and limited means that can be applicable to alternative uses*. Subjective uncertainties are part of the deal, while in Keynes they represented a part of the problem. Moreover, it can be argued that, to some extent, this greater attention to the users demand influenced Keynes perspective too, according to the fact that in Keynes' opinion, it would be up to the demand (aggregate demand), before the supply, to determine the move toward any equilibrium (what a fruitful ground for consumerism!). In other words it would be up to consumers to make the first move, going toward determining the whole of the income. Keynes was fully sure about this diagnosis (that departures from the classical view point according to which it is the supply determining the demand), he was less sure about the cure<sup>37</sup>.

The basic assumptions in the neoclassical approach are that of the individual utility, the rationality of choices by the economic actors, scarcity of goods, and as such they are plainly found within the economic liberal thought. The neoclassical approach is aimed at measuring the allocative efficiency of any given economic choice. The considered economic option may deal with economic factors management, investments, support to the unemployed, as well as with monetary instruments, interest rates, financial tools like public and private shares and obligations, etc.. Precisely, the equilibrium point (which implies a concept of efficacy) is where the

<sup>35</sup> Marx, Il capitale, Libro I, ed. riuniti, 1964, 650.

<sup>36</sup> According to the classical theory, there is a natural synergy between the collective dimension and the individual dimension: no human being is indifferent to others' afflictions (neither the most criminal one is completely indifferent says Adam Smith (1723-1790) in its “Theory of moral sentiments”, as well as nobody chooses to depend on others' benevolence, except for the beggar, he says in the “Wealth of Nations”. It is thus natural that people acting for their own purposes and interests, are capable to reach the best goal for the industry they are working in, while those acting for a public interest never really reach the same goals (this is the theory of the “invisible hand”. This classical view assumed that the annual income of a society, and the annual value to be exchanged on the market, were the same whole thing; within such assumption the individual actors were pursuing the collective welfare independently from their own intentions (by doing for themselves, they were doing for the others).

<sup>37</sup> He proposed the State to intervene by investing in the economy, as well as a monetary policy capable to rule on the interest rate, but he admitted these hypothesis to be fully relying on the circumstances of the historical moment. See in B.INGRAO e F.RANCHETTI, *Il mercato nel pensiero economico, storia e analisi di un'idea dall'illuminismo alla teoria dei giochi*, Hoepli, 2000, p. 579 ss.

economic context does not allow anyone to get a better condition without placing someone else in a worse condition (Pareto's model).

Within the neoclassical perspective the economic equilibrium is pursued according to mathematical formulas that will test the basic settings amongst supplies and demands in a given market, while many classical authors take distance from mathematical models and precise accounting; that is how the marginalism purer view is trying to overcome the uncertainties that the classical visions is struggling with.

So, modern economists are far from denying a role for the State in economies, but while in the past the prevalent view was that of a direct intervention by the public bodies on setting prices and doing business, now the States are called to assure the *laissez-faire* can have as much space as possible. Collective properties are welcomed insofar they come from a genuine will by individuals, rather than by a State imposition and social agreements are considered to be, at the international level too, a long term reliable path to follow. For example, Kenneth Arrow (1924) considers cooperation and social agreement – that is somehow the equivalent of the Smith's benevolence – as essential while coping with conflicts between the individual and the collective dimension. He assumes that governments have to cope with the market natural failures (externalities, public goods, monopolies, uncertainty and gaps in information) by help of institutions which produce countering effects over the settings of a liberal market. Arrow suggests that not only formal institutions and authorities are called to intervene in the market price fixing, also moral and internal attitude of consciousness are taken into account while balancing individual and collective interests, especially because “the biggest tragedies of history depends on the attitude of people compliance with past objective, which is giving strength to the original agreement, when experience is demonstrating the need to abandon it”. Correctly he warns that both power and money can corrupt, so legal institutions must concern both distribution of incomes and price settings; distribution of income is never the precise result of a pure bargaining, while it is a result itself of many factors rising from the learning levels, the personal properties, the personal skills, many things which are themselves resulting from democratic practices, fair distribution, learning processes.

## 5. Labor law as a social institution

Dealing particularly with labor law as a main factor in economy, Ricardo (1772-1823) stated that when real wages increase, real profits decrease because the revenue from sale of manufactured goods is split between profits and wages<sup>38</sup>; he stated elsewhere that “profits depend on high or low wages, wages on the price of necessities, and the price of necessities chiefly on the price of food”. Goods, in the classical economy, were basically material goods, moving from consideration of the necessary goods as produced by land ultimately; goods were considered to be valuable because of the labor activity that was required to increase their production. Ricardo consequently theorized that capital correspond to a social category (owners of profits), as well as labor (owners of work) and land (owners of land), thus he clearly recognized the conflict between capital and labor but not coped with it dramatically, as Marx did later.

According to Marx, what goes to the worker, in the light of the superficialities of the bourgeoisie institutions, is only the appearance of the “price of labour”. The expression that the capitalists use is “natural price”, or “necessary price” of labour, but these are just an appearance, a confusing expression, while the “real value” is to be found elsewhere<sup>39</sup>. A working day of 12 hours, Marx wrote, should be existing on the market before being sold, in order to speak in real terms. If 12 hours of working time is priced 6 sterling, this is not because 6 sterling is the value for that work, but rather because to produce a given good the capital needs a certain amount of work (12 hours) and the fixing of the 6 starlings is not determined by the workers and their needs but by the markets competition<sup>40</sup>.

Nevertheless, Marx's thought referred to this (the natural price) as a one single number, rather than to one number that can be explained relatively: quantitatively, he didn't explain a double side reality. Such a conclusion can only be coherent with the figured gap between the economy and the legal structures that are standing over it, so with a vision of two separate entities.

Both labor price by piece, and labor price by hour, are set, in classical economy, in derivation from other factors' price, firstly from the capital, which is an assumption that is not denied by the marginalism. Particularly, according to Marshall (1842-1924) factors influencing labor demand (and its inflexible attitude) are: elasticity in changing labour for capital (if the wage is rising, the employer finds convenient to change labor for capital);

<sup>38</sup> B.INGRAO e F.RANCHETTI, *Il mercato nel pensiero economico, storia e analisi di un'idea dall'illuminismo alla teoria dei giochi*, Hoepli, 2000, p. 96.

<sup>39</sup> Marx, *Il capitale*, Libro I, ed. riuniti, 1964, 73 e ss. 585 e ss.

<sup>40</sup> So the normal price of labor does include the (non paid) work, which is the natural source of the capitalist's profit. Marx assumed to find the (medium) hourly wage by dividing the value of labour force with the daily working time. He assumed the former being 6 starlings, the latter being 12 hours, so it resulted the hourly wage be 0, 5 starlings. He assumed value to be hidden by the concept of natural price: the value was essentially something that the natural price reversed into something different, thus bringing politics down to economics.

elasticity of demand of the output (according to variation of outputs, the employer cuts employment); the extent of labor share in the total costs (the more labor weights on the total cost, the more an increasing of wage will affect labor demand); elasticity in supply of other factors of production, like capital (if capital supply is inelastic, then the employer is not encouraged to substitute capital for labour)<sup>41</sup>.

By the way, it is interesting to recall here what Marx wrote about labor paid by pieces, which was considered a direct measure of the labor intensity that made easier the subletting of labor, as well as the introduction of parasites standing between the worker and the capitalist. The more space payment by piece is offering to individualism, he wrote, the more it leads to develop the sentiment of freedom on one side, autonomy and self control of workers; but on the other side, it leads to develop the competition of workers amongst themselves, which is bringing to a decrease of the medium wage in a factory. He did not deny that the piece-pay is the most capitalism-adherent way to pay the labor force; neither he denied that this way the workers can control quite well the capitalists profits by controlling the goods' prices.

We will shortly see that these considerations on piece-paid-work are far from overcome by the more recent neoclassical assumptions.

In the 1900s, the shifts from an agricultural society, to an industrial one, and then to a service-based-economy, evidenced how real economy, and real wages, changed according to not only natural factors. These shifts brought to consequently consider the monetary policies as the fluid tool to match real society needs with the historically affirmed economic policies<sup>42</sup>.

In such a "fluid" new context, the neoclassical theory predicts that in a competitive labor market firms should pay a given worker exactly his/her marginal revenue product. Focus is on those who are using goods and services, and what they are ready to pay to get them, rather than on time spent on doing the job. This is something different from the concept of being the hourly wage sufficient to the worker's needs and proportionate to the workers' effort: the marginalism interest on the marginal utility that a good/service can give to the consumer, rather than on the total cost of labor, doesn't cope directly with the Italian conception of remuneration.

While in Keynes' approach the level of wages is exogenously determined, in Hicks'<sup>43</sup> it is rather a flex-price model, a perfect-competition based model. Therefore, the Hicks point of perspective is one of fully employment, while the purely Keynesian perspective does imply consistency with unemployment<sup>44</sup>.

Later, Friedman (1912-2006) conceptualized the idea of the "natural unemployment rate", as well as that of the "permanent income". The concept of natural unemployment rate is used to explain that it is the structural and historical feature of a country that determines its frictional and structural employment rates in a given time, thus the natural employment rate too, in the long run. In other words, the natural unemployment rate would explain a not a stable trade-off between the (variables) of inflation and unemployment (thus the monetary policies themselves couldn't reach a proper equilibrium).

We can observe that time is a major reference in modern economic assumptions and for marginalism too<sup>45</sup>; according to the concept of permanent income, people tendency to consume is determined by what they are expecting more than what they are receiving, so Friedman's concept of permanent wage is referring to a long term period: people determines their expected wage by their received wages, and tend to adapt the expectations according to wages effective payments.

Amongst the marginalism theorists, but contrarily to them, Robert Solow exceptionally gave a positive connotation to rigidity of wage. In one of his lectures he explained this conclusion by appealing to the social value of "fairness": he argued that to fix the wage via a pure calculation, supply-demand based, can lead to decreases of wages that are not tolerable from workers neither from employers because of a "long run punishment strategy" coming out as a sort of hobbesian competition<sup>46</sup> that would depress the market positive trends (considering also that employers are not willing to pay to their more productive employees less than how much they worth). Solow's query is on how can we assure job security and wage continuity that people seem to

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<sup>41</sup> Reported in D. Metcalf, cited.

<sup>42</sup> Friedman (1912 – 2006) amongst the founders of the so called Chicago school, stressed the need to concentrate on the monetary aspect of the general economic theory, but to conclude that any expansive policy acting on the monetary level can only reach temporary effects as for the economic balance (because of a given natural unemployment rate).

<sup>43</sup> [IS-LM: An Explanation](#), *Journal of Post Keynesian Economics*, 3 (2) (Winter 1980-81).

<sup>44</sup> Schumpeter (1883-1950) was an economist of the same age as Keynes and one of his main rivals, argued that Keynes' *General Theory* was not a general theory, while it rather expressed "the attitude of a decaying civilisation".

<sup>45</sup> For example, what is fundamental in comparing Keynes to Hicks approaches, that are complementary to some extent, is that they consider different lengths of times: the Hicks' model considers a shorter period (let assume 1 week) against Keynesian model that considers a longer one (one year): Hicks' (pure) predictions on labour market are thus not subjected to the troubles coming up in the consideration of the many circumstances intervening meanwhile.

<sup>46</sup> Decrease in wages would lead to many also indirect, possible retaliations from workers on employers.

want without falling into “gross inefficiency – persistent unemployment”; he argues that cooperation for achieving a higher wage level (than market wage level) passes through several provisions recognising labor as a social institution. He expressly proposes that expansionary fiscal and monetary policy are the way to go when it is a matter of “decreasing unemployment”<sup>47</sup>, but when it comes to the matter of bargaining over the wage, the best way to go would be to include “socially adherent” clauses and concepts coping with incumbent retaliation deriving otherwise from unfair paid wages, thus to go well beyond the rationales of the wage-efficiency-theory (and particularly from the prisoner’s dilemma in choosing the best option).

## 6. What to analyze in order to verify the effects of using HMW and vouchers

After this brief, hopefully respectfully enough, remembrance of the main economic ideas founding our dominant culture, we can come back to the subject of this study, the statutorily fixed hourly wage, and propose some observations in the future examination of its effects.

The most evident “compromise”, perhaps the main contradiction in our dominant culture, is its capability to give answers only in a relatively short period of time: optimal choices cannot be set “forever”. The business is not supposed to survive to his founder anymore and this is requiring much more flexibility in adaptation to new contexts. Now, given that the examination of nor HMW, neither of *vouchers*, would be meaningful if done separately from the examination of the main legislator rationales, we need to link those tools with both equality and the enlarging of the scope of employment, building this way a legal nexus toward the economic hypothesis that stay underneath.

As for equality, shall we consider the perceived (economic) compromise as an obstacle, or as a vehicle, toward equal treatments? Answer is in how we look at equality: as far as we consider *equality in a relationship as a matter of constantly verifying the parties’ agreement within the circumstances*, there we can assume that the compromise of our dominant culture (temporary optimal choice) is a vehicle toward the goal.

Then, specifically for enlarging the scope of employment. Since HMW and *vouchers* are fixing the labor price in an exogenous manner, both market supply and demand will be affected directly by them: in the short period, demand will tend to decrease where market prices are lower than HMW and *vouchers*, while supply will theoretically increase. Because of this, what the Jobs Act is going to positively provoke, is a long term future increase in labor supply, coherently with an active policy for labor, encouraging employment in all its forms and beyond subordinate employment. This is how enlarged personal scope for employment (economic) protection is supposed to be achieved.

Thereafter, to experiment the effect of the new Act will essentially mean to scrutinize the development in numbers of new employment contracts – self employed and not necessarily subordinate, particularly by making a comparison between subordinate and economically dependent only contracts – more than their remunerations, as well as to verify to what extent undeclared working agreement will be paid by *vouchers*.

Moreover, since not the HMW, nor the *vouchers* system, are appreciable as minimum standards just taken by themselves (while they will be appreciable as such by adding a management agreement over working time and possibly other socially appreciable protections, like formative credits, social security provisions, non discriminating policies etc.) another course to scrutinize the impact of the Reform is the way the social parties will develop in such a type of clauses and network contracting. In other words, the legal intervention is essentially linked to the evolution of networking bargaining, since any fixed wage rate doesn’t mean any proper minimum standard to the single worker. So to focus on collective agreements is not a paradox while considering the effect of a legal intervention which is supposed to directly impact on wages rather than on industrial relations.

In this path it would be possible to observe the development over trade unions, public and private agencies’ ability to grant workers’ dignity in term of sufficient and proportionate remuneration, according to also art. 36 Italian Constitution.

While national collective agreements will be of interest as for the inclusion of the workers and employment type of agreement that are now outside the labor market, mostly decentralized (collective) bargaining will need to be considered to scrutinize the content of clauses that will actually build, together with the legal hourly wage, a management in terms maximum hours according to legal provisions, social security and movements within the labor market. We see that these goals are different from merely protecting the workers’ job position, which is

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<sup>47</sup> F. HAYEK, cited, 75, although to estimate consequences for wage (and price) inflation remains problematic.

something that the Job Act doesn't do – while they rather go toward securing a personal dignity going beyond the life of the enterprise .

Since the Act pursues flexibility in and out from the labor market, what can be called as “non standard” collective association and bargaining, development of labor agencies, will play the main part in junction plurality of enterprises, legal rationales, and social security coordination. Traditional membership in trade unions is declining and other forms of association leading to results affecting the employment sphere are increasing. It will be meaningful the way the parties agree on a complex frame of relationship considering part-time jobs, accessory job just managed not aside from the main employment relationships, disclosure the relevant employment relation and its special nexus.

In this path, a particularly interesting point to investigate over is the presence of agreements having possibly *erga omnes* effect – while achieving the minimum standards, instead of agreements that are not applied to everybody (this investigation would be highly relevant for not discriminatory purposes also); this will bring us to consider similarities with the anglo-saxon ruling over “agency-shop”, “union-shop” “closed shop” and right-to-work-laws in general, insofar they deal with uniform treatments<sup>48</sup>.

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<sup>48</sup> C.ROBINSON, Labour Unions, Corporations and right to work laws: impacts on the America economy, 2012, Sociology, Social work & Urban profession faculty research, Paper 2.