

# Part I

## The Crisis as a Crisis of the EU's Identity

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### **There Is No (Legal) Alternative**

*Codifying Economic Ideology into Law*

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### **Introduction**

The purpose of this chapter is to further explore the nature of 'crisis', and how the incorporation of an economic ideology as 'solution' to that crisis in the form of legally binding obligations restricts the ability to pursue alternative courses of action, creating tensions within society. Focusing upon economic doctrine as reflecting ideological positions, the authors consider the way in which the framing of events as 'crises', and thereby establishing them as threats to the current political and economic system, enables political actors to facilitate changes that may not otherwise be politically feasible. In particular, by responding to a crisis through the creation of laws that codify an ideologically guided economic doctrine, a temporary state of crisis creates a permanent legal set of obligations. By doing so, prevailing (if not altogether hegemonic)

political actors are able to delegitimise alternatives to that economic doctrine as falling outside of the rule of law: there is no legal alternative but to follow that legal obligation.

This chapter begins by explaining the theoretical framework guiding the work. It draws from a social constructivist perspective, highlighting the importance of ideas as a means of interpreting events. It combines analysis of structural economic changes with the role of actors in creating and framing narratives surrounding such changes and the ensuing struggles. The proposed thesis holds that while structural changes are analytically observable, there is no single true narrative of social reality, but instead competing and contestable truth claims about the social or political origins of events, what those events mean, and whether they constitute a challenge, an opportunity, or a problem. It also expands upon how economic ideologies, such as those represented in neoclassical economics, reflect ideologically oriented perceptions of the truth of our social and economic world. In so doing, instead of rigidly applying analytical tools and precepts of social constructivism or Marxism to the events described, the chapter adopts a more flexible framework. It builds the theory drawing from tools and precepts of both approaches, thereby creating a theoretical hybrid, which is more convincing in accounting for the complex variety of factors contributing to the understanding of how events can be framed so as to make specific policy choices legally binding – while there may be alternative policy options, there is no *legal* alternative.

The subsequent section further explores how a ‘crisis’ narrative served to structure arguments concerning the nature of the 2008 collapse of key financial institutions and the resulting economic fallout, and the appropriate responses to that perceived ‘crisis’. In this respect, the existence of crisis is not an objective, immutable truth, but instead dependent upon our frames of reference, experiences and

understandings of material events. The section also considers the process by which the existence of a crisis is framed, communicated and acted upon. The rest of the chapter analyses the development of the EU's economic model. The third section traces this development as a response to the perception of systemic economic 'crisis' that resulted from the identification of serious structural problems with the international financial system during the 1970s and the collapse of Bretton Woods. The section then discusses the reframing of this crisis as a legitimacy one, resulting from the alleged state capture by actors such as trade unions; and through to the rise of monetarism and 'balanced budgets' as the basis for legal obligations under the Stability and Growth Pact, granted further impetus by the Maastricht Treaty. The final section considers the economic crash of the mid 2000s, indicating that although this was the result of a myriad of different factors, what was arguably a 'crisis' of private sector lending practices became framed as a crisis of public sector profligacy, with economic ideas concerning 'expansionary austerity' serving as a frame for the reform of the public sector. By the codification of this emergency response to a perceived crisis resulting from imbalanced budgets and high levels of public debt, a permanent state of austerity becomes codified as law, restricting the possibility of attempting alternative economic policies as a means of managing structural problems. The chapter concludes by considering the implication of this – namely the creation of a new legitimacy crisis, in which the top-down, rule-making governance style of government becomes discredited. By creating no alternative in law, unhappy electorates seek alternatives outside of that legal framework, leading to a rise in populist parties, pursuance of referenda as a means of direct democracy, and in

the extreme case of the UK's 'Brexit' from the European Union (EU), a desire to leave that legal regime altogether.<sup>1</sup>

## I The Ideas That Shape Our World: a Framework for Analysis

The central thesis of this chapter is that 'ideas matter'.<sup>2</sup> Fundamental assumptions are important in understanding how certain concepts become codified in law and therefore restrict the policy options of governments. Understanding the contestation between competing ideas that seek to explain phenomena (and in so doing, give them meaning) is the first essential stage in framing social and political conflict. In this sense the approach of this chapter is inspired by a constructivist framework, according to which 'people do one thing and not another due to the presence of certain "social constructs": ideas, beliefs, norms, identities or some other interpretive filter through which people perceive the world'.<sup>3</sup> To put it another way, our interactions with the world, while based in direct engagement with material and objective facts, are filtered through social, cultural and political processes that serve to shape our understanding of the world around us.<sup>4</sup> 'Truth' in social and political matters, 'is not a property of the "world out

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<sup>1</sup> In this context, we refer to the EU's legal order and membership of it, rather than that of the Eurozone, of which the UK is not a member. However, as will be discussed later, perceptions of the impact of the Eurozone crisis among UK voters are believed to have been one of the determinants of the decision to vote 'Leave' in the referendum.

<sup>2</sup> A Wendt, *Social Theory of International Politics* (CUP 1999).

<sup>3</sup> C Parsons, 'Constructivism and Interpretive Theory' in D Marsh and G Stoker (eds), *Theory and Methods in Political Science* (3rd edn, Palgrave Macmillan 2010) 80.

<sup>4</sup> EG Guba and Yvonna S Lincoln, 'Competing Paradigms in Qualitative Research' in NK Denzin and YS Lincoln (eds), *Handbook of Qualitative Research* (SAGE 1994) 110;

there” but, with the exception of purely analytical statements, is always relative to a semantic system’.<sup>5</sup> What this means, for the purpose of this chapter, is that while structural changes and struggles normally (though not necessarily) linger behind a narrative of crisis, the ‘truth’ of it is partial in nature. Different perceptions of the causes and solutions to those structural conflicts (including solutions created by legal reform) give rise to contestations over what constitutes a crisis, and how best to address it.

This brings us to the importance of ideas. As Beland and Cox state, we can consider ideas to be ‘interpretive frameworks that make us see some facts as important and others as less so’.<sup>6</sup> They are the beliefs held by individuals or adopted by institutions that influence their attitudes and actions.<sup>7</sup> Saurugger states that ideas influence policymaking in three specific ways: ‘First, they help to construct the problems and issues that enter the policy agenda; second, they frame the basic assumptions that influence the content of reform proposals; finally, ideas can act as discursive tools that shape reform imperatives.’<sup>8</sup> Of particular relevance to this chapter is the notion that ideas can shape macro-level understandings of the world and how it functions, which we can refer to as ideologies. Ideology is in essence an interpretive frame, which serves to act as a guide to action. In his discussion of Ideological State

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<sup>5</sup> T Christiansen, KE Jorgensen and A Wiener (eds), *The Social Construction of Europe* (SAGE 2001) 3.

<sup>6</sup> F Kratochwil, ‘Constructivism: What It Is (Not) and How It Matters’ in D Della Porta and M Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (CUP 2008) 82.

<sup>7</sup> D Beland and RH Cox, ‘Introduction: Ideas and Politics’ in Daniel Beland and Robert Henry Cox (eds), *Ideas and Politics in Social Science Research* (OUP 2010) 3.

<sup>8</sup> L Emmerij, R Jolly and TG Weiss, ‘Economic and Social Thinking at the UN in Historical Perspective’ (2005) 36 *Development and Change* 211, 214.

<sup>9</sup> S Saurugger, ‘Constructivism and Public Policy Approaches in the EU: From Ideas to Power Games’ (2013) 20 *Journal of European Public Policy* 888, 891.

Apparatuses (hereafter ISA),<sup>9</sup> Althusser argues that ideology refers to the ideology of the ruling class, made manifest through private domain actors such as trade unions, churches, political parties, the media and the family.<sup>10</sup> The analysis conducted by Althusser is Marxist in nature, with the ruling class being synonymous with the capitalist class, and ideology constituting ‘an imaginary assemblage, a pure dream, empty and vain’,<sup>11</sup> an imaginary relationship of individuals to their real conditions of existence.<sup>12</sup> The notion of ISA, and the associated Repressive State Apparatuses (RSA) developed within this framework are useful beyond purely Marxist–structuralist analysis however, and will be expanded upon with regard to the ideological conditions of law. In doing so, we adopt a post-Marxist understanding of ideology as an ideational framework supported by a framing narrative that serves as the interpretive lens for decision-making.

In terms of ideas influencing economic policies, the resurgence of ‘neoclassical’ economic thought has been particularly important historically in framing understandings of the relation between state and market throughout the world, and has served as the basis for market reform in numerous contexts, including the Pinochet dictatorship in Chile and the economic reforms undertaken in South East Asia during the 1980s. The ideas that served as the basis for the economic reforms that have shaped the EU, as well as the international trade system, can be traced back to the establishment of the Mont Pèlerin Society in 1947, which comprised notable economic thinkers such as Milton Friedman, Friedrich Hayek and Ludwig von Mises. For Mirowski

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<sup>9</sup> A useful concept, which shall be returned to in later sections of this work.

<sup>10</sup> Althusser, *On Ideology* (Verso 2008) 17–18.

<sup>11</sup> *ibid* 34.

<sup>12</sup> *ibid* 36.

and Plehwe, the Mont Pèlerin Society can be considered the birthplace of a Neoliberal Thought Collective, or NTC,<sup>13</sup> out of which developed the distinct, yet cross-fertilising, Austrian legal theory school and the Chicago School of neoclassical economics. While German ordoliberalism, already on the rise since the 1930s with roots in authoritarian liberalism and in the legal and political discourse of Carl Schmitt,<sup>14</sup> is often considered to be a distinct form of economic thought, it nevertheless received from this cross-fertilisation a renewed impetus towards developing its core concept of a preordained social market economy.<sup>15</sup> What these schools have in common is a focus upon a small-state, market economy. In this schema, the state would not act as the libertarian 'night watchman', there to preserve private property rights and to protect from foreign invaders, but instead would act as a coercive entity, there to ensure the function of, and indeed removal of barriers to, market activity. The NTC, while not a formal institution, nevertheless constituted an epistemic community,<sup>16</sup> with similar learned experiences and understandings of how economies function. Through the establishment of these informal links, individuals with shared economic views increasingly became seen as the economic mainstream and were successful in gaining positions in academic institutions such as the University of Chicago, as well as in think tanks relied upon by leaders such

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<sup>13</sup> P Mirowski and D Plehwe (eds), *The Road from Mont Pèlerin the Making of the Neoliberal Thought Collective* (Harvard UP 2009); P Mirowski, *Never Let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown* (Verso 2014) 38.

<sup>14</sup> See for example L Vinx, 'Carl Schmitt and the Problem of Constitutional Guardianship' in M Arvidsson, L Brännström and P Minkkinen (eds), *The Contemporary Relevance of Carl Schmitt – Law, Politics, Theology* (Routledge 2016); R Cristi, *Carl Schmitt and Authoritarian Liberalism* (University of Wales Press 1998).

<sup>15</sup> Mirowski (n 13) 42.

<sup>16</sup> On this point, see PM Haas, 'Introduction: Epistemic Communities and International Policy Coordination' (1992) 46 *International Organization* 1.

as Prime Minister Thatcher and President Reagan, namely the Institute of Economic Affairs in the UK and the Heritage Foundation in the US. Both of these think tanks espoused conservative, classical economic ‘solutions’ to the range of crisis ‘problems’, from labour relations to trade between nations, creating the conditions for the existing ideological frame; namely, that it was not the role of the state to coordinate or plan markets, to be successfully contested, but to create the minimum conditions necessary for free markets to operate, with minimal state interference.<sup>17</sup> Friedman in particular served as adviser to both Thatcher and Reagan, and Hayek’s *Road to Serfdom* was highly influential on Thatcher in particular. Thatcher stated that it was ‘the most powerful critique of socialist planning and the socialist state which I read at this time [the late 1940s], and to which I have returned so often’.<sup>18</sup> In this respect, it is important to think of the new wave of economic liberalism, encompassing both neoliberalism and the variant of ordoliberalism, not as an ideology of state reduction, but of state *transformation*.

Within this framework, the role of the state is to support and regulate the margins of market activity. It is not to intervene in the running of markets, but instead to facilitate it. In neoliberalism, this is done through the ‘maximisation of entrepreneurial freedoms within an institutional framework characterised by private property rights . . . the role of the State is to create and preserve an institutional

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<sup>17</sup> V Tanzi, *Government versus Markets: The Changing Economic Role of the State* (CUP 2014) 134; K Birch and A Tickell, ‘Making Neoliberal Order in the United States’ in Kean Birch and Vlad Mykhnenko (eds), *The Rise and Fall of Neoliberalism: The Collapse of an Economic Order?* (Zed Books 2010) 4–5.

<sup>18</sup> R Bourne, ‘Hayek and Thatcher’ (Centre for Policy Studies, 11 September 2012) <[www.cps.org.uk/blog/q/date/2012/09/11/hayek-and-thatcher](http://www.cps.org.uk/blog/q/date/2012/09/11/hayek-and-thatcher)>.

framework appropriate to such practices'.<sup>19</sup> However, some authors have argued that the rise of 'so-called' neoliberal thought has led to an increase in the number of regulatory agencies, and an increase in regulation reflective of a form of regulatory capitalism,<sup>20</sup> and that it is therefore wrong to describe this as neoliberalism. In comparison, Cahill argues that we can refer to 'actually existing neoliberalism', which separates a *laissez-faire* economic doctrine in theory from a top-down managerial form of capitalism in practice.<sup>21</sup> Mirowski disagrees, arguing that the NTC reflected by Friedman in particular never ascribed to *laissez-faire*, and instead saw a role for the state.<sup>22</sup> In this respect, neoliberalism closely mirrors its cousin ordoliberalism, insofar as they both consider the state to have an interventionist role to facilitate market practices based on principles of competition. A different stream of literature, focused on 'statecraft', reaches similar conclusions. It identifies the current evolution of the state as the 'market state', which replaces the previous 'nation state'. While the essential role of the latter was welfare provision to the nation, the emerging market state is strategically focused on maximising economic opportunities for market agents, guaranteeing the basic strategic market infrastructure without unduly interfering with economic competition.<sup>23</sup> The success of this new wave of liberal economic thinking has steadily

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<sup>19</sup> D Harvey, 'Neoliberalism as Creative Destruction' (2007) 610 ANNALS of the American Academy of Political and Social Science 21, 22.

<sup>20</sup> See for example D Levi-Faur, 'The Rise of Regulatory Capitalism: The Global Diffusion of a New Order' (2005) 598 ANNALS of the American Academy of Political and Social Science 12; Braithwaite, *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (Edward Elgar 2008).

<sup>21</sup> D Cahill, *The End of Laissez-Faire?: On the Durability of Embedded Neoliberalism* (Edward Elgar 2015).

<sup>22</sup> Mirowski and Plehwe (n 13).

<sup>23</sup> P Bobbitt, *The Shield of Achilles – War, Peace and the Course of History* (Knopf 2002) 229: '[s]uch a State depends on the international capital markets and, to a lesser

developed in the last thirty years. Its hegemonic status is an expression of the accepted common sense of both state-level policymaking, as well as general public perception. As Monbiot has claimed, 'we're all neoliberals now'.<sup>24</sup>

## II Never Let a Good Crisis Go to Waste: Conceptualisation, Recognition and Facilitation

Since 2008, many authors writing in the diverse fields of European Union studies have referred to the existence of a 'crisis'. Writing in a recent edited volume, legal scholars Chalmers, Jachtenfuchs and Joerges refer to the Eurocrisis as the 'most severe crisis in the history of the EU'.<sup>25</sup> Similarly, the prominent philosopher and sociologist Habermas has written that 'in the current crisis, it is often asked why we should continue to cling to the European Union at all'.<sup>26</sup> Political scientist Majone indeed titled a book *Rethinking*

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degree, on the modern multinational business network to create stability in the world economy, in preference to management by national or transnational political bodies . . . Whereas the nation-state justified itself as an instrument to serve the welfare of the people (the nation), the market-state exists to maximize the opportunities enjoyed by all members of society'; and, expanding on its defining characteristics, 'the market state is largely indifferent to the norms of justice, or for that matter to any particular set of moral values so long as law does not act as an impediment to economic competition' (p 230).

<sup>24</sup> C Monbiot, 'Neoliberalism – the Ideology at the Root of All Our Problems' *The Guardian* (15 April 2016)

<[www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot](http://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot)>; see also D Harvey, *A Brief History of Neoliberalism* (OUP 2007) on neoliberal hegemony.

<sup>25</sup> D Chalmers, M Jachtenfuchs and C Joerges, 'The Retransformation of Europe' in Damian Chalmers, M Jachtenfuchs and C Joerges (eds), *The End of the Eurocrats' Dream: Adjusting to European Diversity* (CUP 2016) 1.

<sup>26</sup> J Habermas, *The Crisis of the European Union: A Response* (Polity 2013) 1.

*the Union of Europe Post-Crisis*.<sup>27</sup> Such statements are not relegated to the academic sphere, however; one only needs to refer to policy documents published by the European Commission in the past eight years to see the term ‘crisis’ being used repeatedly, whether in light of a new policy agenda, known as Europe 2020, in which ‘the crisis is a wake-up call, the moment where we recognise that “business as usual” would consign us to a gradual decline’,<sup>28</sup> or in the context of reforming copyright laws in the digital environment, deemed essential to ensuring the EU’s recovery from financial ‘crisis’.<sup>29</sup> In discussions on the current direction, policies and challenges of the EU, the existence of ‘crisis’ is presupposed, constituting the material state in which the organisation finds itself.

Yet what is a ‘crisis’, and how are we cognisant of the ‘fact’ that one exists? Posing such a question may appear facetious – after all, is it not obvious that we are experiencing one? Whether we focus upon the negative humanitarian consequences of austerity-based politics in Greece,<sup>30</sup> Spain<sup>31</sup> and Portugal,<sup>32</sup> or the plight of Syrian

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<sup>27</sup> C Majone, *Rethinking the Union of Europe Post-Crisis: Has Integration Gone Too Far?* (CUP 2014).

<sup>28</sup> European Commission, ‘Europe 2020: A Strategy for Smart, Sustainable and Inclusive Growth’ (2010) COM(2010) 2020 final 2.

<sup>29</sup> European Commission, ‘A Digital Agenda for Europe’ (2010) COM(2010) 245 final/2 2.

<sup>30</sup> V Ioakimidis and DD Teloni, ‘Greek Social Work and the Never-Ending Crisis of the Welfare State’ (2013) 1 *Critical and Radical Social Work* 31.

<sup>31</sup> M Gili and others, ‘The Mental Health Risks of Economic Crisis in Spain: Evidence from Primary Care Centres, 2006 and 2010’ (2013) 23 *European Journal of Public Health* 103.

<sup>32</sup> D Cairns, K Growiec and N de Almeida Alves, ‘Another “Missing Middle”? The Marginalised Majority of Tertiary-Educated Youth in Portugal during the Economic Crisis’ (2014) 17 *Journal of Youth Studies* 1046.

refugees and their subsequent treatment in countries such as Hungary,<sup>33</sup> is the existence of crises not evident? 'Crisis', it is submitted, is not an impartial and objective assessment of an exogenous phenomenon, an observation of a material fact in the physical realm. While structural changes are analytically observable, they are not in themselves a crisis. A 'crisis' is not an objective fact. Rather, it is contextual and relational. It is contextual insofar as the circumstances in which the event occurs serve to give it meaning. It is also relational, insofar as our prior knowledge, experiences and understandings serve as an interpretive lens, making sense of the material event, and in turn causing us to identify it as a crisis. In order to better understand this, an example may prove useful. Let us take the example of narratives concerning crime. A person taking property that belongs to another is a physical, material act that can be observed. This is an act constituting theft, a crime. But a material fact, one person stealing from another, does not in itself constitute a crisis. Whether it constitutes a crisis is a contextual, relational assessment based on its conceptual construction. Crime was historically not a political issue, but an observable part of life. This appeared to change in the 1970s in the US, when crime began to be discussed in terms of crisis, plague and terror.<sup>34</sup> An observed phenomenon, an apparent increase in crime rates, was conceptually constructed as a crisis, necessitating an urgent political response. While other countries also observed an increase in crime rates at a similar point in time, they

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<sup>33</sup> A Kallius, D Monterescu and P Kumar Rajaram, 'Immobilizing Mobility: Border Ethnography, Illiberal Democracy, and the Politics of the "Refugee Crisis" in Hungary' (2016) 43 *American Ethnologist* 25.

<sup>34</sup> See for example B Page and RY Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (University of Chicago Press 1992); S Iyengar, *Is Anyone Responsible?: How Television Frames Political Issues* (University of Chicago Press 1991); D Gardner, *Risk: The Science and Politics of Fear* (Virgin Books 2008).

did not frame the phenomenon in terms of 'crisis'.<sup>35</sup> Furthermore, even where a crisis is perceived to exist, the causes of, and indeed solutions to that crisis are ultimately interpreted and, then communicated, in terms of the underlying ideological position of the actors constructing the narrative. For example, in the dominant narratives in the US and UK, the causes of crime (and subsequently, crime-related crises) are ultimately related to individual moral failings, the breakdown of social relations and undesirable elements in society.<sup>36</sup> In comparison, in Scandinavia, crime at that point in time was considered to result from collective social failure, relating to socio-economic inequality or lack of opportunities.<sup>37</sup> Solutions also differed – whereas countries like the US and UK adopted penal policies based strongly upon performative punishment, often with zero tolerance policies and harsh prison sentences,<sup>38</sup> countries such as Norway and Sweden focused upon rehabilitative policies, with more lenient prison sentences (or, indeed, alternatives to imprisonment), and the reintegration of offenders into society. Ideology plays a part in this identification, both of crisis and the appropriate responses to it – in the late 1970s, both the US and UK were heavily influenced by more conservative political philosophies, within a liberal framework of personal responsibility and individualism, where individuals should be punished for their failings.<sup>39</sup> Scandinavian countries, in comparison, were largely dominated by centre-left parties based on

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<sup>35</sup> See for example L Zedner, 'In Pursuit of the Vernacular: Comparing Law and Order Discourse in Britain and Germany' (1995) 4 *Social & Legal Studies* 517.

<sup>36</sup> D Garland, 'The Culture of High Crime Societies' (2000) 40 *British Journal of Criminology* 347.

<sup>37</sup> F Estrada, 'The Transformation of the Politics of Crime in High Crime Societies' (2004) 1 *European Journal of Criminology* 419.

<sup>38</sup> K Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (OUP 1999);

<sup>39</sup> Estrada (n 37); Garland (n 36).

socialist principles and social belonging, with policies instead focused on rehabilitation and reintegration.<sup>40</sup>

It is also important to consider how an event or phenomenon becomes understood as constituting a 'crisis'. A crisis is discursively constructed, or as Hay states, 'constituted in and through narrative'.<sup>41</sup> It is subjectively perceived<sup>42</sup> as 'a social event, and therefore is always socially constructed and highly political'.<sup>43</sup> What is, and indeed, what is not a crisis is ultimately determined by the ability of well-placed actors, whether in politics or the media, to successfully identify and communicate the existence of a crisis to their target audience(s). The ability to do so is linked to the dominant ideologies and discourses – those arguments and framings that are coherent within the larger ideological framework dominant in society at that time may be more able to be effectively communicated and accepted by the target audience.<sup>44</sup> Referring to the previous example, where the dominant discourses concerning the way society functions are based in ideas of individualism, self-reliance and personal responsibility, discourses concerning crime tend to be based in ideas of individual fault and personal failing necessitating punishment. Alternatively, where society is understood as a collective endeavour with shared responsibility, rehabilitation may be favoured over harsh prison terms, and public discourse focuses on social causes of crime. In attempting to

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<sup>40</sup> H Von Hofer, 'Crime and Reactions to Crime in Scandinavia' (2005) 5 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 148; T Lappi-Seppälä, 'Penal Policy in Scandinavia' (2007) 36 *Crime and Justice* 217.

<sup>41</sup> C Hay, 'Narrating Crisis: The Discursive Construction of the "Winter of Discontent"' (1996) 30 *Sociology* 253, 254.

<sup>42</sup> *ibid* 255.

<sup>43</sup> A Gamble, *The Spectre at the Feast: Capitalist Crisis and the Politics of Recession* (Palgrave Macmillan 2009) 38.

<sup>44</sup> I Mehta, 'The Varied Roles of Ideas in Politics' in Daniel Beland and Robert Henry Cox (eds), *Ideas and Politics in Social Science Research* (OUP 2010).

understand whether there is a crisis, and if so, what its root causes are, there may be competing ideas represented, with different narratives competing for public acceptance so as to discursively control understanding of that event. As Hay puts it, narratives of crisis 'compete in terms of their ability to find resonance with individual and collective direct, lived experiences, and not in terms of their "scientific" adequacy as explanations for the condition they diagnose'.<sup>45</sup> Hay provides the example of the construction of the 'Winter of Discontent', during which the tabloid media successfully framed the strikes of workers over pay and conditions in 1970s Britain using emotive terms of crisis, with the state being brought to a standstill by selfish actors holding the state to ransom, refusing to bury the dead, collect garbage, allow access to hospitals by patients, or unload food held in storage containers at ports in Liverpool.<sup>46</sup> Similarly, in the US in the 1980s, actors were able to frame job losses and recession combined with an ageing population as constituting a Social Security crisis in which excessive benefit payments and welfare provision to those not deemed to have 'paid in' to the system, rather than as 'a consequence of the failure of fiscal and monetary policies' enacted by successive governments.<sup>47</sup> Media discourses and the acts and statements of high-profile political actors can in turn shape understanding of events, constructing narratives within ideological frames with guideposts for knowledge, persuasion and action.<sup>48</sup>

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<sup>45</sup> Hay (n 41) 255.

<sup>46</sup> *ibid* 261.

<sup>47</sup> Carroll L. Estes, 'Social Security: The Social Construction of a Crisis' 61 *Milbank Memorial Fund Quarterly: Health and Society* 445, 447-48.

<sup>48</sup> See generally DA Schön and M Rein, *Frame Reflection: Toward the Resolution of Intractable Policy Controversies: Toward the Resolution of Intractable Policy Controversies* (Basic Books 1995); VA Schmidt, 'Speaking to the Markets or to the People? A Discursive Institutional Analysis of the EU's Sovereign Debt Crisis' (2014) 16 *British Journal of Politics & International Relations* 188.

Yet just because one actor claims that something is a crisis does not make it one: the construction of a narrative of crisis is a process. In this respect, drawing from the literature on securitisation in international relations can be useful. The framing of an issue as being one which constitutes a security threat is a process, in which a subject, such as 'crime', or 'immigration' is discussed in terms of a security issue. This issue then necessitates a security response in the form of an immediate and exceptional act. However, this cannot be achieved without convincing a target audience, generally considered to be the general public, or policymakers with the ability to accept, legitimise or legislate for this exceptional response.<sup>49</sup> Through studying these processes of framing, communication and acceptance, we can then better understand how security can be used as a concept 'invoked to legitimise contentious legislation, policies or practices that would otherwise not have been deemed legitimate'.<sup>50</sup> Securitisation is the process by which something is constructed as a security threat necessitating a policy response.<sup>51</sup> As stated by Buzan et al., through this process, the issue being interpreted by observers 'becomes a security issue – not necessarily because a real existential threat exists but because the issue is presented as such a threat'.<sup>52</sup> The issue, be it an attack committed by a terrorist organisation, or even the mere existence of that group at all, is securitised through the use of security-framed language, 'as an existential threat,

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<sup>49</sup> B Buzan, O Waever and J de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1997) 41.

<sup>50</sup> AW Neal, 'Securitization and Risk at the EU Border: The Origins of FRONTEX' (2009) 47 *Journal of Common Market Studies* 333, 335.

<sup>51</sup> See for example J Eriksson, 'Observers or Advocates? On the Political Role of Security Analysts' (1999) 34 *Cooperation and Conflict* 311; J Huysmans, 'Defining Social Constructivism in Security Studies: The Normative Dilemma of Writing Security' (2002) 27 *Alternatives: Global, Local, Political* 41.

<sup>52</sup> Buzan, Waever and de Wilde (n 49) 24.

requiring emergency measures and justifying actions outside the normal bounds of political procedure'.<sup>53</sup> Key dimensions of securitisation are urgency and exceptionality; something poses an imminent security threat, thereby requiring an exceptional response to counter that security threat, something that must be accepted as 'true' by the target audience in order for it to be considered as having been securitised.<sup>54</sup> It is submitted that the process by which an event, issue or phenomenon is identified, communicated and accepted as constituting a crisis is analogous with that of securitisation. This process can be considered as one of conceptualisation, communication and facilitation. The first stage, *conceptualisation*, involves the identification of an event or phenomena as constituting a 'crisis' event. The ideological stance of the observer helps to frame that event, identifying what it is about it that creates a crisis, and why. Once the crisis has been conceptualised, the observer must then communicate the existence of a crisis necessitating an immediate and exceptional response in order to counter, combat or recover from that crisis event, with the acceptance of this narrative by the target audience. Another way of putting this is the idea that the crisis creates such uncertainty or instability that extreme measures must be taken; it may not be pleasant, but 'There Is No Alternative'. This is akin to the securitising act in securitisation theory, by which, through discursive appeal, the event is communicated to an audience as a means to persuade them that action is necessary. The final stage is that of *facilitation*; once the event has been accepted as constituting a 'crisis' necessitating an urgent, exceptional response, that exceptional action can be

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<sup>53</sup> *ibid.*

<sup>54</sup> See R Emmers, 'Securitization' in A Collins (ed), *Contemporary Security Studies* (4th edn, OUP 2015).

legitimised, allowing for policies, decisions, or laws to be instigated that would not normally be considered acceptable or possible.

A practical example borrowed from global health governance can illustrate the transferability of this model. In the summer of 2009, the WHO officially declared a state of global pandemic<sup>55</sup> following the outbreak of a new strain of A-N1H1 virus, better known as ‘swine flu’.<sup>56</sup> The outbreak started in Central America, in the state of Veracruz in Mexico, and spread globally, prompting a *conceptualisation* of a state of global health crisis by official governmental authorities. The ensuing increasing anxiety of the international community led to a generalised outcry advocating the adoption of extraordinary measures to avert a potential global health disaster – the *recognition* phase. As a result, massive quantities of A-N1H1 influenza vaccine, subject to ‘fast-track’ emergency approval procedures, were swiftly made available by regulatory agencies. In order to ensure the supply of the vaccine to soothe public opinion, states discharged companies from tort liability in case of damages,<sup>57</sup> and assumed full responsibility for the risks created by the widespread distribution of a not-thoroughly-tested vaccine in their communities – the *facilitation* phase. Yet, the following winter (2009–10), the pandemic gradually started to diminish, and by August 2010, the Director-General of

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<sup>55</sup> See statement to the press by the WHO Director-General, Dr Margaret Chan, <[www.who.int/mediacentre/news/statements/2009/h1n1\\_pandemic\\_phase6\\_20090611/en/index.html](http://www.who.int/mediacentre/news/statements/2009/h1n1_pandemic_phase6_20090611/en/index.html)>.

<sup>56</sup> An interesting reconstruction questioning the constitutional implications of the case for EU health policy is A de Ruijter, ‘The Constitutional Implications of European Public Health Policy’, ACELG Working Paper Series, 2010/05.

<sup>57</sup> The contracts between producers and Member States in the EU for the sale and distribution of A-N1H1 vaccine are characterised, Europe-wide, by the explicit provision of liability exemption clauses. See for example the contract between Novartis and the Italian government <[www.altreconomia.it/allegati/contenuti/phpXkxWOS2095.pdf](http://www.altreconomia.it/allegati/contenuti/phpXkxWOS2095.pdf)>.

the WHO, Dr Margaret Chan, declared the end of the A-N1H1 pandemic.<sup>58</sup> The pandemic could have been much worse, or arguably should have been much worse, in light of the level of alert and social anxiety triggered by the 'crisis' narrative. In the space of one year, the A-N1H1 virus had killed approximately 18,000 people globally.<sup>59</sup> That is about 4 per cent of the 250,000 to 500,000 annual deaths caused by 'regular' influenza.<sup>60</sup> Questions were thus raised about the necessity of states investing billions in the purchase of enormous quantities of a vaccine, the safety and efficacy of which was far from certain. Then, quietly and smoothly, this story slowed down and disappeared.

Within the dominant ideology of western liberal democracy and the system of capitalism fostered within it, we have a plethora of examples of the ways that crisis has been facilitative of actions or policies that might not ordinarily be accepted. From Klein's analysis of the 'shock doctrine', in which natural disasters such as Hurricane Katrina, wars as in Iraq and acts of terror serve to open up new 'markets' to significant economic reform along neoliberal lines,<sup>61</sup> to Lowenstein's work on 'disaster capitalism', where the provision of nominally state functions are privatised as a response to a perceived crisis, be it the existence of large numbers of refugees to be 'resettled' off the Australian coast or the housing of asylum seekers in the UK (and the 'cost to the taxpayer' that this would entail),<sup>62</sup> the successful construction of a crisis narrative

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<sup>58</sup> See

<[www.who.int/mediacentre/news/statements/2010/h1n1\\_vpc\\_20100810/en/index.html](http://www.who.int/mediacentre/news/statements/2010/h1n1_vpc_20100810/en/index.html)>.

<sup>59</sup> By late July 2010, the WHO was still considering the virus a pandemic, on the basis of the same statistics: see the relevant documents available at

<[www.who.int/csr/disease/swineflu/en](http://www.who.int/csr/disease/swineflu/en)>.

<sup>60</sup> WHO fact sheet communication No 211, April 2009, *ibid*.

<sup>61</sup> N Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Penguin 2008).

<sup>62</sup> A Loewenstein, *Disaster Capitalism: Making a Killing Out of Catastrophe* (Verso 2015).

allows for the enactment of policies it may otherwise be difficult to legitimise. Furthermore, by using this opportunity to make an idea legally binding, the question of solutions is changed from a political one to a legal one – what is legally permitted as a response to a crisis, and what is legally prohibited? Law can therefore be used to depoliticise a particular issue, taking it out of the venue of political debate and discourse, and moving it into the realm of technical rule-making and application. By using ideas ‘as weapons’,<sup>63</sup> contesting ideas, and in the context of this chapter, economic ideologies can therefore be depoliticised and, ultimately, delegitimised; through the use of the legal system, it can then be ensured that There Is No (Legal) Alternative. Yet, this is not the end of political contestation, which can hardly ever come to a definitive halt. Instead, by normatively excluding the possibility of change from the constitutional order, one runs the risk of destabilising that order altogether, as the legal responses and constraints facilitated by these discourses serve to delegitimise those legal frameworks. If, as these arguments run, there is no legal alternative within the existing system of governance, opponents to that system will instead argue for the dissolution or disengagement from that system, as we shall further explore in considering the UK’s decision to withdraw from the EU, as well as the rise of anti-EU rhetoric in political campaigning.

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<sup>63</sup> M Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (CUP 2002).

### III From Bretton Woods to Maastricht: Monetarism as Ideology, Monetarism as Law

It is possible to reconceptualise the development of the EEC, and now the EU, in terms of integration as a response to perceived crisis, and crisis as a facilitator of change. The 1970s was a period of significant political-economic upheaval. Since the end of the Second World War, many industrialised nations not part of the Soviet Union were party to the Bretton Woods Agreement, which was initially negotiated between the Allied powers in 1944, and which Germany gained membership of after the war was over. Bretton Woods formalised a monetary policy in which the US dollar was 'equated' with gold,<sup>64</sup> and national currencies pegged to the value of the US dollar as a means of ensuring international currency stability.<sup>65</sup> The key objective of the Bretton Woods Agreement, according to Ruggie, was to create an international economic order based on embedded liberalism,<sup>66</sup> in which a compromise was established, ensuring free-flowing trade between states while allowing nation states to intervene in their domestic economies to mitigate the impact of that trade. This domestic intervention was Keynesian in nature,<sup>67</sup> itself based on an internal compromise between the perceived interests of labour and capital; a corporatist model involving state planning, administrative bureaucratisation and corporate management on the basis of increasing

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<sup>64</sup> JG Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 *International Organization* 379, 406.

<sup>65</sup> E Helleiner, 'The Evolution of the International Monetary and Financial System' in John Ravenhill (ed), *Global Political Economy* (4th edn, OUP 2014) 178.

<sup>66</sup> Ruggie (n 64) 393.

<sup>67</sup> VA Schmidt and M Thatcher, 'Theorizing Ideational Continuity: The Resilience of Neo-Liberal Ideas in Europe' in VA Schmidt and M Thatcher (eds), *Resilient Liberalism in Europe's Political Economy* (CUP 2013) 10.

productivity with social welfare provision and collective bargaining.<sup>68</sup> In this system, trade unions, in particular, played an important role, cooperating in the management of wages in response to economic fluctuations.<sup>69</sup> Within this framework, the state was the *dirigiste* state,<sup>70</sup> responsible for guiding, shaping and managing the economy.<sup>71</sup> During this period, beginning in the early 1950s and ending in the 1970s, impressive growth rates in the US, Europe and Japan led to this compromise being tolerated by corporate entities, if not welcomed with entirely open arms.

At this time, according to Mirowski, the Mont Pèlerin Society members were something of a downbeat and disenfranchised group, relegated to the sidelines of economic thinking as a result of their support for free market solutions to the Great Depression and the subsequent rise of Keynesian interventionist policies.<sup>72</sup> Those classical liberal economic ideas, which the Mont Pèlerin economists claimed to adhere to, were ones in which the international financial system was underwritten by a system based on an international gold standard. States could use the gold standard as a basis for the valuing of their currencies, but this also allowed for currency depreciation and 'beggar-thy-neighbour' economic strategies. Undermined by their apparent ineffectiveness during the early 1930s, the failing of these classical economic ideas resulted in a legitimacy crisis of the old order. Their ineffectiveness, which, as Judt argues, 'seemed to Americans especially to be the root source of the European (and

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<sup>68</sup> See for example R Cox, 'Labour and Hegemony' (1977) 31 International Organization 385.

<sup>69</sup> A Hassel, 'Trade Unions and the Future of Democratic Capitalism' in P Beramendi and others (eds), *The Politics of Advanced Capitalism* (CUP 2015) 245.

<sup>70</sup> Or, in statecraft terms, the welfare providing nation state – see Bobbit (n 23).

<sup>71</sup> RB Du Boff, 'The Decline of Economic Planning in France' (1968) 21 The Western Political Quarterly 98, 98.

<sup>72</sup> Mirowski (n 13) 6–7.

world) crisis',<sup>73</sup> in particular allowed for the contestation of dominant economic ideologies, resulting in the shift from a classical economic model to a Keynesian one. In other words, the Bretton Woods Agreement, and the domestic economic policies that followed, were based in a post-war consensus, with 'the centre of gravity of political argument in the years after 1945 [lying] not between left and right but rather *within* the left: between communists and their sympathisers and the mainstream liberal-social-democratic consensus'.<sup>74</sup> The dominant discourse of political economy, the idea shaping economic conduct, was that of liberal interventionism. The role of states was to intervene in markets so as to ensure their continued functioning for the achievement of public policy goals such as social stability. Economics and politics were intertwined, and co-dependent.

By the 1970s, however, perceptions had shifted substantially. The war in Vietnam, combined with a rapidly growing US federal budget deficit, were seen as no less disastrous for the US economy due to an outflow of US dollars that exceeded the amount of gold possessed by the US.<sup>75</sup> Concerns over a possible recession in the US and international speculation against the dollar resulted in President Nixon unilaterally devaluing the currency, cutting its link to the value of gold, effectively breaking up the Bretton Woods system.<sup>76</sup> This collapse, both in Bretton Woods specifically, as well as in confidence in the system of international trade with a fixed currency exchange, resulted

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<sup>73</sup> T. Judt, *Postwar: A History of Europe Since 1945* (Vintage 2010) 107.

<sup>74</sup> T. Judt, *Ill Fares the Land: A Treatise on Our Present Discontents* (Penguin 2011) 92.

<sup>75</sup> Judt (n 73) 454; I. Shaoul, 'Defeating Neoliberalism: A Marxist Internationalist Perspective and Programme' in K. Birch and V. Mykhnenko (eds), *The Rise and Fall of Neoliberalism: The Collapse of an Economic Order?* (Zed Books 2010) 242.

<sup>76</sup> D. Harvey, *The Enigma of Capital: And the Crises of Capitalism* (Profile Books 2011) 32.

in the UK devaluing its currency in 1972, followed by France in 1973, and the establishment of a new floating-rate system; the cost of this, ultimately, was inflation.<sup>77</sup> The 'Oil Shock' of 1973, a consequence of an embargo imposed by the Organisation of Arab Petroleum Exporting Countries, resulted in the cost of oil quadrupling. The inaccessibility of these energy supplies resulted in drops in industrial output in affected countries, lowering gross domestic product (GDP). This combination of low-to-nil economic growth (stagnation) with the inflation caused by the collapse of Bretton Woods led to a phenomenon referred to as stagflation, defined by Blyth as a situation in which 'wages/prices (inflation) and unemployment rose together'.<sup>78</sup> The Keynesian consensus broke down. Economic instability allowed for contesting voices to emerge, raising economic arguments considered fringe until then, claiming that the events being witnessed constituted a major structural and systemic crisis within Keynesian economics. The resolution of this crisis, these voices argued, must be found outside the Keynesian orthodoxy, which had rapidly become discredited.<sup>79</sup> This was, in part, because events 'seemed to show that unemployment and inflation could coexist, which was extremely unlikely in Keynesian theory'.<sup>80</sup> The ideas of the Mont Pèlerin Society, previously at the margins of policymaking, became newly influential as policymakers and sought alternatives to the Keynesian model.

How did this progressive shift impact Europe? Originally, the Treaty of Rome establishing the European Economic Community and its relevant institutions such as

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<sup>77</sup> Judt (n 73) 454; Ö Orhangazi, 'Financialization and the Nonfinancial Corporate Sector' in U Mattei and JD Haskell (eds), *Research Handbook on Political Economy and Law* (Edward Elgar 2015) 140.

<sup>78</sup> M Blyth, *Austerity: The History of a Dangerous Idea* (OUP 2013) 40.

<sup>79</sup> See in particular RE Lucas, 'Econometric Policy Evaluation: A Critique' (1976) 1 Carnegie-Rochester Conference Series on Public Policy 19; Tanzi (n 17) 132–33.

<sup>80</sup> Blyth (n 78) 41.

the European Court of Justice, laid down the prohibition on tariffs, quantitative restrictions and national measures ‘having equivalent effect’ on trade, with a transitional period ending 1 January 1970.<sup>81</sup> Despite this general framework, however, economic policies were national in nature, based on the Keynesian compromise between the socialist state and capitalist production.<sup>82</sup> Within this framework, regulation was an issue of national, and indeed state public policy; for Laffont, regulation in this model was ‘the public economics face of industrial organisation. It explored the various ways in which governments interfere with industrial activities for the good or for the bad’.<sup>83</sup> This is the golden age of what Ogus refers to as ‘command-and-control’ regulation, laid down and enforced exclusively by the state.<sup>84</sup> Distinct from the discourse of neoliberalism, in which the ‘interference’ of the state in market activities could always be considered bad, this was not a given under Keynesian policies. For the EEC states in particular, the US and Japan were perceived as having weathered the turbulence of the mid 1970s much more effectively.<sup>85</sup> This was considered to be the result of both the US and Japan representing unified state entities, whereas the EEC was characterised by national divergences in preferences and policies, resulting in the often-cited ‘Eurosclerosis’ typifying this period of European integration.<sup>86</sup>

<sup>81</sup> M Egan, *Constructing a European Market* (OUP 2001) 41

<sup>82</sup> S Strange, *States and Markets* (Bloomsbury Academic 2015) 128.

<sup>83</sup> J Laffont, ‘The New Economics of Regulation Ten Years After’ (1994) 62  
*Econometrica* 507, 507.

<sup>84</sup> A Ogus, *Regulation: Legal Form and Economic Theory* (Hart 2004) 79.

<sup>85</sup> W Sandholtz and J Zysman, ‘1992: Recasting the European Bargain’ (1989) 42  
*World Politics* 95, 109–10.

<sup>86</sup> R Keohane and S Hoffmann, *The New European Community: Decisionmaking and Institutional Change* (Westview Press 1991) 6–8.

The Trilateral Commission, a non-governmental think tank established in 1973 by David Rockefeller, issued a report in 1975 that was significantly influential in changing the understandings of the EEC Member States regarding economic policy. The title of the report is indicative of its findings, referring as it does to 'the crisis of democracy'.<sup>87</sup> Europe was considered increasingly ungovernable due to an 'overload' of participants with conflicting demands, and being overly bureaucratic<sup>88</sup> - the task was now to replace its corporatist models with 'more flexible models that could produce more social control with less coercive pressure'.<sup>89</sup> To do so, it would be necessary to relocate responsibilities away from states, and towards markets.<sup>90</sup> By framing the events of the 1970s as the result of a crisis of democracy, and indeed a legitimacy crisis in which the old model was discredited and a new model needed, these phenomena could be *conceptualised* as crisis-inducing, *recognised* by policymakers as a problem in need of a solution, *facilitating* significant ideational and policy change.

In Europe, this restructuring along market lines began with the actions of the European Court of Justice, through its case law implementing the free movement of goods and services, and the removal of state barriers to trade, and facilitation of both mutual recognition and inter-state competition.<sup>91</sup> It is for this reason that some

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<sup>87</sup> M Crozier, SP Huntington and J Watanuki, 'The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission' (1975).

<sup>88</sup> *ibid* 12.

<sup>89</sup> *ibid* 55.

<sup>90</sup> CJ Bickerton, *European Integration: From Nation-States to Member States* (OUP 2012) 94.

<sup>91</sup> Majone (n 27) 99-100; M Thatcher, 'Supranational Neo-Liberalisation: The EU's Regulatory Model of Economic Markets' in VA Schmidt and M Thatcher (eds), *Resilient Liberalism in Europe's Political Economy* (CUP 2013) 186; SK Schmidt, 'The Shadow of Case Law: The Court of Justice of the European Union and the Policy Process'

commentators have argued that the Court has been a 'neoliberal' actor,<sup>92</sup> enshrining (or, as Weiler puts it, constitutionalising)<sup>93</sup> the logic of market-based solutions and economic reasoning into the EU legal order.<sup>94</sup> This approach was not restricted to the negative integration of the Court, however, but extended into the rationale of positive integration through market re-regulation taken by the European Commission and Council.<sup>95</sup> Furthermore the European Council, originally an informal meeting of the heads of state of EEC countries, was influential in the development of a European Monetary System during its summits in 1978 in Copenhagen, Bremen and Brussels.<sup>96</sup> The Trilateral Commission's report identifying the roots of crisis in an overabundance of democracy facilitated a situation in which the states party to the EEC could make their voices more effectively heard. Ostensibly intended as a means of coordinating their international response to pressing issues,<sup>97</sup> this resulted in their inclusion as a formal institution within the European organisational structure, referenced in the Single

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in J Richardson and S Mazey (eds), *European Union: Power and Policy-making* (4th edn, Routledge 2015).

<sup>92</sup> See for example W Sandholtz and J Zysman, '1992: Recasting the European Bargain' (1989) 42 *World Politics* 95; L Hooghe and G Marks, 'The Making of a Polity: The Struggle Over European Integration' in Herbert Kitschelt (ed), *Continuity and Change in Contemporary Capitalism* (CUP 1999); M Thatcher, 'Supranational Neo-Liberalisation: The EU's Regulatory Model of Economic Markets' in VA Schmidt and M Thatcher (eds), *Resilient Liberalism in Europe's Political Economy* (CUP 2013); Cahill (n 21).

<sup>93</sup> J Weiler, 'The Transformation of Europe' (1991) 100 *Yale Law Journal* 2403.

<sup>94</sup> JP McCormick, *Weber, Habermas and Transformations of the European State: Constitutional, Social, and Supranational Democracy* (CUP 2007) 259.

<sup>95</sup> See generally F Scharpf, *Governing in Europe: Effective and Democratic?* (OUP 1999).

<sup>96</sup> E Murlon-Druol, 'Steering Europe: Explaining the Rise of the European Council, 1975–1986' (2016) 25 *Contemporary European History* 409, 410.

<sup>97</sup> *ibid* 413.

European Act and included formally as an EU institution in the Treaty of Lisbon. Indeed, according to Murlon-Druol, of the issues discussed by the European Council between 1975 and 1986, macroeconomic policy was the most common.<sup>98</sup> The election of Margaret Thatcher in 1979, and her 'there is no alternative' approach to economic reform, combined with the Mitterrand reforms in 1983, was considered to be the point at which the conditions for broader financial liberalisation in the European Community were set.<sup>99</sup>

The continuing codification of an economic ideology as legally binding obligations was given impetus by the 1985 European Council summit in Milan. According to the European Council conclusions, measures that should be pursued by the Community included the liberalisation of capital movements, the creation of a free market for financial services and the continuing removal of barriers to trade.<sup>100</sup> In the Commission's 'White Paper: Completing the Internal Market' published subsequently to the Milan summit, it was stated that actions should be taken to create 'a more favourable environment for stimulating enterprise, competition and trade'.<sup>101</sup> Demonstrating the impact on policymakers represented by the ideational shift from Keynesianism to neoclassical/neoliberal thought, the Commission concluded that 'a well developed free trade area offers significant advantages: it is something much better than that which existed before the Treaty of Rome'.<sup>102</sup> The resulting Single European

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<sup>98</sup> *ibid* 416.

<sup>99</sup> E Helleiner, 'A Bretton Woods Moment? The 2007–2008 Crisis and the Future of Global Finance' (2010) 86 *International Affairs* 619, 626–27.

<sup>100</sup> European Council, Conclusions of the European Council 28 and 29 June 1985 in Milan (1985) 9.

<sup>101</sup> European Commission, 'White Paper: Completing the Internal Market' (European Commission 1985) COM(85) 310 final, para 21.

<sup>102</sup> *ibid* 220.

Act, signed in Luxembourg in 1986, facilitated the liberalisation of financial services desired by the European Council members, 'altering the systemic relationships that govern monetary policy making',<sup>103</sup> empowering central banks by making them independent from governments. The goal was to ensure that 'irresponsible' governments could not abuse fiscal policy, reflected in increases in public debt: 'identified as the source of economic problems . . . the remedies were identified in the realm of monetary policy'.<sup>104</sup> These actions served to separate the discursive links between politics and economics, with economic activity considered a largely technocratic or expert-led exercise, in which undue political influence could result in inefficiencies or distortions of that distinct sphere of activity.

The Economic and Monetary Union (EMU) was the next step in preventing the future likelihood of this 'problem' (regarded as being responsible for the crises of the 1970s), codifying economic ideology concerning monetary policies into legally binding obligations. The Delors Report, named after Commission President Jacques Delors, published in 1989, linked the idea of EMU as functionally linked to the internal market, and indeed necessary for its completion. Indeed, a report issued the following year, entitled 'One Market, One Money' made the case that 'if the move to EMU were not to take place . . . capital market liberalisation would not be achieved or maintained'.<sup>105</sup> The Delors Report regarded the economic shocks of the 1970s as damaging to the process of

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<sup>103</sup> K Dyson, K Featherstone and C Michalopoulos, 'Strapped to the Mast: EC Central Bankers between Global Financial Markets and Regional integration' (1995) 2 *Journal of European Public Policy* 465, 446.

<sup>104</sup> *ibid* 482.

<sup>105</sup> European Commission, 'One Market, One Money: An Evaluation of the Potential Benefits and Costs of Forming an Economic and Monetary Union' (1990) 44 17.

European integration.<sup>106</sup> EMU, characterised by the free movement of capital, locked exchange rates and a single currency, would help to prevent these shocks in the future, it was reasoned, as it would prevent market manipulation and currency wars between the Member States. However, as McNamara argues, the implementation of EMU through the Maastricht Treaty represented the realisation of a neoliberal consensus, namely that the goal of economic coordination was to achieve anti-inflationary monetary policies and the limitation of public spending deficits,<sup>107</sup> discouraging state intervention in market activity not only politically, but legally.

Mann refers to this process at the EU level as being the constitutionalisation of economic doctrine through rules-based approaches to monetary policy, strictly limiting governmental discretion, providing the example of the EU's 'aggressive' price stability requirements.<sup>108</sup> The economic shocks of the 1970s, perceived as a crisis caused by stagflation (i.e. lack of growth combined with inflation) resulted in a collapse of market confidence, and indeed, a collapse of confidence in Keynesian economics. A distrust of 'big government', related to Nixon's domestic spending, resulted in the 'solution' to the crisis: reining in public spending as a means of combating inflation. Indeed, in a Council Regulation known as the Stability and Growth Pact,<sup>109</sup> (SGP) the very first recital states that the SGP is based on 'the objective of sound government finances as a means of

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<sup>106</sup> Committee for the Study of Economic and Monetary Union, 'Report on Economic and Monetary Union in the European Community' (1989) 7.

<sup>107</sup> KR McNamara, *The Currency of Ideas: Monetary Politics in the European Union* (Cornell UP 1998).

<sup>108</sup> G Mann, 'Hobbes' Redoubt? Toward a Geography of Monetary Policy' (2010) 34 *Progress in Human Geography* 601, 611.

<sup>109</sup> Council Regulation (EC) 1466/97 of 7 July 1997 on the strengthening of the surveillance of positions and the surveillance and coordination of economic policies [1997] OJ L209.

strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation'. This was then codified in the Lisbon Treaty, with the consolidated version of the Treaty on European Union stating in Article 3(3) that one of its core objectives is the sustainable development of Europe through 'balanced economic growth and price stability', with the effect of 'locking-in political commitments to orthodox market-monetarist fiscal and monetary policies that are perceived to increase government credibility in the eyes of financial market players'.<sup>110</sup> In this system, referred to by Gill as 'disciplinary neoliberalism',<sup>111</sup> even should EU Member States wish to pursue alternate economic policies or goals, there is no legal alternative.

## IV A New Crisis, A New Challenge: When There Is No Legal Alternative, Brexit Stage Left?

The global financial crisis of the mid 2000s is perceived to have begun with the collapse of the subprime mortgage market: economically vulnerable homeowners, who had been granted loans despite dubious creditworthiness, struggled to make their monthly repayments as a result of higher interest rates and falling property prices.<sup>112</sup> However, as Blyth astutely points out, numerous different academic explanations of what happened, and who is to blame, have been given.

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<sup>110</sup> Cahill (n 21) 113.

<sup>111</sup> See generally S Gill, 'Constitutionalising Capital: EMU and Disciplinary Neoliberalism' in A Bieler and A David Morton (eds), *Social Forces in the Making of the New Europe* (Palgrave Macmillan 2001).

<sup>112</sup> D Hodson and L Quaglia, 'European Perspectives on the Global Financial Crisis: Introduction' (2009) 47 *Journal of Common Market Studies* 939, 940.

The crisis is both overexplained and overdetermined . . . for example, three excellent books on the crisis stress, respectively, increasing income inequality . . . the captured nature of financial regulation, and the political power of finance. Each book certainly captures an important aspect of the crisis. But are these factors absolutely necessary to adequately explain it?<sup>113</sup>

That the systemic spread of financial instability, resulting in the collapse of Lehman Brothers in the US and the revelations of significantly overleveraged European banking institutions loaded with ‘junk’ debt, was perceived as a ‘crisis’ internationally is both clear and indisputable. In addition to the statements of leading EU officials mentioned earlier in this chapter, figures such as the then US presidential candidate Barack Obama declared that ‘the economic crisis we face is the worst since the Great Depression’.<sup>114</sup> Similarly, Ben Bernanke stated in 2009 that ‘the current crisis has been one of the most difficult financial and economic episodes in modern history’.<sup>115</sup> What is clear, however, is that the crisis had its origins in the practices of private sector institutions.<sup>116</sup> As Beck states with regard to the perception of the crisis in Europe however, the surface view of policymakers has been that it instead ‘revolves around

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<sup>113</sup> Blyth (n 78) 22.

<sup>114</sup> **B Obama**, ‘US Election: Full Text of Barack Obama’s Speech on the Economy’ The Guardian (13 October 2008) <[www.theguardian.com/world/2008/oct/13/uselections2008-barackobama](http://www.theguardian.com/world/2008/oct/13/uselections2008-barackobama)>.

<sup>115</sup> **B Bernanke**, ‘Four Questions about the Financial Crisis’ Board of Governors of the Federal Reserve System (14 April 2009) <[www.federalreserve.gov/newsevents/speech/bernanke20090414a.htm](http://www.federalreserve.gov/newsevents/speech/bernanke20090414a.htm)>.

<sup>116</sup> As convincingly argued by **S French**, **A Leyshon** and **N Thrift**, ‘A Very Geographical Crisis: The Making and Breaking of the 2007–2008 Financial Crisis’ (2009) 2 Cambridge Journal of Regions, Economy and Society 287.

debts, budget deficits and problems of finance'.<sup>117</sup> For Angela Merkel in particular, the crisis was the result of 'cheap money' and profligate state spending, which therefore required that states tighten their belts.<sup>118</sup>

Indeed, as with previous crises, the crisis of the mid 2000s allowed for new ideas to influence policy responses to it. Unlike the paradigm shift represented by the change from Keynesian to neoliberal economic policies (including the ordoliberal offshoot), here the ideas forming the cognitive filter served to reinforce existing preconceptions regarding the role of the state in economic policy. From the work of Reinhart and Rogoff that dominated policy circles in the US, in which it was argued that accumulation of public sector debt resulted in decline in growth,<sup>119</sup> to that of the 'Bocconi Boys' in Milan who argued for 'expansionary austerity' as a means to counter financial crisis,<sup>120</sup> prominent economically liberal thinkers were able to successfully argue that the *perceived* crisis was a crisis fuelled by public sector debts and deficits, a fact then *recognised* by policymakers, resulting in the *facilitation* of new legal changes.

According to Blyth, the Bocconi University of Milan public finance economics thinking began with the work of Luigi Einaudi in the early twentieth century, as a hybrid

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<sup>117</sup> U Beck, *German Europe* (Rodney Livingstone tr, Polity 2014) 20.

<sup>118</sup> Blyth (n 78) 52.

<sup>119</sup> CM Reinhart and KS Rogoff, 'Growth in a Time of Debt' (2010) 100 *American Economic Review* 573; CM Reinhart and KS Rogoff, 'The Aftermath of Financial Crises' (National Bureau of Economic Research 2009) Working Paper 14656 <[www.nber.org/papers/w14656](http://www.nber.org/papers/w14656)>; for criticism of their modelling, see J Cassidy, 'The Reinhart and Rogoff Controversy: A Summing Up' <[www.newyorker.com/online/blogs/johncassidy/2013/04/the-rogoﬀ-and-reinhart-controversy-a-summing-up.html](http://www.newyorker.com/online/blogs/johncassidy/2013/04/the-rogoﬀ-and-reinhart-controversy-a-summing-up.html)>.

<sup>120</sup> O Helgadóttir, 'The Bocconi Boys Go to Brussels: Italian Economic Ideas, Professional Networks and European Austerity' (2016) 23 *Journal of European Public Policy* 392.

of the Ordoliberal school of economic liberalism and public choice economics.<sup>121</sup> The role of the state, according to this way of thinking, is to expand the boundaries of the market, facilitate competition and create ‘the legal and political milieu in which men can organise, invent and produce’.<sup>122</sup> Blyth argues that it is a new generation of economics professors at Bocconi, such as Alberto Alesina and Francesco Silvia Ardagna, who have substantially influenced the EU’s current policies, and subsequent law reforms, in light of the crisis.<sup>123</sup> Austerity, namely the cutting of public expenditure, would allow for economic expansion as the private sector moves to fill the gap, their line of thinking runs. Instead of raising taxes, or taking on more debt in order to facilitate public works programmes and ensure employment, as the Keynesian consensus argued in the mid-twentieth century, states should instead ‘combine spending cuts in transfers, welfare programs and the governmental wage bill’.<sup>124</sup>

This can be seen most clearly in the case of Greece, as well as in Ireland, Italy, Spain and Portugal. Despite criticisms over the methodology and strength of their findings that led to state reforms based in cutting budgets,<sup>125</sup> and indeed the entire concept of ‘expansionary austerity’,<sup>126</sup> the work of Alesina and Ardagna was presented at a 2010 ECOFIN meeting in Madrid, and was highly influential on the European Central Bank, resulting in their support of state budgetary cuts.<sup>127</sup> In the media, as well

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<sup>121</sup> Blyth (n 78) 165–66.

<sup>122</sup> F Forte and R Marchionatti, ‘Luigi Einaudi’s Economics of Liberalism’ (Centro di Studi sulla Storia e i Metodi dell’Economica Politica 2010) 02/2010 24.

<sup>123</sup> Blyth (n 78) 167.

<sup>124</sup> A Alesina and S Ardagna, ‘Tales of Fiscal Adjustment’ (1998) 13 *Economic Policy* 488, 490.

<sup>125</sup> Blyth (n 78) 175.

<sup>126</sup> See for example J Guajardo, D Leigh and A Pescatori, ‘Expansionary Austerity: New International Evidence’ (International Monetary Fund 2011) WP/11/58.

<sup>127</sup> Blyth (n 78) 175–76.

as the corridors of power in Berlin and Brussels, the Greek case in particular was presented as one which consisted of a lazy and bloated public sector, incredible inefficiencies and an overly generous state pension system, all made possible as a result of successive Greek governments having easy access to capital because of membership of the Euro,<sup>128</sup> rather than as the result of significant macroeconomic imbalances and structural faults within the Euro monetary system itself. The European Commission, European Central Bank and International Monetary Fund, known as the Troika, implemented a system to 'bail out' Greece, as the financial markets were unwilling to do so. With a budget deficit of 13 per cent and debts of 120 per cent of GDP, within the monetarist system dominating economic thought since the Bretton Woods collapse, the Greek state was not considered credible or creditworthy. However, the bailouts given to Greece and the other 'debtor' states came with 'strict conditionality'. This conditionality was required with Germany as the 'indispensable nation',<sup>129</sup> with scholars agreeing that 'German power, interests and ideas would be crucial in determining whether EMU would fail, continue to muddle through or be put on a more sustainable path'.<sup>130</sup> Rather than focus on systemic reform, including the fabled 'eurobonds', which would allow investors to grant money to the Eurobloc as a whole, which would then apportion it to individual states requiring financial aid, Germany instead focused on structural adjustments to individual countries, within a narrative frame in which the countries of

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<sup>128</sup> Y Kitromilides, 'Stories, Fables, Parables, and Myths: Greece and the Euro Crisis, Toward a New Narrative' (2013) 47 *Journal of Economic Issues* 623, 628.

<sup>129</sup> R Sikorski, 'I Fear Germany's Power Less than Her Inactivity' *The Financial Times* (28 November 2011) <[www.ft.com/content/b753cb42-19b3-11e1-ba5d-00144feabdc0](http://www.ft.com/content/b753cb42-19b3-11e1-ba5d-00144feabdc0)>; see also Harold James, 'Cosmos, Chaos: Finance, Power and Conflict' (2014) 90 *International Affairs* 37.

<sup>130</sup> M Matthijs, 'Powerful Rules Governing the Euro: The Perverse Logic of German Ideas' (2016) 23 *Journal of European Public Policy* 375, 376.

Northern Europe were prudential saints, and Southern Europe, profligate sinners.<sup>131</sup>

According to Merkel, there was no alternative. ‘The rules must not be oriented toward the weak, but toward the strong. That is a hard message. But it is an economic necessity.’<sup>132</sup> As with the creation of the price stability rules in the Growth and Stability Pact, however, it is one thing for something to be necessary; it is another to ensure that there is no *legal* alternative.

The first set of legal changes was the ‘Six Pack’ of laws passed in 2011. The Six Pack comprised three Regulations<sup>133</sup> and one Directive<sup>134</sup> intended to increase compliance with the Stability and Growth Pack Requirements, and two Regulations intended to ensure the prevention of macroeconomic imbalances and enforcement actions to ‘correct’ excessive macroeconomic imbalances in the Euro area.<sup>135</sup> In 2013,

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<sup>131</sup> See M Matthijs and K McNamara, ‘The Euro Crisis’ Theory Effect: Northern Saints, Southern Sinners, and the Demise of the Eurobond’ (2015) 37 *Journal of European Integration* 229.

<sup>132</sup> Chancellor Angela Merkel, as quoted in James (n 129) 530.

<sup>133</sup> Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 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 L306/12; Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [2011] OJ L306/33; Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area [2011] OJ L306/1.

<sup>134</sup> Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States [2011] OJ L306/41.

<sup>135</sup> Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L306/25; Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area [2011] OJ L306/8.

two further Regulations<sup>136</sup> were passed, which provided for closer budgetary scrutiny and coordination. According to Chalmers, this legislation serves to hem in states ‘with a hedgerow of constraints and procedures’<sup>137</sup> based on the identification of the public goods of ‘low debt, balanced budgets and balanced economic performance’.<sup>138</sup> In other words, economic policies based on an ideology of market liberalism and monetarism become codified as legally binding obligations, ensuring that, while competing economic visions may contest the use of these measures as a way of securing both the exit from ‘crisis’ as well as growth post-crisis, it is not possible to pursue such action. While there may be alternatives that could be pursued by national governments, there is no *legal* alternative.

These obligations, imposed during a time of perceived crisis, then facilitate a permanent legal change, in which the state of emergency becomes the ‘normal’ of legal provisions, requiring that this budgetary surveillance and compliance remains post-crisis, resulting in a permanent reconfiguration of the state. Law acts therefore as both Ideological State Apparatus (ISA) and Repressive State Apparatus (RSA) in these circumstances – law is an ISA, as the rule-of-law narrative requires that ‘good’ states abide by their legal obligations, as do their citizens. Acting in direct contravention of those laws becomes socially unacceptable and politically infeasible. To do so would

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<sup>136</sup> Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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 L140/11; Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 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 L140/1.

<sup>137</sup> Chalmers, Jachtenfuchs and Joerges (n 25) 272.

<sup>138</sup> *ibid.*

somehow delegitimise the actions taken – while they may have been *effective* they are nevertheless *illegal*, and therefore unthinkable in a constitutional system based upon the rule of law. As an RSA, the attachment of bailouts to strict conditionality gives law a coercive force; do this, or there will be penalties. Your legal requirement is to obey, and your punishment for you failing to do so is legally enforceable sanctions.

Let us return then to the notion of strict conditionality. The bailouts, and the attached conditionality, have been commented upon by Kilpatrick for their somewhat unusual legal nature – carried out by EU institutions, and yet not based directly on EU law, instead relying upon Memoranda of Understanding to ensure cuts to specific sectors or budgetary fields.<sup>139</sup> These bailouts have required strict structural reform, including ‘extensive cuts to, or limitations upon who can access, health and education provision; reduced access to and levels of pensions and other social benefits . . . and reduced employment protection’.<sup>140</sup> In other words, this process of state transformation, based on the legal implementation of economic ideology, has resulted in the burden falling disproportionately on the poor, the vulnerable, the disabled, and the young.

And what of the consequences? As was discussed with regard to the events of the 1970s, what began as an economic crisis became increasingly perceived as a legitimacy crisis, caused by undue amounts of ‘democracy’ represented by the influence of actors such as trade unions in determining state economic policies. As a result, we saw a move to the regulatory market state, and more ‘technocratic’ modes of governance replacing government. We can consider that the events of the past few years have led to a repeat

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<sup>139</sup> C Kilpatrick, ‘Are the Bailouts Immune to EU Social Challenge Because They Are Not EU Law?’ (2014) 10 European Constitutional Law Review 393.

<sup>140</sup> *ibid* 393–94.

of the 1970s, with a twist; economic crisis begets legitimacy crisis, but in this instance, it is a crisis of the existing model based in technocratic governance. The philosopher Ulrich Beck wrote that there were risks to ‘German Europe’, reflected by the hegemony of German economic thinking and policy direction during the height of the crisis. This, according to Beck, creates division not just between Northern states and Southern states, but also between elected and electorate. In Beck’s words, ‘Governments vote for austerity measures, while people vote against them. What [this] reveals is the structural divide between a European project that has been devised and administered *from above*, by political and economic elites, and the resistance that wells up *from below*.’<sup>141</sup> The EU’s move to halt the crisis through unpopular economic adjustments mandated by (and in turn justified by reference to) legislation reinforced a perception that the EU and its legal order was disconnected from the people of Europe, making life-changing decisions in a dispassionate, unrepresentative way. Gillingham argues that ‘the gap between the elitist approaches of the ruling Eurocrats and the democratic consensus needed for political legitimacy is huge’.<sup>142</sup> In 2014 this resulted in a wave of nominations of ‘anti-EU’ and Eurosceptic parties to the European Parliament, as well as dramatic drops in support for the European project in Southern European states subject to the ‘expansionary austerity’ doctrine.<sup>143</sup>

Indeed, there is a growing body of literature that refers to the end of the EU as we know it; the crisis represents the end of the Eurocrats’ dream,<sup>144</sup> the consideration

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<sup>141</sup> Beck (n 117) 6.

<sup>142</sup> JR Gillingham, *The European Union: An Obituary* (Verso 2016) 167.

<sup>143</sup> M Matthijs, ‘Mediterranean Blues: The Crisis in Southern Europe’ (2014) 25 *Journal of Democracy* 101.

<sup>144</sup> D Chalmers, M Jachtenfuchs and C Joerges (eds), *The End of the Eurocrats’ Dream: Adjusting to European Diversity* (CUP 2016).

that European integration has gone too far,<sup>145</sup> and indeed, that the EU deserves an obituary.<sup>146</sup> What is not considered, however, is that it is perhaps not the EU that needs an obituary, but the *way* in which integration has been pursued, namely through a technocratic ‘rules and markets’ approach. This is the basis for the legitimacy crisis. Whereas previously, democracy was perceived by expert groups as being detrimental to economic development, resulting in top-down restructuring of state relations through the imposition of neo/ordoliberal economic doctrine as binding legal obligations, this legitimacy crisis is *of* those binding legal obligations, and the manner in which they are imposed. According to Nicoli, based on a large-scale quantitative analysis of parliamentary elections throughout the EU Member States between 2008 and 2015, the economic crisis has led to a rise in the election of populist, anti-EU parties, ‘particularly through the channel of negative growth, historically high levels of unemployment and governance arrangements’.<sup>147</sup> Interestingly, the results were found to pervade beyond both the Southern states directly subject to the externally imposed austerity measures, and even to countries outside of the EMU.<sup>148</sup> This goes beyond a simple left–right divide, as Innerarity argues, but instead results in a ‘technocracy–populism’ axis being added to the traditional political compass, which straddles both the left and right of the political spectrum.<sup>149</sup> This can be seen in the left-populist revolt against further proposed austerity measures in the 2015 pyrrhic referendum in Greece, in which voters said ‘Oxi’ (no) to the Troika and further cuts to the public sector, which were nevertheless

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<sup>145</sup> Majone (n 27).

<sup>146</sup> Gillingham (n 142).

<sup>147</sup> F Nicoli, ‘Hard-Line Euroscepticism and the Eurocrisis: Evidence from a Panel Study of 108 Elections Across Europe’ (2016) *Journal of Common Market Studies* 1, 14.

<sup>148</sup> *ibid* 14–15.

<sup>149</sup> D Innerarity, ‘What Kind of Deficit? Problems of Legitimacy in the European Union’ (2014) 17 *European Journal of Social Theory* 307, 312.

implemented by the defeated Syriza government. It can be seen as part of the large ‘NO’ vote that characterised the Italian constitutional referendum of December 2016, in which 60 per cent of the electorate refused a massive constitutional reform presented by mainstream politics as the natural ‘European choice’.<sup>150</sup> It can also be seen in the (albeit fringe) ‘Lexit’ movement in the UK, which campaigned for leaving the EU on the grounds that the legal framework of EU law prevented progressive economic reforms.<sup>151</sup> More visibly, and arguably much more effectively, a populist right-wing rhetoric concerning the technocracy of the EU, its lack of legitimacy and its responsibility for worsening economic crises struck a chord with the British public. Michael Gove, a leading figure in the ‘Brexit’ movement, famously responded to an audience member at a Sky News debate on the merits of leaving the EU, ‘people in this country have had enough of experts’.<sup>152</sup> According to Travers, the decision by British voters to leave the EU can be attributed to various factors, including immigration (i.e. the free movement of workers, particularly as a form of competition for low-skilled jobs perceived as facilitating a race to the bottom in terms of wages and conditions); a narrative of bureaucrats disconnected from the interests of the population imposing top-down regulation; a dislike of austerity; and a perception that the crisis in the Eurozone was having a negative impact on the British economy.<sup>153</sup> Several academic

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<sup>150</sup> S Merler, ‘Italy’s Constitutional Referendum: A Roundup of the Political Commentary’ <<http://blogs.lse.ac.uk/euoppblog/2016/12/03/italys-constitutional-referendum-a-roundup-of-the-political-commentary>>.

<sup>151</sup> See for example MA Wilkinson, ‘The Brexit Referendum and the Crisis of “Extreme Centrism”’ (2016) 17 *German Law Journal* 131.

<sup>152</sup> H Mance, ‘Britain Has Had Enough of Experts, Says Gove’ *Financial Times* (3 June 2016) <[www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c](http://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c)>.

<sup>153</sup> T Travers, ‘Why Did People Vote for Brexit? Deep-Seated Grievances Lie behind This Vote’ <<http://blogs.lse.ac.uk/politicsandpolicy/why-did-people-vote-for-brexit>>.

commentators, writing soon after the result was announced, have indicated concerns that this perception of an out-of-touch elite, coupled with a perceived failure of ‘expansionary austerity’ as public services have been cut, unemployment has risen and people have expressed publicly a desire to ‘take back control’, has led to a situation where populist ideas are serving to delegitimise the functions of the EU, and indeed the current regulatory framework.<sup>154</sup> Prime Minister Theresa May’s comments and subsequent support for a ‘hard’ Brexit, on the grounds that ‘no deal is better than a bad deal’, further reinforces that where policy choices and ideologies are crystallised in the form of binding obligations, the perceived solution to their rigidity is to remove oneself from that system of regulation altogether. It should be of concern to policymakers that when a framework is created in which There is No Legal Alternative, alternatives to that legal system begin to be sought.

## Conclusion(s)

The central thesis of this chapter has been that ideas matter. We have argued that the way we look at structural challenges and the solutions we offer are ultimately based on our perception of material facts filtered through the shaping lenses of ideas and ideologies. We have discussed throughout the chapter how the Euro-crisis has been shaped and analysed largely as a debt and budget deficits crisis in which virtuous actors have had to bear the costs of sloppy partners, who in turn needed to pay their

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<sup>154</sup> R Ashcroft and M Bevir, ‘Pluralism, National Identity and Citizenship: Britain after Brexit’ (2016) 87 *Political Quarterly* 355; C Calhoun, ‘Brexit Is a Mutiny Against the Cosmopolitan Elite’ (2016) 33 *New Perspectives Quarterly* 50; L Floridi, ‘Technology and Democracy: Three Lessons from Brexit’ (2016) 29 *Philosophy & Technology* 189; SB Hobolt, ‘The Brexit Vote: A Divided Nation, a Divided Continent’ (2016) 23 *Journal of European Public Policy* 1259.

benefactors back. What has been largely missing from this mainstream narrative is an acknowledgement that different analyses and, indeed, alternative solutions exist. In this sense, the Euro-crisis is very much a perceived crisis and therefore, we have argued, ideologically biased in its perception. Our thesis is that this is essentially the net result of the integration process as carried out since the 1970s. In particular it is in the double move from Keynesian to liberal economics on the one hand, and from state politics to supranational technocracy on the other, that we find the inception of the move from 'there is no alternative', as a powerful economic and political discourse, to the definitive 'there is no *legal* alternative' by which, regardless of their existence, alternative analysis and solutions are not simply intellectually disregarded, but effectively made illegal. The Euro-crisis is in this sense the symptom of a much larger or (to borrow the words of this book's title) multi-systemic failure. Both actors and commentators have gone to a great deal of effort to shape the surrounding narrative as a failure delimited both theoretically (debt and deficit) and geographically (Greece and Southern Europe).

Yet what this narrative has failed to appreciate is the fact that ideas matter. Eventually a contestation between competing ideas is bound to emerge in a situation of structural conflict and uncertainty, such as the one pervading the EU as of the late 2000s. When this happens, if there is no legal alternative *within* the polity, competing narratives may very well identify solutions *outside* the polity. It is no surprise then that the controversial (Greece), unwisely packaged (Italy) or altogether shattering (UK) referendums held in the last two years have been essentially a net rejection of the dominant narrative and of its legal authority (albeit with very different connotations as discussed above).

In this sense, the codification of ideology into law constitutes a major grounding element of a multi-systemic failure of which the Euro-crisis is, in the end, but an epiphenomenon.