A European view on the American welfare state*

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I. INTRODUCTION

Suppose you teach social security law or social policy at a European university. One day, you tell your colleagues that you are leaving for a couple of months to conduct research in the United States on the evolution of the American welfare state, and in particular its anti-poverty policies. There is a high probability that several of them will exclaim, half-jokingly, 'Why go so far to find out what everybody here already knows – that the US just doesn't have a welfare state?' Although this reaction would of course be slightly exaggerated for effect, the idea that the United States is first and foremost the country of 'unbridled capitalism', a country with, as a consequence, very limited social protection policies, is fairly representative of what many in Europe believe. From a more academic perspective, this view has been supported by numerous scholars. For instance, in his famous book *The Three Worlds of Welfare Capitalism*, probably the most influential and cited work in the field of comparative social policy, the Danish sociologist Gøsta Esping-Andersen presents the US as the most typical example of what he calls a 'residual' welfare state, *ie* a social protection system dominated by basic assistance to the poor and limited universal programmes, which have to be complemented – for those who can afford it – by private insurance.[1] There is no shortage of similar observations by European as well as American authors: in short, the US welfare state is clearly claimed to be a 'laggard' compared to Europe.[2]

By contrast, American television viewers heard Mitt Romney, Barack Obama's Republican challenger in the 2012 presidential elections, declare on CNN, 'I'm not concerned about the very poor.' Asked by the interviewer to clarify his thoughts, Romney

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1 G. Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Polity Press, Cambridge, 1990).

2 See for example the various authors quoted by J. Alber, 'What the European and American Welfare States Have in Common and Where They Differ: Facts and Fictions in Comparisons of the European Social Model and the United States', (2010) 20 *Journal of European Social Policy* 2, 102-103.

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explained, 'We have a very ample safety net' for the poor.[3] The Republican Party candidate also published an op-ed in *USA Today*, in which he ominously denounced the danger of seeing America become an 'entitlement society', that is 'a society that contains a sizeable contingent of long-term jobless, dependent on government benefits for survival.' Romney further explained, 'government dependency can only foster passivity and sloth', instead of rewarding 'merit' and 'hard work'.[4] Thus, in Romney's view – and, arguably, in that of many of his supporters – not only has the US a 'very ample' social safety net, but it is expanding as well, creating perverse effects.

Taking those two very diverging perceptions of the United States as a starting point, the present article aims to confront and ascertain them. Is it justified to consider, as most Europeans do, the US safety net a laggard in a comparative perspective or is this an erroneous perception? To address this question, the article will provide a descriptive and synthetic overview of the American social protection and anti-poverty programmes – which have, overall, received relatively little attention in the Continental literature[5] – and will contrast those programmes with the European ones. More precisely, we will work in three steps.

By way of introduction, we will compare how poverty is officially defined and measured in the US and in the European Union. Two very different measurement methodologies have been adopted, which are revealing of our respective conceptions of poverty (II). In the second part of this paper, we will skim through the main American social protection programmes, in search of counterparts of the schemes with which Europeans are the most familiar. The purpose will not be to enter into the legal regulations' technical details, but rather to demonstrate that there are indeed good reasons to depict the US welfare state as, if not minimal, at least comparatively incomplete (III). Thirdly, we will add some nuance to the picture by pointing out that, despite the weaknesses of the American safety net by European standards, the US social welfare system also includes programmes that provide some security which are rarely taken into account by European observers. The US welfare state is larger than is generally thought, for it is in part composed of schemes that do not exist or only have a quite limited scope in Europe (IV). Finally, we will conclude by returning to the initial question.

Before we start, it must be stressed that our purpose is not to offer a critique of American social policies,[6] nor is it to try to demonstrate the normative superiority of the

3 See the transcription of Romney's comments at http://cnnpressroom.blogs.cnn.com/2012/02/01/mitt-romney-middle-income-americans-are-focus-not-very-poor, accessed 1.12.2012.

4 M. Romney, 'What Kind of Society Does America Want?', *USA Today*, 19.12.2011.

5 The few surveys of which we have knowledge were written by American scholars. See, for different perspectives, F. Bloch, 'The (Not Insignificant) Right to Social Security in the United States', in J. Van Langendonck (ed), *The Right to Social Security* (Intersentia, Antwerp-Oxford, 2007), 305-322 (describing the jurisdictional rights available to claimants and recipients); and R. Lieberwitz, 'Force et instabilité du lien entre emploi et protection sociale aux Etats-Unis', in P. Auvergnon (ed), *Emploi et protection sociale: de nouvelles relations?* (Presses Universitaires de Bordeaux, Bordeaux, 2009), 299-326 (analysing the evolution of the relationship between employment and social protection).

6 For this type of scholarship, see in particular the works of the 'UCLA school'. See, among many other writings, Joel Handler's and Yeheskel Hasenfeld's last co-authored book: J. Handler & Y. Hasenfeld, *Blame Welfare, Ignore Poverty and Inequality* (Cambridge University Press, New York, 2007), as well as Noah Zatz's essay in legal and political theory: N. Zatz, 'Poverty Unmodified? Critical Reflections on the Deserving/Underserving Distinction', (2012) 59 *UCLA Law Review* 3, (Essays in Honor of Joel F. Handler), 550-597.

European ones.[7] While fully recognising the fruitfulness of such perspectives, the main objective is elsewhere. It is, building on the (limited) existing scholarship,[8] to paint a comprehensive portrait of the US welfare state, in order to support or, conversely, to put into perspective common preconceptions about the differences between the New and the Old World regarding the fight against poverty. Such informative work, it is hoped, might contribute to enlightening the normative and political debate on which 'social model' should be given preference to.

II. DEFINING AND MEASURING POVERTY IN THE US AND IN EUROPE: ABSOLUTE VERSUS RELATIVE

To begin with, how is poverty officially defined and measured on the two shores of the Atlantic? In the news and in the media, one regularly hears about the so-called 'poverty line'. It is, for instance, reported that x% of the population lives in poverty, that the poverty rate has increased or decreased over the past year, that the level of this or that benefit amounts to such percentage of the poverty line, and so on. But, somewhat surprisingly, little is usually said about what exactly is meant by poverty.

On both sides of the ocean, the official poverty line refers to a question of income and economic resources, and not to other important aspects of personal well-being. In this respect, it is a quite restrictive indicator, whose readability and simplicity should not make us lose sight of the multidimensional character of social exclusion. Beyond this common trait, the threshold of poverty, or more exactly of financial poverty, is calculated in a radically different way in the US and in Europe. The American official measure is typically an absolute indicator of poverty, while the European one is said to be relative.

A. In the US, poverty as utter destitution

The official US poverty methodology was developed in the first half of the 1960s.[9] It is based on the work of Mollie Orshansky, a public servant of the Social Security Administration during the time of the so-called 'War on Poverty' initiated by the Democratic President Lyndon Johnson. Johnson's administration was in need of an indicator of economic deprivation to be able to collect data and to target its policy initiatives aimed at 'eradicating poverty' – the goal formally assigned to the War on Poverty. It is in this context that Orshansky proposed defining the poverty threshold as the cost of a subsistence food budget multiplied by three. In fact, a few years earlier a survey had shown that the average American family spent about one-third of its income on food. In parallel, the US Department of Agriculture had calculated the cost of an 'economy food plan', a plan designed to provide nutritious but monotonous diet for temporary

7 In this vein, see for example J. Weidenholzer & C. Aspalter, 'The American and the European Social Dream: The Competition of Welfare Regimes', (2008) 24 *Journal of Comparative Social Welfare* 1, 3-11.

8 See in particular Jens Alber's richly documented (but mainly quantitative) synthesis: J. Alber, 'What the European and American Welfare States Have in Common and Where They Differ', *op cit*. The present paper aims at supplementing Alber's analysis focused on patterns of expenditure by entering more into the 'content' of each of the American social welfare programmes.

9 On its development and subsequent evolution, see the detailed account of G. Fisher, 'The Development and History of the Poverty Thresholds', (1992) 55 *Social Security Bulletin* 4, 3-14.

use when funds are low. Forced to make the most of the little data that was available, Orshansky's reasoning was that if an average American family spends one-third of its income on food, three times the cost of a subsistence food budget would provide a good proxy for economic poverty. Then, she calculated various thresholds to account for the variable size and composition of households.

Her proposition was accepted by the government and officially embedded in a directive of the Office of Management and Budget – an agency that is part of the President's executive office. This directive assigns the Census Bureau the duty to, every year, calculate and report the official poverty rate, *ie* the proportion of the population living in households whose incomes fall below the poverty threshold applicable to them. It is important to specify that the families' resources to which the appropriate threshold is compared are calculated before taxes and do not include the cash value of in-kind benefits. It might seem more logical to refer to disposable, or after-tax, income, the one actually at the disposal of households for consumption, but that information was not available when the methodology was developed. Moreover, at that time pre-tax money constituted a reasonable equivalent for disposable income, to the extent that most families living at the poverty level paid no federal income tax. Generally speaking, Mollie Orshansky herself took care to present her results as a 'conservative underestimate' of poverty.[10] She saw her work as a first step in identifying serious income inadequacy, ahead of further refinements.

The official US poverty methodology is typically an absolute measure, because the point of reference is fixed. The thresholds do not evolve with changes in standards of living. They are indexed for inflation, but their real value has remained exactly the same for fifty years, despite dramatic changes in the expenditures and needs of low-income families.

To get a first picture of the spread of income poverty in the United States, one can look at the current official poverty rate and see how it has evolved over time. From the end of the 1950s to the mid-1970s, the poverty rate fell quite quickly. It dropped from more than 22% to about 12%. But it has largely stagnated since then. The poverty rate has just been fluctuating along with the evolution of the economic cycle, hovering between 11% and 15%. Since the start of the Great Recession in 2007 – the worst economic crisis endured by the US since the Great Depression of the 1930s – the rate has risen each year, exceeding 15% in 2010.[11] Nowadays, more than 45 million Americans are officially living in poverty, *ie* have a yearly income below $11,484 for a single person or $23,021 for a family of four – these figures thus corresponding to the amount of money equivalent to three times the cost of a subsistence food budget as was estimated by the US Department of Agriculture in the 1950s.

Beyond this national mean, the poverty rate is, in terms of age category and ethnic origin, notoriously higher for children (22%) and for African Americans and Hispanics (more than 25%). It must be pointed out, however, that the level of poverty of the two most significant ethnic minorities is not explained by the same reason. African Americans, especially men, remain massively excluded from the labour market, while

10 *Ibid*, 7.

11 For these figures and those that follow, see the report published annually by the Census Bureau: C. DeNavas-Walt, B. Proctor & J. Smith, 'Income, Poverty, and Health Insurance Coverage in the United States: 2011', *Current Population Reports* No P60-243, Washington DC, Government Printing Office, 2012, 13-20 and 49.

Hispanics are more likely to suffer from in-work poverty, because of low wages and lack of benefits.[12] Conversely, the poverty rate is significantly lower than the average for people aged 65 and older, as well as for non-Hispanic whites – less than 10% for both categories.

B. In the EU, poverty as economic marginalisation

For its part, the European Union decided to adopt a poverty indicator common to all Member States during the 2001 Laeken summit – quite a bit later than the US – when Belgium presided over the Council of the European Union. The indicator was adopted in the framework of the open method of coordination on social protection and social inclusion, together with a large set of various social indicators.[13] The indicator is officially called the at-risk-of-poverty rate. People whose incomes fall below the threshold are not necessarily said to be poor; they are said to be at risk of being poor. The threshold is set at 60% of the national median disposable income – the national median income being the level of income that separates the population of a country into two strictly equal parts. All people belonging to households that make less than 60% of the median income of their country, after taxes and social transfers, are considered at risk of being poor. The resources calculated to determine whether the household members are at risk of poverty therefore correspond to the actual disposable income.

This at-risk-of-poverty indicator is typically relative. It does not attempt to define a nature or a substance of poverty that would be intangible. It does for instance not refer to hunger or to other basic human needs. Relative measures rely on the assumption that the phenomenon of poverty can only be apprehended in a particular society and in a particular time. More specifically, the European indicator aims at emphasising the importance of comparative economic deprivation. The underlying idea is that people can be considered at risk of poverty when they are significantly lagging behind the overall standard of living in their country. That is why, by definition, the at-risk-of-poverty threshold evolves over time, in order to reflect changes in the average level of living.

Thus, where the official US methodology puts the emphasis on the minimal amount of money necessary to escape starvation, the European indicator attaches more importance to the dimension of social cohesion. Poverty is considered to be increasing when income disparities between rich and poor widen in such a way that they lead to a deterioration of the relative position of the poor – even if the latter improves in absolute terms. In short, one could say that there is a logic of 'not enough' on the one hand, and a logic of 'much less' on the other.[14]

C. Computing poverty in the US through the European lens

It is instructive to compare both measures beyond their respective philosophies. When Mollie Orshansky established the official US poverty threshold in the beginning of the 1960s, its relative value approximately amounted to 50% of the American median in-

12 J. Handler & Y. Hasenfeld, *Blame Welfare, Ignore Poverty and Inequality*, *op cit*, 37.

13 On this process, see A. Atkinson, E. Marlier & B. Nolan, 'Indicators and Targets for Social Inclusion in the European Union', (2004) 42 *Journal of Common Market Studies* 1, 47-75.

14 G. Notten & C. de Neubourg, 'Monitoring Absolute and Relative Poverty: "Not Enough" is not the Same as "Much Less"', (2011) 57 *Review of Income and Wealth* 2, 248.

come of that time. Interestingly, it was therefore not so far from the current European threshold. But some forty years later, in 2000, the US poverty line had dropped to less than 30% of the national median income.[15] Economic growth has raised real incomes and inequalities have considerably widened, while the threshold has remained at the same absolute level. Because it has never been updated to take those changes into account, many (American) observers seriously doubt that the official methodology still fittingly captures the spread of poverty in the United States. It can even be said that there is a widespread consensus among social scientists that if it made sense at the moment of its adoption, given the data available at that time, the measure is now largely outdated, in its philosophy – the choice of a fixed threshold – as well as with regard to its technical features – in particular the reference to households' gross incomes.[16] In the same vein, it is worth noting that the 'subjective poverty line', *ie* the level of income below which people consider one to be living in poverty, closely tracks the evolution of median income, while it is increasingly disconnected from the official poverty threshold.[17]

Several attempts have been made to replace the official methodology, but so far all have failed.[18] A major political obstacle is that any change in the directive defining the poverty methodology must be approved by the White House, given that the Office of Management and Budget is part of the executive branch. Understandably, presidents are quite reluctant to approve modifications that would reveal that the poverty rate is (far) higher than what the official statistics suggest.[19]

15 T. Smeeding, 'Poor People in Rich Nations: The United States in Comparative Perspective', (2006) 20 *Journal of Economic Perspectives* 1, 71.

16 See for example J. Iceland, *Poverty in America. A Handbook*, 2nd edition (University of California Press, Berkeley (CA), 2006), 23-25 (summing up the main criticisms of the official methodology).

17 *Ibid*, 33-34. The figure presented suggests that the subjective poverty line by and large amounts to 50% of the median income.

18 On these attempts and the reasons for their failure, see the reflections and propositions – partly inspired by the European experience with social indicators – of R. Blank, 'How to Improve Poverty Measurement in the United States', (2008) 27 *Journal of Policy Analysis and Management* 2, 233-254. See also the review of various alternative approaches to poverty measurement by R. Haveman, 'What Does it Mean to Be Poor in a Rich Society?', in M. Cancian & S. Danziger (eds), *Changing Poverty, Changing Policies* (Russell Sage, New York, 2009), 386-407.

19 Considering this obstacle, the Census Bureau has developed a 'supplemental' poverty measure that has, since 2011, been released every year along with the official rate, without replacing it. This alternative measure is based on recommendations made in a 1995 report by a panel of experts from the National Academy of Sciences – whose initial purpose was, at the request of Congress, to propose a new official methodology. The supplemental poverty measure is said to be quasi-relative, because the threshold is based on the cost of a set of basic goods, including food, clothing, shelter and utilities, which will be periodically updated, in order to reflect changes in actual expenditure on this bundle of goods. Also, household resources are defined as post-tax income, including the value of in-kind benefits, minus the cost of incompressible expenditure such as work-related and medical out-of-pocket expenses, so as to refer to actual disposable income. On the development of the supplemental poverty measure, see K. Short, 'The Research Supplemental Poverty Measure: 2011', *Current Population Reports* No P60-244, Washington DC, Census Bureau, 2012. Its interest lies less in the total number of people identified as poor than in the fact that it allows the needs of the impoverished population and the efficiency of government programmes aiming at alleviating poverty to be gauged far better than the official methodology allows. Note that the set of social indicators adopted by the European Union Member States also includes a material deprivation indicator.

Be that as it may, one way to provide a more accurate picture of the spread of poverty in the United States is to apply the European indicator of at-risk-of-poverty to it. By so doing, two economists calculated that in the period 1993-2000 the relative poverty rate in the US was hovering near 25% of the population.[20] This was still the case in 2010.[21] That means that roughly one out of four Americans lives on less than 60% of the national median disposable income. By contrast, at the end of the 2000s the at-risk-of-poverty rate was 16% on average in the European Union. The Member States with the highest relative poverty rate – the English-speaking and the Mediterranean countries, as well as some of the countries from the Eastern enlargement – were all below 20%. The only exceptions were Bulgaria, Romania and Latvia, but none of them topped the American record.[22]

The United States is commonly considered the richest country in the world, for it has the biggest GDP. Taking differences in the cost of living into account, American GDP per capita is superior to that of all EU Member States, with the sole exception of the very specific case of Luxembourg. Nevertheless, all comparisons show that the US also has the highest concentration of poverty, and by far, among the Western industrialised countries.[23] Child poverty in particular is significantly higher than in the other wealthy democracies. It is the well-known paradox of an extremely rich country, within which a very large segment of the population is excluded from the standards of living available to the majority.

Before moving on, it must be pointed out that the European at-risk-of-poverty measurement is a purely statistical indicator. It allows monitoring and comparison, but is not intended to provide a basis to set public benefits. By contrast, the US official poverty measure is directly used, as will be seen, to determine the eligibility for several programmes. Despite its widely recognised flaws, this reinforces its practical importance.

III. THE US SOCIAL SAFETY NET: A LAGGARD BY EUROPEAN STANDARDS

What is the overall state of the social protection system in the United States? Why do social policy scholars usually refer to it as residual? Is this a fair depiction? To assess the relevance of this claim, we will in this part describe the American welfare state from a 'European' perspective, in that we will search for counterparts of the social security schemes that are the most commonly established in the countries of the European Union.

To begin with, what is the proportion of GDP dedicated to public social spending in the United States? This is the mainstream approach to the issue in the social sciences literature, the one that leads to the classic statement that the US welfare state is unusually small in comparison. The contrast between the New and the Old World is indeed quite sharp when one looks at the figures. According to the OECD social expenditure

20 G. Notten & C. de Neubourg, 'Monitoring Absolute and Relative Poverty', *op cit*, 255.

21 See the online database of the Luxembourg Income Study (LIS): www.lisdatacenter.org/lis-ikf-webapp/app/search-ikf-figures (accessed 1.12.2012).

22 A. Atkinson *et al*, 'Income Poverty and Income Inequality', in A. Atkinson & E. Marlier (eds), *Income and Living Conditions in Europe* (Publications Office of the European Union, Luxembourg, 2010), 119.

23 See for instance the figures presented by T. Smeeding, 'Poor People in Rich Nations: The United States in Comparative Perspective', *op cit*, 73-75.

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database,[24] in 2005 the United States allocated 16% of its GDP to social protection programmes, whereas the fifteen initial Member States of the European Union spent an average of somewhat more than 24% of their GDP on such programmes – thus roughly one-fourth of national wealth and about eight percentage points more than the US. As for the new Member States from the Union's Eastern enlargement, which are known for having far less developed social protection systems than the EU 15,[25] the public social spending rate reached an average of 20%. Including them, the European average was above 23%. All this suggests that in terms of the proportion of public resources invested in social protection, the 'welfare state effort' is notably more important on this side of the Atlantic.

However, it is important to go beyond this rather crude indication. To get a more fine-grained picture of the American social safety net, we will now review its major components. For this purpose, we will, as is customary, distinguish between the social insurance programmes (A) and the means-tested benefits (B), *ie* the schemes covering the whole population, or at least a large part of it, on one side, and those specifically targeted to the poor on the other side. It is worth noting that in the American context, the expression 'anti-poverty policies' generally encompasses both categories, while in Europe it typically only refers to means-tested transfers. For each scheme, we will outline its origin and evolution, its administration and its scope. The stress will be put on the influence that each programme has on poverty and the poor. An interim conclusion will be drawn at the end of this survey.

In terms of sources of information, besides the references relating to each programme that will be mentioned, this overview largely relies on what is informally known in the United States as the 'Green Book.' It is a vademecum of the major American social welfare policies combining legal and empirical data that is periodically updated by the staff of a committee of the US House of Representatives.[26]

Two final remarks. First, among the 'classic' sectors of social protection, Workers' Compensation, which is the US scheme covering occupational injuries and illnesses, will be deliberately left aside, because it is less interesting for our purpose. Second, between 2008 and 2010, in response to the Great Recession, Congress and the Obama administration successively passed several stimulus packages that substantially affected

24 See the data compiled by J. Alber, 'What the European and American Welfare States Have in Common and Where They Differ', *op cit*, 115.

25 On the post-communist welfare states, see H.J.M. Fenger, 'Welfare Regimes in Central and Eastern Europe: Incorporating Post-Communist Countries in a Welfare Regime Typology', (2007) 3 *Contemporary Issues and Ideas in Social Sciences* 2 (online journal), available at http://journal.ciiss.net/index.php/ciiss/article/view/45/37 (accessed 1.12.2012).

26 US House of Representatives, Staff of the Committee on Ways and Means, 'Background Material and Data on the Programs within the Jurisdiction of the Committee on Ways and Means', 110th Congress, 2008 (hereinafter the *Green Book*), available at http://democrats.waysandmeans.house.gov/singlepages.aspx?NewsID=10490 (accessed 1.12.2012). Note that the document, in its nineteenth edition, is no longer accessible on the official Committee's website since the Republicans took control of the House in the midterm elections of 2010. A twentieth edition was released in 2011, but in a format totally different from that of the previous editions: it only consists of a selection of web links to various online resources. See http://greenbook.waysandmeans.house.gov (accessed 1.12.2012).

the features of several entitlements.[27] But since most changes were only temporary, they will not be reviewed here either.

A. Social insurance programmes

In terms of financial volume, social insurance programmes account for the vast majority of expenditure.[28] Five sectors need to be dealt with: old age and disability pensions (a), health care (b), unemployment insurance (c), child benefits (d) and family leave (e).

a. Social Security: contributory pension and disability benefits

The largest programme is Social Security, which is also one of the oldest. In a comparative perspective, the expression is somewhat misleading, to the extent that in the International Labour Organization conventions, in European Union law, or in other English-speaking countries such as the United Kingdom, 'social security' typically refers to social protection in its entirety. It designates the whole system with its different branches, or sectors: health care, pensions, disability, unemployment, and so on.[29] In the United States, what is elsewhere named social security is designated by the encompassing expression 'social welfare'. Social Security has a much narrower meaning: it is basically an equivalent for pensions.[30] It refers to the famous Social Security Act passed in 1935 in the framework of Franklin Roosevelt's New Deal, the first 'big bang' in US social policy. For decades, the Republican majority had radically opposed attempts to legislate on economic and social matters, with the support of a very conservative-leaning Supreme Court. It was ultimately the unprecedented economic crisis of the Great Depression that allowed a largely Democrat-dominated Congress to break the laissez-faire and lay the foundations of the American welfare state,[31] long after Western European countries had adopted their first social legislation.

Social Security mainly provides retirement pensions. Initially set at 65, the retirement age has been gradually raised to 67. To be eligible, retirees need to have accumulated at least 40 quarters of covered employment. Benefits are primarily funded by payroll taxes paid by employees and their employers, as well as by the self-employed. They are

[27] For a detailed presentation of the successive stimulus packages, see G. Burtless & T. Gordon, 'The Federal Stimulus Programs and their Effects', in D. Grusky, B. Western & C. Wimer (eds), *The Great Recession* (Russell Sage, New York, 2011), 249-293.

[28] See the data provided by J. Ziliak, 'Recent Developments in Antipoverty Policies in the United States', Madison (WI), University of Wisconsin-Madison, Institute for Research on Poverty, Discussion Paper No 1396-11, 2011, 2.

[29] See ILO Convention No 102 of 28 June 1952 concerning minimum standards of social security (which has not been ratified by the United States); Reg (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166 of 30.04.2004, 1; N. Wikeley & A. Ogus, *The Law of Social Security*, 5th edition (Oxford University Press, Oxford, 2002).

[30] For a genealogy of the term 'social security' in the US, see D. Beland, 'The Politics of Social Policy Language', (2011) 45 *Social Policy & Administration* 1, 4-6.

[31] On the beginnings of the American welfare state, see M. Landis, 'Fate, Responsibility, and "Natural" Disaster Relief: Narrating the American Welfare State', (1999) 33 *Law & Society Review* 2, 257-318 (showing how the Roosevelt administration depicted the Great Depression as a national disaster requiring the provision of relief).

distributed by the Social Security Administration, the federal agency that administers the programme. For our purpose, it is worth noting that Social Security can be credited with having a strong anti-poverty effect. It covers the vast majority of the elderly, and the replacement rate varies inversely with earnings: low-wage workers receive a higher proportion of their pre-retirement earnings than workers with average and high incomes. Evidence suggests that the setting up of Social Security and the rapid growth of benefits after World War II largely explain the dramatic decline in income poverty among the elderly during the second half of the twentieth century.[32] As mentioned above, the official poverty rate of people aged 65 and older is significantly inferior to that of the non-elderly. In a comparative perspective, it has been estimated that Social Security is more universal and redistributive than the German old age insurance system,[33] which is the oldest public pension scheme in Europe (1889). Overall, it seems fair to state that although the US historically is a latecomer in the field of pensions, it is no longer an outlier.

Initially, Social Security only consisted of an old age pension programme, but soon after its adoption it was supplemented by a survivors' pension scheme, which provides benefits to dependents of deceased workers. More significantly, Social Security was further expanded in 1956 when the Disability Insurance (DI) programme was added, a programme covering incapacity for work. Disability Insurance is also financed by payroll taxes and managed by the Social Security Administration, as part of the broader Old-Age, Survivors, and Disability Insurance (OASDI). Its most notable feature are the very stringent eligibility requirements to which disability benefits are subject. Besides the rule that applicants must have worked and contributed during at least five of the last ten years, they must prove, in order to be administratively considered 'disabled', that they are no longer able and will not be able to perform any substantial gainful activity for at least one year. Concretely, proving a complete inability to hold any employment requires substantial medical documentation. Unlike other countries, the US disability scheme thus does not rely on a gradual approach of work incapacity, but on a binary one: it is 'all or nothing'. Hence, only very severe work incapacity is compensated by benefits and warrants an exemption from the workforce.[34]

With its three components, OASDI historically constitutes the basic federal social insurance system in the United States.

b. Medicare: health care for the elderly and the permanently disabled

As in all national social protection systems, health care is the other major sector of the American welfare state. However, this is where the parallel with other nations ends, since the organisation of the US health care system has striking peculiarities. As is well known, the United States has never set up a universal health care system providing medical coverage to the whole population. In this respect, the US is a truly unique case in the industrialised world. But that does not mean that no publicly funded health

32 See G. Engelhardt & J. Gruber, 'Social Security and the Evolution of Elderly Poverty', in A. Auerbach, D. Card & J. Quigley (eds), *Public Policy and the Income Distribution* (Russell Sage, New York, 2006), 259-287.

33 J. Alber, 'What the European and American Welfare States Have in Common and Where They Differ', *op cit*, 109-110.

34 On this choice, see M. Diller, 'Entitlement and Exclusion: The Role of Disability in the Social Welfare System', (1996) 44 *UCLA Law Review* 2, 361-465.

programmes exist in the US, contrary to popular belief in Europe. On the social insurance side, one very important federal programme has to be mentioned: Medicare.[35] Medicare was created in 1965 under Johnson, in the context of the War on Poverty, the (only) other period of major expansion in US social policy that followed the New Deal. It initially targeted the elderly, but was later extended to the permanently disabled. Seniors become eligible when they reach the age of 65, regardless of their health status, provided that they or their spouse paid payroll tax contributions for at least 40 quarters. Disabled persons under the age of 65 qualify for Medicare after two years of receiving Disability Insurance payments. Whereas roughly one elderly out of two lacked medical insurance prior to 1965,[36] today virtually all are covered.

Medicare reimburses the costs of hospital stays, physician visits, as well as, since 2006, prescription drugs. It is the second largest social welfare programme in terms of expenditure after Social Security. Medicare does, however, not provide important services, often needed by the elderly and the disabled, such as long-term care, vision care and dental care. Moreover, covered benefits are subject to monthly premiums as well as fairly high co-payments. Most beneficiaries have some form of supplemental coverage, notably through their former employer, to fill the gaps in Medicare's benefit package and to support the cost-sharing requirements. Still, since complementary insurance usually also requires premiums, many beneficiaries face significant out-of-pocket health spending to meet their medical needs.[37] Despite these limits, the programme remains a vital source of health security for senior citizens. Regarding its funding, Medicare is financed by a combination of payroll taxes and general revenues, supplemented by the premiums paid by beneficiaries. The programme is administered by the US Department of Health and Human Services, the largest federal department – of which the Social Security Administration formed a part before being established as an independent agency in 1995.

What about the non-elderly who are not permanently disabled? Unless they are poor and fall into a category considered 'deserving', which gives them access to Medicaid (see below), they depend on the market and for-profit private insurance companies. Given the complexity of the issue, it would deserve a separate analysis,[38] but, roughly speaking, one can say that working-age individuals basically have two options: either they find an employer willing to offer them employer-sponsored insurance, or they need to buy a medical plan themselves.

In the US, employment is the traditional gateway to health coverage.[39] This peculiarity emerged in the mid-twentieth century, after job-related health benefits were excluded from payroll and income taxes. Nowadays, the majority of Americans obtain medical insurance through their employer – or that of a family member. Yet, the ratio of

35 For a survey, see J. Iglehart, 'The American Health Care System. Medicare', (1999) 340 *New England Journal of Medicine* 4, 327-332.

36 Kaiser Family Foundation, 'Medicare: A Primer', 2010, 13. The Kaiser Family Foundation is a non-profit independent organisation whose analysis is reputable and widely used by American health scholars.

37 *Ibid*, 6 (explaining that median out-of-pocket health spending as a share of income was above 16% among Medicare beneficiaries in 2006, up from 12% ten years earlier).

38 In the US, health care insurance is generally not considered part of social welfare law but rather of the autonomous field of health law.

39 In this connection, see the reflections of S. Glied, 'The Employer-Based Health Insurance System. Mistake or Cornerstone?', in D. Mechanic *et al* (eds), *Policy Challenges in Modern Health Care* (Rutgers University Press, New Brunswick (NJ), 2005), 37-52.

employers who offer health coverage has steadily declined over the past decade, from 65% in 2000 to 55% ten years later,[40] mainly owing to the quick growth of the cost of premiums.

Employees of small firms and low-wage workers are far less likely to be offered employer-sponsored insurance than employees of large companies. In the absence of work-related coverage, they can purchase a medical plan directly from a private insurer, on the so-called 'individual market'. But the plans offered on this market are generally both much more expensive and far less comprehensive than group coverage. Pricing and issuance of coverage on the individual market are very poorly regulated, so that insurers are to a large extent free to differentiate premiums or limit the extent of the coverage on the basis of the applicant's health status. As a consequence, many low-wage workers and their families, especially those suffering from pre-existing conditions, remain underinsured despite exorbitant costs, or simply cannot afford any medical coverage.[41]

This leads us to the much-discussed problem of the uninsured. It is estimated that in 2011, about 16% of the total American population, *ie* almost 50 million people, had no health insurance at all, neither public nor private.[42] However, it must be specified that the uninsured are not completely deprived of access to medical care. Under the Emergency Medical Treatment and Active Labor Act (EMTALA), passed in 1986, hospitals are legally obliged to provide care in case of medical emergency, regardless of the patient's ability to pay. Yet, it is notorious that the law is not always complied with and that the care provided in the emergency rooms often remains 'uncompensated' due to the inability of the uninsured to pay the bill. Those uncompensated costs, in 2005 estimated at $30 billion per year, are ultimately paid for by the insured and the government, which drives up the price of premiums, making insurance policies even less accessible.[43] As a result, many Americans are obliged to delay or forego basic medical care, in particular preventive care. While brushing a significant part of the population aside, the US health system nonetheless makes up for more than 17% of American GDP, compared to between 8% and 12% in most Western countries,[44] where coverage is universal. At the same time, life expectancy in the United States is below the OECD average.[45] All this suggests that the American health care system is comparatively very costly, quite inefficient and deeply inequitable.

As will be seen below, the health care landscape will be substantially reshaped in the coming years thanks to the entry into force of the major overhaul enacted under President Obama in 2010.

[40] C. DeNavas-Walt, B. Proctor & J. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, *op cit*, 65.

[41] For a detailed examination of the US health insurance market fragmentation, see A. Hoffman, 'Oil and Water: Mixing Individual Mandates, Fragmented Markets, and Health Reform', (2010) 36 *American Journal of Law & Medicine* 1, 48-60.

[42] C. DeNavas-Walt, B. Proctor & J. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, *op cit*, 21.

[43] J. Gruber, 'Covering the Uninsured in the United States', (2008) 46 *Journal of Economic Literature* 3, 577-578.

[44] OECD, *Health at a Glance. OECD Indicators* (OECD Publishing, Paris, 2011), 151.

[45] *Ibid*, 25.

c. Unemployment Insurance: limited benefits for the involuntarily unemployed

Whereas Social Security and Medicare are entirely managed by the federal government, the Unemployment Insurance (UI) system is mainly regulated, organised and funded at state level. This feature has a historical origin. The first unemployment insurance schemes were established at the beginning of the 1930s by a few states. Along with Workers' Compensation, they constitute the oldest component of the US safety net. At the time of the New Deal, Roosevelt proposed to build on the experience gained by the pioneering states to establish a joint federal-state partnership that would leave substantial autonomy to the local level. As a consequence, only limited federal requirements were included in the 1935 Social Security Act.[46] Each state has developed its own unemployment insurance programme. Accordingly, eligibility conditions and benefit amounts vary widely across states. The latter administer their programmes under the supervision of the US Department of Labor, which monitors compliance with federal norms. The states also finance the cost of the benefits themselves by imposing a tax on wages on employers. The federal government only meets part of the expenses relating to the administration of the system.

Under federal law, almost the entire salaried labour force is covered by the unemployment programmes. However, whereas the unemployment insurance system has a fairly broad scope of application, the risk provided for is defined rather restrictively. All state programmes indeed share two key features that are striking in a comparative perspective. The first relates to the eligibility requirements for the benefits, the second to the maximum period they are granted.

As elsewhere, eligibility requirements can be divided into two categories: monetary and non-monetary. To qualify for the benefits, claimants must first have worked in covered employment for a certain time and must have made minimum earnings during this period, called the base period (monetary requirements). Second, they must also be and stay involuntarily unemployed, which means complying with the classic set of conditions: (i) to be able to work, (ii) to not have quit one's job without good cause, (iii) to not have been discharged for work-related misconduct, (iv) to not refuse an offer of suitable employment and (v) to be available for and actively seek work (non-monetary requirements). Although the principle of those diverse eligibility requirements is familiar, almost all states have strongly tightened their terms over time, particularly in the 1980s.[47] They have sharply raised the minimum earnings that applicants must have made in the base period. Concurrently, they have significantly toughened the sanctions for voluntary unemployment, by increasingly replacing the temporary loss of the allowance with definitive disqualification.

As a result of these two parallel evolutions, an average of only about a third of the unemployed are actually receiving unemployment benefits.[48] The ratio of compensated unemployed to unemployed is thus peculiarly weak in the US. Many working poor do not succeed in fulfilling the monetary requirements, because they work intermittently

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46 J. Hight, 'Unemployment Insurance: Changes in the Federal-State Balance', (1982) 59 *University of Detroit Journal of Urban Law* 4, (Long Lines and Hard Times: Future Unemployment Insurance Alternatives), 616-617.

47 See L. Williams, 'Unemployment Insurance and Low-Wage Work', in J. Handler & L. White (eds), *Hard Labor. Women and Work in the Post-Welfare Era* (M.E. Sharpe, Armonk (NY)-London, 1999), 160-164.

48 *Green Book*, *op cit*, IV-4 and IV-5.

and for very low wages. This risk is especially salient for women and people of colour. As a matter of fact, numerous involuntarily unemployed, especially single mothers, depend – or more precisely, as we shall see, used to depend – on social assistance,[49] which is far more meagre than an unemployment benefit.

The second striking characteristic of the American unemployment system is that states usually limit the benefits to a maximum period of six months. It must be added that a permanent federal-state mechanism provides for the payment of 'extended benefits' for up to 20 additional weeks in states where unemployment is particularly high. The federal government covers half the cost of those extended benefits. Additionally, Congress and the administration have a practice of enacting supplemental temporary aid, this time fully federally funded, in cases of major nationwide economic recession. During the Great Recession for example, the total maximum duration was extended to an unprecedented 99 weeks. In this respect, the US unemployment insurance system shows some responsiveness to economic fluctuations. However, this extension was not intended to last and was progressively reduced along with the economic recovery. Yet, the six months' ceiling applicable under normal circumstances is quite low.[50]

By comparison, what can be said of European countries? Since the 1990s, there has clearly been a trend to reduce the maximum duration of unemployment benefits. Yet, considerable variations remain between, for instance, the Americanised United Kingdom, where 'jobseeker's allowances' may be claimed for only 26 weeks, and the unique case of Belgium, where unemployment benefits are as a rule not subject to any time limit. Between these two extremes, unemployment benefits are typically available for a maximum length of one and a half to two years.[51] Thus, while Americans discuss the duration of benefits in terms of weeks, Europeans rather discuss it in terms of months, or even years. Maybe even more significantly, many European countries also have an unemployment assistance system, which provides an allowance, sometimes means-tested, to unemployed persons who have exhausted their benefits. In terms of amount, these unemployment assistance benefits are usually somewhere halfway between those of unemployment insurance and those of social assistance. Nothing like that exists in the United States. As a result, the 30 to 45% of unemployed Americans who exhaust their benefits every year without having found a new job[52] must basically rely on themselves.

In sum, the unemployment that is implicitly considered legitimate, the one that public authorities financially compensate, is defined quite restrictively in the US. Limited accessibility to benefits and the short duration of granting explain why it devotes only between 0.3% and 0.5% of its GDP to unemployment policy, versus 2% to 3% in nearly all other member countries of the OECD. This modest figure also reflects the fact that investment in vocational training and employment services is very limited in the US.[53]

49 L. Williams, 'Unemployment Insurance and Low-Wage Work', *op cit*, 159, 162 and 163.

50 Moreover, one should not forget that in the United States, workers who lose their job often lose their health insurance in addition to their wage, so that a lay-off has much harsher repercussions than elsewhere.

51 G. Burtless & T. Gordon, 'The Federal Stimulus Programs and Their Effects', *op cit*, 266.

52 *Green Book*, *op cit*, IV-17.

53 B. Quade, C.J. O'Leary & O. Dupper, 'Activation from Income Support in the US', in W. Eichhorst, O. Kaufmann & R. Konle-Seidl (eds), *Bringing the Jobless into Work? Experiences with Activation Schemes in Europe and the US* (Springer, Berlin, 2008), 352-353.

d. Child benefit: what child benefit?

Besides old age pensions, health care and unemployment insurance, the fourth classic sector of social insurance schemes are child benefits, or child allowances. All European countries, as well as numerous other industrialised nations, provide for the payment of such benefits. Although the precise terms vary considerably from country to country, it essentially consists in a cash income paid on a periodic basis to persons raising children. Increasingly, child allowances are granted whatever the work situation of the parents, so that in many countries they have acquired the status of universal – or quasi-universal – benefits. Their purpose is to help parents bear the costs of rearing their children. Generally, the amount of the benefit per child increases with the 'rank' of the latter in the family or with its age. The amount is also often supplemented for low-income and single-parent households, as well as in the event that the head of the household is unemployed or disabled. These various characteristics explain why child benefits play a major role in the fight against poverty.[54]

How does the US fare with respect to child benefits? The answer is simple: as such, no child benefits exist in the United States. In this area, the contrast could therefore hardly be more marked between the US and Europe. It helps to understand why single mothers struggle more to make ends meet than elsewhere. The lack of cash support provided by child allowances also explains why they and their children face a significantly higher risk of poverty than other categories of the population.[55]

e. Family leave: what family leave?

In the same vein, there is no right to paid family leave in the US, not even for new mothers. Federal law only provides unpaid leave, and so under restrictive conditions.[56] The Family and Medical Leave Act (FMLA) signed into law in 1993 by President Clinton – after George Bush senior had vetoed it twice – guarantees employment upon return from a family-related absence to employees working in firms with 50 or more people and whose seniority amounts to at least one year. The maximum duration of the leave is 12 weeks. As a result of its limited scope, only about half of the workforce is entitled to it. Unsurprisingly, low-wage workers, a majority of which are women and Hispanics, are more likely to be ineligible. Hence, there clearly is disparity based on class, gender and race. In any case, and more fundamentally, the fact that the leave is unpaid prevents many parents from taking it, simply because they cannot afford to live without a paycheque. In the 2000s, a handful of states, such as California, began to set up a paid parental leave programme, but so far there is no sign of political willingness at the federal level to adopt this move. Past efforts in this direction have failed, notably because of the fierce opposition of business lobbyists.

54 For a comparative survey focused on outcomes for single mothers, see W. Van Lancker, J. Ghysels & B. Cantillon, 'An International Comparison of the Impact of Child Benefits on Poverty Outcomes for Single Mothers', forthcoming.

55 On child poverty in the US, see S.K. Danziger & S. Danziger, 'Child Poverty and Antipoverty Policies in the United States: Lessons from Research and Cross-National Policies', in S. Kamerman, S. Phipps & A. Ben-Arieh (eds), *From Child Welfare to Child Well-Being. An International Perspective on Knowledge in the Service of Policy Making* (Springer, Dordrecht, 2010), 255-274.

56 See J. Waldfogel, 'The Role of Family Policies in Antipoverty Policy', in M. Cancian & S. Danziger (eds), *Changing Poverty, Changing Policies*, op cit, 244-246.

With respect to family leave, the United States appears once more as an outlier, if not an anomaly. Since Australia enacted a paid parental leave scheme in 2011, the US is indeed the only country in the OECD not guaranteeing all wage-earners a right to take paid leave after the birth of a child. And it is one of the only countries in the world, along with a few Third World exceptions, not having established a paid maternity leave scheme at the minimum.[57] Yet, such (basic) policies are fundamental to help parents achieve a work/family balance, as well as to protect new mothers' health.

B. Means-tested benefits

After having sought American counterparts of the most widespread social insurance programmes, we will now conduct the same exercise for means-tested transfers. By definition, all the benefits that will be reviewed are subject to an income test. And as we shall see, the US official poverty methodology is often used in the determination of monetary eligibility. In addition, these transfers are not funded by payroll taxes, but by state and federal general revenues. Four benefits need to be examined: health care for the poor (a), social assistance for the elderly and the disabled (b), social assistance for families with children (c), and social assistance for childless adults (d). The description of the health care programme intended for the poor will be the occasion to outline the global overhaul of the health care system enacted under Obama.

a. Medicaid (and beyond): health care for the 'deserving' poor (and the quest for universal coverage)

Medicaid

Among the means-tested benefits, the programme by far the most important in terms of expenditure is Medicaid. Medicaid aims at providing access to health care for the poor, or more precisely for some categories of the poor.[58] It was created in 1965, along with Medicare. But unlike the latter, Medicaid is organised in the form of a partnership between the federal government and the states. Even though the states are not legally required to participate, they all do. The states' programmes must respect federal guidelines issued by Congress and the Department of Health and Human Services in relation to the scope and content of the coverage in order to receive federal funding. The federal government provides its financial support by means of a matching grant mechanism: for each state dollar spent in Medicaid, the government adds federal money. The match rate varies per state, according to their per capita income. The matching rates increased substantially during the Great Recession, but under normal rules the minimum rate is 50% and, on the whole, the federal government usually meets somewhat less than 60% of all Medicaid spending.

57 ILO, *Maternity at Work. A Review of National Legislation*, 2nd edition (International Labour Office, Geneva, 2010), 17.

58 On the history of public policies intended to provide access to health care for the poor and the organisation of Medicaid, see generally K. Schwartz, 'Health Care for the Poor: For Whom, What Care, and Whose Responsibility?', in M. Cancian & S. Danziger (eds), *Changing Poverty, Changing Policies*, *op cit*, 330-363.

Who is entitled to the publicly funded medical coverage provided by Medicaid?[59] The federal guidelines define mandatory and optional groups. The first groups must be eligible for Medicaid in every state, while for the second groups, states have the option of covering them or not. The mandatory categories are: (i) pregnant women and infants living below 133% of the official poverty line; (ii) children between 6 and 18 under 100% of the same line; (iii) elderly and disabled persons receiving Supplemental Security Income – a means-tested benefit, which will be described below, for which income eligibility amounts to 75% of the poverty line; and (iv) parents below eligibility levels of social assistance for families with children, as defined in 1996 before social assistance was drastically reformed. Beyond these mandatory categories, states have the discretion to extend Medicaid eligibility to various additional groups – the optional ones. Most states have done so to varying degrees, principally for pregnant women, infants and children, whose income eligibility has often been raised to around 200% of the poverty line. States can also cover low-income parents beyond the minimum federal standard. However, here extensions have remained very modest and mainly limited to working parents. As for childless adults, they are categorically excluded by federal law. No matter how poor they are, adults without dependent children cannot be eligible for Medicaid, unless they are covered exclusively with state money. As a result, only a handful of states provide some degree of access to Medicaid to poor childless adults.

All this shows that instead of granting medical coverage to all low-income persons living under a certain threshold, the choice has been made to make distinctions between various categories of the population in income poverty and, among these, to give priority to pregnant women, children, the elderly and the severely disabled. By contrast, medical help to low-income parents is scarce and often conditional on work, while adults without dependent children remain almost completely excluded. It is in this respect that Medicaid is often said to be reserved for the poor deemed 'deserving'. By reason of the listing of minimum federal requirements and the wide discretion left to states, the proportion of the population covered by Medicaid differs considerably from one state to another, ranging from 8% in Nevada to 22% in the District of Columbia. Although mandatory categories have been significantly broadened over time by Congress, massive gaps remain in the medical coverage of the poor. Nationwide, less than half of the people living below the official poverty line are enrolled in Medicaid. Of course, some of the officially poor have a private job-based insurance, but it still leaves about one-third of them uninsured – as well as numerous low-income families living near the poverty line.

The medical benefits provided by Medicaid are determined by each state within constraints established by the federal guidelines. States thus enjoy wide flexibility in this respect too. The Medicaid coverage is, generally speaking, quite comprehensive and usually includes many services that private insurers and Medicare exclude or limit, such as long-term care, mental health care and transportation services. Cost-sharing requirements are tightly restricted, in order to minimise financial barriers to access. Medicaid also provides complementary coverage to low-income Medicare beneficiaries, who are called 'dual eligibles'. It gives them access to the important services that are included in Medicaid but not in Medicare and assists them with Medicare premiums and co-payments.

59 All numbers mentioned in connection with Medicaid coverage are excerpted from Kaiser Family Foundation, 'Medicaid: A Primer', 2010, 43.

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Despite the financial matching by the federal government, Medicaid spending represents a heavy burden on states' budgets, because of the poor health and the extensive needs of many of the programme beneficiaries. Since states are legally required to balance their budget every year, they are often led to make cuts in the services offered during economic downturns, either by reducing the extent of the coverage or by making enrolment more difficult. For that matter, a non-negligible proportion of people eligible for Medicaid are not enrolled in the programme – a phenomenon known as 'non-take-up'.

The Obama overhaul of the US health care system

Medicaid will be substantially expanded in the framework of the comprehensive health care reform passed in 2010. Since World War II, numerous attempts have been made to overhaul the US health system, in particular to solve the embarrassing problem of the uninsured and reduce the massive inequalities of access to basic care.[60] Until the Obama presidency, all reform plans drafted by the administration or Congress had failed, mainly because of the disagreement between progressives, who favoured a universal single-payer system, and conservatives, backed by the powerful lobbies of physicians and insurers, wanting on the contrary to expand the private insurance market and keep it minimally regulated. After the passage of Medicare in 1965, the left's hope was that it would later be extended to the whole population. Yet, due to their considerable political and economic resources, conservative forces were able to defeat all subsequent attempts to enact a national health insurance system, each time brandishing the spectre of a 'socialisation of medicine'. The compromise elaborated by the Obama administration to reach near-universal coverage has been to renounce the old aspiration of the progressives and, instead, to rely mainly on regulation of the existing health insurance market, coupled with an expansion of Medicaid.

Long and difficult, the political process was marked by the vehement opposition of Republican Congressmen and conservative lobbies, who did not stop decrying a 'government take-over' of the health care system. Ultimately, the Patient Protection and Affordable Care Act, a 1200-page bill, was signed into law by President Obama in March 2010.[61] Its landmark provisions will not come into force until 2014. The primary focus of the act is to increase access to health care.

As regards private insurance, the strategy adopted to achieve it consists in significantly enlarging the pool of insured persons, while reframing the insurers' practices. Insurance companies will, in particular, no longer be authorised to deny coverage to individuals based on pre-existing conditions or other health issues, or to charge them higher premiums compared to healthy individuals. A poor health condition will thus cease to be a legitimate basis to refuse coverage or increase its price. To offset the costs that will be generated by this prohibition of discrimination on the grounds of

60 On these attempts and the reasons for their failure, see J. Quadagno, 'Why the United States Has No National Health Insurance: Stakeholder Mobilization Against the Welfare State, 1945-1996', (2004) 45 *Journal of Health and Social Behavior* (extra issue), 'Health and Health Care in the United States: Origins and Dynamics', 25-44.

61 For an outline of the reform, see R. Haveman and B. Wolfe, 'US Health Care Reform: A Primer and an Assessment', (2010) 8 *Journal for Institutional Comparisons* 3, 53-60. For critical and in-depth discussions, see, among many others, the special issue of the (2011) 159 *University of Pennsylvania Law Review* 6, 1577-2252, 'The New American Health Care System: Reform, Revolution, or Missed Opportunity?'.

health, the Affordable Care Act contains a provision that has become emblematic of the reform and is known as 'individual mandate'. It requires that individuals make sure to maintain a minimum level of health coverage for themselves and their family, be it based on job-related insurance, public coverage such as Medicare or Medicaid, or an individual insurance plan.

The goal is to attract into the pool of insured the individuals, usually young and wealthy, who forego insurance as long as they are in good health. This will prevent cost-shifting from the uninsured to the insured and the government. This will also allow insurers to cover, thanks to the additional premiums, the individuals with pre-existing health conditions they are from now on required to accept. To complete this puzzle, the law provides for the payment of subsidies to help low- and moderate-income people who are not offered an employer-sponsored health plan to purchase individual insurance. The subsidies will be granted on a sliding scale basis to households whose incomes are between 100% and 400% of the poverty line. Moreover, premiums and out-of-pocket payments will be capped for these families. So facilitated, the compliance with the mandate will be enforced through a system of financial penalty. People who do not satisfy the minimum coverage requirement will owe a penalty, which will consist in a percentage of the household income.

As regards public programmes, while the basic eligibility features of Medicare remain untouched, the reform encompasses a major expansion of Medicaid, called to be the final backstop. The Affordable Care Act removes the existing family categories and creates a basic floor instead. From 2014 on, states will be invited to make all persons and families with incomes below 133% of the poverty line eligible for Medicaid. The cost of this broad eligibility expansion will be almost entirely paid for by the federal government. It will cover it entirely the first three years, then a proportion that will gradually decrease to 90%. With regard to the content of the Medicaid coverage, the law provides that the benefit package offered by each state will have to include a certain number of health benefits considered 'essentials', in order to reduce disparities between programmes and to strengthen the medical safety net.

Overall, the implementation of the reform should drastically reduce the number of people without health coverage. Some will remain uninsured, such as undocumented immigrants, individuals eligible for Medicaid who will not enrol, and those who will not comply with the individual mandate. Nonetheless, the coverage will be substantially expanded and be more affordable for the millions of Americans who are now largely deprived of access to health care. From a comparative point of view, it can be pointed out, however, that the complex construction encompassed by the Affordable Care Act does not really represent a Europeanisation of the US health care system, despite what the emphasis on (near-)universality and affordability might *prima facie* suggest. Where the European countries have had recourse to the technique of publicly funded social insurance, the United States will indeed continue to rely primarily on the private insurance market to provide access to health care. Although it also expands the eligibility for a public entitlement, the reform can be considered first and foremost market-friendly, since it requires most of the population to participate in the pre-existing health care market. All its originality is to regulate and recast the latter at the same time, in order to make it work in a way that entails more solidarity.[62]

62 This point is well underlined by A. Hoffman, 'A Vision of an Emerging Right to Health Care in the U.S.: Expanding Health Care Equity through Legislative Reform', in A. Gross & C. Flood (eds), *The Right to Health at the Public/Private Divide. A Global Comparative Study* (Cambridge University Press, Cambridge, 2013), forthcoming.

Although the idea of an individual mandate initially emanated from conservative think tanks and was promoted in the 1990s by Republican lawmakers as a pro-business alternative to traditional social insurance,[63] the constitutionality of the Affordable Care Act has been challenged head-on by the 26 states whose governor or attorney general was a Republican. The law was attacked on the grounds that requiring every citizen to subscribe to insurance would exceed the limits assigned by the US Constitution to the action of federal government, while the Medicaid expansion, for its part, would be excessively coercive towards the states. Let us note that, despite what could often be heard in the media, the legal issue was not framed in terms of individual liberty, *ie* as to whether or not the mandate would impinge on a fundamental right to remain free of regulation by the government. The Supreme Court has indeed made clear since the New Deal era that such a right does not exist.[64] Legally speaking, the case exclusively concerned the question of allocation of powers.

In June 2012, in one of the most highly anticipated decisions in its history, the Supreme Court upheld the law by the slimmest majority.[65] Many observers feared that the five conservative members of the Court would rule against the four 'liberals' to invalidate the reform, as has happened several times in recent years in cases that were politically highly sensitive. However, Chief Justice Roberts, the Court's president appointed by George W. Bush, joined the liberal faction to deliver the majority opinion. Without entering into the details, the majority deemed that the financial penalty that is triggered by the failure to comply with the individual mandate can be characterised as a tax and that its enactment is a legitimate exercise of the Congress's constitutionally sanctioned power to levy taxes. As for the Medicaid expansion, seven out of the nine Justices found that the threat to withdraw all Medicaid federal funding in case of non-compliance with the expansion was unconstitutionally coercive towards the states, in that it left them with no real option to participate or not. Nevertheless, the same majority of five that upheld the individual mandate found that an appropriate remedy was to circumscribe the Health and Human Services Secretary's power to withhold federal funds. As a consequence, states participating in Medicaid are no longer required to expand their programme eligibility but have the option to do so, in which case they will receive additional federal funding.

Now that the Affordable Care Act's constitutionality has been affirmed, the reform should be fully implemented by 2014. Mitt Romney had solemnly promised, along with all Republican leaders, that if he were elected president, he would symbolically begin his term by repealing the so-called 'Obamacare'. Strangely enough, when he was governor of Massachusetts, Romney was an advocate of the individual mandate and signed a bill into law overhauling his state health care system that largely prefigured

63 This point is documented in the 'Brief of Health Care Policy History Scholars as Amici Curiae in Support of Petitioners' that was submitted to the Supreme Court in the case *Department of Health and Human Services v Florida et al* (docket No 11-398), which was heard together with the case quoted at footnote 65. The brief can be found on the American Bar Association's website: www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-398_petitioner-amcuhealthcarepolicyhistoryscholars.pdf (accessed 01.12.2012).

64 On the demise in the mid-1930s of the laissez-faire jurisprudence embodied by the famous *Lochner* decision, see E. Chemerinsky, *Constitutional Law. Principles and Policies*, 4th edition (Kluwer, New York, 2011), 630-645.

65 *National Federation of Independent Business et al v Sebelius, Secretary of Health and Human Services*, 567 US (2012).

the upcoming federal reform and directly inspired its architects.[66] Romney's defeat against Obama took away the threat of a repeal.

b. Supplemental Security Income: cash aid to the needy elderly or disabled

Supplemental Security Income, better known as SSI, is a federal programme that provides cash assistance to the needy aged or disabled.[67] It was introduced under Nixon in 1972. Although he was a Republican, Nixon in several ways expanded the social policies of the War on Poverty, pushed by a Democrat-controlled Congress. Nixon's aim was to replace pre-existing state assistance programmes initiated by the Social Security Act that differed widely in terms of eligibility requirements and benefit amounts, in order to create a national income maintenance system for poor seniors and the impaired. In a landscape rather marked by the weight of previous institutional choices, it is the only social welfare programme that shifted from the state to the federal level.[68] The population targeted by Supplemental Security Income has remained the one that slips through the cracks of Social Security's two main components, the old age pension and the disability insurance, because of insufficient past contributions. Although financed separately, the programme was integrated into Social Security and, accordingly, is managed by the Social Security Administration.

In fact, the vast bulk of the SSI caseload is made up of non-elderly disabled. Among them, a majority are indigents suffering from a mental impairment, such as retardation.[69] However, the eligibility requirements to qualify for the benefit are very tight. The income threshold to be considered needy amounts to only 75% of the official poverty line – which equates to the maximum amount of the grant. Furthermore, the applicant must be either aged 65 or older, or disabled. The definition of disability used to determine eligibility for Supplemental Security Income is the same to the one used in Disability Insurance. It means that to be granted the benefits, one has to succeed in proving an inability to perform any substantial gainful activity for at least one year due to medical reasons. Supplemental Security Income is therefore *de facto* reserved, with regard to the non-elderly, to persons who are both very poor and medically completely unable to work. Moreover, disabled persons whose incapacity was caused by alcoholism or drug addiction have been excluded from the benefits since the drastic overhaul of the social assistance schemes in 1996.

As to the benefit amounts, they are, as mentioned, far below the poverty line. But they are inflation-indexed, which is not the case for all means-tested cash transfers. Most states supplement the federal grant, but according to requirements and to an extent highly variable from state to state. About a third of the Supplemental Security Income caseload receives some state supplements.[70]

66 On the 2006 Massachusetts health care reform – which is colloquially known as 'Romneycare' – see its presentation by M. Romney, 'Health Care for Everyone? We Found a Way', *Wall Street Journal*, 11.04.2006 as well as the special issue of the *University of Kansas Law Review*, (2007) 55 *University of Kansas Law Review* 5, 'The Massachusetts Plan and the Future of Universal Coverage', 1091-1374.

67 For an overview, see M. Daly & R. Burkhauser, 'Left Behind: SSI in the Era of Welfare Reform', (2003) 22 *Focus* 3, 35-43.

68 K. Finegold, 'The United States: Federalism and Its Counter-Factuals', in H. Obinger, S. Leibfried & F. Castles (eds), *Federalism and the Welfare State. New World and European Experiences* (Cambridge University Press, Cambridge, 2005), 168-169.

69 *Green Book*, *op cit*, III-21 and III-24.

70 *Ibid*, III-21.

c. Temporary Assistance for Needy Families: 'reformed' social assistance to families with children

At present, the question that arises is: what benefit is accessible to all the other poor, the poor who are not sick or totally disabled? Historically, the solution that was adopted by all Member States of the European Union, except Italy and Greece – but including the Eastern countries – was the setting up of a universal minimum income.[71] Besides some schemes targeted specifically at the disabled and the elderly, what is generically called social assistance provides a minimum income for the very poor who are unable to get any other benefit and are available for work.

There is no such thing in the US, at least not at the federal level. In 1972, Congress rejected the Nixon administration's Family Assistance Plan, which is to this date the only serious attempt to enact a federal programme that would have provided financial support to all low-income families.[72] Congress only agreed to pass legislation creating Supplemental Security Income, because providing cash assistance to individuals not expected to work – the aged and the severely disabled – seemed unlikely to have much effect on participation in the labour market, contrary to a universal income floor. Nonetheless, some forms of general public assistance do exist, but they have always been quite limited, in their scope as well as in their level of generosity. More precisely, the United States has two distinct kinds of benefits for the very poor. Both have been significantly downsized over the past two decades.

The first benefit is what is colloquially known as 'welfare'. In the American context, welfare refers only to one specific programme, and not, as is generally the case elsewhere, to the whole system of social protection. In the US, it is roughly a synonym for public assistance to poor families with children. Before it was drastically 'reformed' in the mid-1990s, welfare consisted in a programme named AFDC – Aid to Families with Dependent Children. Created by the 1935 Social Security Act, it provided some cash assistance to poor families living under a certain income threshold. In fact, the Social Security Act put in place the dual model that would later be reproduced for the organisation of public health care entitlements: while universal social insurance schemes, such as old age pensions, were established at the federal level, targeted means-tested benefits for the poor, such as AFDC, were assigned to the states, under federal supervision. The choice of decentralisation for social assistance programmes was necessary to obtain the vote of the Southern Democrats. They largely controlled the South at that time and were the political voice of the powerful plantation owners, who strongly opposed policies that could potentially enable their African American labour force to leave the cotton fields.[73]

Given these preoccupations, Aid to Families with Dependent Children was initially designed for widows who, it was considered, should not be expected to work, so

[71] For an overview, see C. Saraceno, 'Concepts and Practices of Social Citizenship in Europe: The Case of Poverty and Income Support for the Poor', in J. Alber & N. Gilbert (eds), *United in Diversity? Comparing Social Models in Europe and America* (Oxford University Press, Oxford, 2010), 162-168.

[72] On this largely unknown episode of the US social welfare history, see B. Steensland, 'Cultural Categories and the American Welfare State: The Case of Guaranteed Income Policy', (2006) 111 *American Journal of Sociology* 5, 1273-1326.

[73] See K. Finegold, 'The United States: Federalism and Its Counter-Factuals', *op cit*, 162-163. For the same reason, agricultural and domestic workers, who were overwhelmingly black, remained excluded from Social Security until the 1950s.

that they could take care of their families. However, in the early 1960s, protest and litigation actions organised by welfare rights activists led to the removal of various legal and administrative barriers to enrolment, as well as to more federal control of the programme. As a result, the AFDC caseload began to rise quickly and to expand to a new population: poor unwed single mothers.[74] In the space of a few years, the vast majority of recipients became single heads of household, and among them, African Americans were clearly overrepresented. AFDC began to play the role of unemployment insurance and a safety net for poor young mothers of colour. But from the 1980s, the continuous increase of recipients coupled with the recurrent exposure in the media of the disastrous living conditions in the black ghettos went hand in hand with an assault by the conservatives on the so-called 'welfare queens' – an expression abundantly used by Ronald Reagan. Beneficiaries were constantly depicted as abusing the generosity of the welfare state and corrupting family values as well as the work ethic by their deviant way of life.[75] By the early 1990s, AFDC was 'the most disliked public program in America'.[76]

In 1996, after the Republicans took full control of Congress, AFDC was finally, with Clinton's support, abolished and replaced by TANF. The meaning of the abbreviation speaks for itself: TANF means Temporary Assistance for Needy Families. This sweeping reform is probably the most discussed and disputed reform in the history of social welfare in the US – although the 2010 health care overhaul is an increasingly serious challenger. In short, the main change consisted in transforming the former federal entitlement into a block grant, *ie* a fixed amount of money devolved to the states, which received wide discretion over the design and the administration of the programme. At the same time, federal law imposed a maximum lifetime limit of 5 years on the receipt of benefits, as well as stringent work requirements: at least half of the caseload in each state must be engaged in work activities in return for the aid. At any rate, the latter cannot be received in excess of 5 years over the course of an adult lifetime. The motto behind the reform was the need to break the so-called 'culture of dependency' that would have developed among recipients of AFDC. States took advantage of the huge margin of flexibility they were given to implement the reform in very different ways.[77]

What concrete effects has the welfare reform had so far?[78] The most prominent one is that the caseload has literally plunged. Only five years after the Personal Responsibility and Work Opportunity Reconciliation Act was enacted, the number of recipient families had fallen by around 60%, from over 5 million cases to about 2 million – a

74 On the history of welfare, see generally the synthesis of K. Gustafson, *Cheating Welfare. Public Assistance and the Criminalization of Poverty* (New York University Press, New York, 2011), 17-50.

75 On the political and discursive process of delegitimisation of the welfare in the US, see F.F. Piven & R. Cloward, 'Welfare State Politics in the United States', in Z. Ferge & J. Kolberg (eds), *Social Policy in a Changing Europe* (Campus Verlag-Westview Press, Frankfurt-Boulder(CO), 1992), 57-75; J. Peck, 'Workfare: A Geopolitical Etymology', (1998) 16 *Environment and Planning D: Society and Space* 2, 133-161.

76 M. Katz, *The Price of Citizenship. Redefining the American Welfare State*, updated edition (University of Pennsylvania Press, Philadelphia, 2008), 1.

77 For a thorough examination of how each of the 50 states defined 'work' in its respective regulations, see N. Zatz, 'Welfare to What?', (2006) 57 *Hastings Law Journal* 5, 1131-1188.

78 For a review of the abundant literature devoted to this question, see R. Blank, 'What We Know, What We Don't Know, and What We Need to Know about Welfare Reform', in J. Ziliak (ed), *Welfare Reform and Its Long-Term Consequences for America's Poor* (Cambridge University Press, New York, 2009), 22-58.

level not seen since the 1960s.[79] Nobody amongst the supporters or detractors of the reform had anticipated such a massive drop. As a consequence, it was hailed a success by most policymakers and public opinion, and even a 'triumph' by an intellectual such as Lawrence Mead, the spiritual father of neo-paternalism in social policy.[80]

Nevertheless, the apparent success indicated by the decline in the rolls is seriously counterbalanced by two worrying findings. The first flip side of the medal is that a growing group of poor single mothers now lives totally 'off the books'. They are no longer on welfare, because they exhausted their benefits or were sanctioned for non-compliance with the work requirements. Yet, they are not working either, usually because they face significant barriers to employment: health issues, mental troubles, residential instability, a very low level of education, addictions, domestic violence, etc. Under the new post-entitlement regime, these poor 'disconnected' single mothers, and their children, are completely left to fend for themselves.[81]

Secondly, TANF is by definition completely impervious to the evolutions of the economic situation, since the federal funding operates by means of a frozen block grant, which is not even inflation-indexed. Except for individuals not able to take a job, it seemed to pose no major problem in the second half of the 1990s and the beginning of the 2000s, when strong growth allowed many adult recipients to move towards work, leading to the aforementioned major decline in the welfare rolls. But the start of the Great Recession in 2007 has brought to light the structural inability of a block grant programme to play the role of a reliable minimum safety net. Despite the sky-rocketing unemployment rate, the TANF caseload has kept at the same historically low level. This status quo does not mean that there are less (very) poor American families than before the reform. Rather, it masks the fact that more impoverished households than ever before are totally deprived of minimal assistance. Confronted with an up-surge in poverty and unemployment, and with a federal grant that has lost almost 30% of its real value since 1996, states are indeed tightening the eligibility requirements, reducing time limits, and harshly cutting into the level of the benefits. This level is now equivalent to less than half of the official poverty line in all states.[82]

d. General Assistance: the endangered social assistance to childless adults

One last means-tested programme must be mentioned in this quest for counterparts to European social protection schemes: the General Assistance. While TANF is directed to families, General Assistance is targeted at childless adults. It is – or, as we shall see, it

79 *Green Book*, *op cit*, VII-26 and VII-27.

80 L. Mead, 'Why Welfare Reform Succeeded', (2007) 26 *Journal of Policy Analysis and Management* 2, 370 and 373. Lawrence Mead is a professor of politics at New York University and the author of two highly influential books: *Beyond Entitlement. The Social Obligations of Citizenship* (Free Press, New York, 1986) and *The New Politics of Poverty. The Nonworking Poor in America* (Basic Books, New York, 1992).

81 On the extent of the problem, see R. Blank & B. Kovak, 'The Growing Problem of Disconnected Single Mothers', in C. Heinrich & J.K. Scholz (eds), *Making the Work-Based Safety Net Work Better. Forward-Looking Policies to Help Low-Income Families* (Russell Sage, New York, 2009), 227-258. On the survival strategies that 'no-work, no-welfare' households are compelled to put into place, see the ethnographic inquiry led in Chicago's African American ghetto of S. Venkatesh, *Off the Books. The Underground Economy of the Urban Poor* (Harvard University Press, Cambridge (MA), 2006).

82 L. Schott & L. Pavetti, 'Many States Cutting TANF Benefits Harshly Despite High Unemployment and Unprecedented Need', Washington DC, Center on Budget and Policy Priorities, 2011.

used to be – the safety net of very last resort, the safety net for the poorest of the poor. Its specificity, and the reason why it is, quite surprisingly, almost never covered in the literature on social welfare in the US, is that it is not subject to any federal oversight. In other words, it is entirely up to states to decide to run it or not, and to fund it or not. For the same reason, if such a programme is set up, it can either be operated on a uniform basis state-wide, or, as in California, be mandated state-wide with important local variations.

The overall evolution undergone by general assistance programmes in the last twenty years is particularly striking. No later than in the mid-1990s, forty states had some form of General Assistance, while the ten others – almost all located in the South – had no programme at all.[83] In 2011, only thirty states still had a general assistance scheme. And among the remaining programmes, the vast majority had been very severely cut back.[84] The most widespread evolution, which began at the same time as the push for welfare reform, consisted in excluding from the benefits the people judged able-bodied and, thus, in limiting the benefits to those considered unemployable – *ie* those who have some degree of physical or mental disability but do not qualify for SSI. The benefits are not only much more limited in scope; they have also become extremely modest in their amount. In most states, they are now below one quarter of the poverty line. For instance, general assistance in Los Angeles amounts to $221 a month, not inflation-indexed. For individuals deemed employable, the benefit is furthermore limited to 9 months per year, to avoid recipients becoming 'dependent'.[85]

Yet, several states have opted for a much more radical 'solution'. Some have completely eliminated their General Assistance, such as the state of Illinois, which purely and simply terminated its programme in summer 2011, leaving 10,000 recipients in Chicago without any income overnight.[86] This happened in the midst of a massive economic crisis, with unemployment remaining persistently high. Nonetheless, the issue has not elicited audible political protest, nor has it even been subject to coverage in the major media.

In short, General Assistance is clearly an endangered species. Its silent dismantling again makes the US case quite intriguing, to say the least, to European observers.

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83 For a review, see S. Anderson, A. Halter & B. Gryzlak, 'Changing Safety Net of Last Resort: Downsizing General Assistance for Employable Adults', (2002) 47 *Social Work* 3, 249-258.

84 For a synopsis, see L. Schott & C. Cho, 'General Assistance Programs: Safety Net Weakening Despite Increased Need', Washington DC, Center on Budget and Policy Priorities, 2011. Information on general assistance programmes is scarce since, after the passage of welfare reform, and in the wake of the devolution movement, the federal Department of Health and Human Services stopped collecting and centralising the data that states used to report annually.

85 Thanks to Zeke Hasenfeld, the present author was able to spend an afternoon as 'advocate' for a pro bono law firm in one of the LA county offices. The scene was quite startling: overcrowded with homeless people, many of whom clearly had serious mental health issues, the facility was equipped with firearms detectors and prominently displayed the faces and identities of former recipients sentenced for cheating, while caseworkers were separated from their clients by a thick glass window and communicated with them through a microphone.

86 L. Schott & C. Cho, 'General Assistance Programs', *op cit*, 9.

As an interim conclusion, let us briefly take stock of this overview of the main American social welfare programmes through European eyes. Generally speaking, it is striking that these programmes are strongly fragmented. Although the Social Security Administration and the Department of Health and Human Services manage, or at least exercise some supervision of the majority of the benefits, one cannot say that there is a real, centralised, 'system' of social protection. Instead, one finds a superposition of programmes the regulation, management and funding of which are split between different levels of power, resulting in significant gaps in the coverage against the principal social risks. The clearest example of this fragmentation, and its consequences, is probably provided by the sector of health care. More radically, beyond the scattering of the relevant authorities and funding sources, benefits as classic as family allowance, maternity leave and universal minimum income simply do not exist.[87]

As regards the different categories of the population, it can be said, in sum, that the elderly are more or less well protected: they are covered by Social Security and Medicare, the two largest and most popular programmes. Both of these are universal, in the sense that the benefits they allocate are not means-tested and their eligibility conditions do not seek to draw a demarcation line between the deserving and the undeserving. The US social welfare policies also express some concern for poor children, as well as, but to a lesser extent, poor mothers: they are provided with access to health care and to some public assistance. Individuals who cannot work because of a disability benefit from a certain income support too, but the legal definition of disability is particularly restrictive. Finally, working-age adults deemed able-bodied, especially if they are childless, are treated as the least deserving of all. No matter the difficulties they face, they are, to a large extent, held solely responsible for their situation and must ensure their financial autonomy exclusively through work.

On the whole, it seems hard not to consider the American social safety net quite weak by comparison – and even frankly harsh for vulnerable people. This has led an American sociologist to write, 'the United States may be the best place to live if you are rich, but it may be the worst affluent democracy to live in if you are poor'.[88]

IV. THE UNKNOWN US WELFARE STATE

To accurately portray a foreign system, one cannot content oneself with looking for the local versions of presumed universal categories. To be carried out rigorously, cross-national comparison must be marked by a 'respect for foreignness', which calls for an effort of decentring.[89] It is in pursuit of this goal that we would now like to add nuance to and complete the above developments by calling attention to American schemes that are often neglected by Europeans. More precisely, we will successively point out three sets of policies that have no real counterpart in Europe but that do play a very important role in the way 'social welfare' is organised in the United States.

87 Reflecting the fragmentation and limitation of benefits, or the declining interest they arouse amongst lawyers, no comprehensive handbook of US social welfare law exists. Similarly, the class of public benefits law has disappeared from the curriculum of many law schools.

88 D. Brady, *Rich Democracies, Poor People. How Politics Explain Poverty* (Oxford University Press, New York-Oxford, 2009), 178.

89 J.-C. Barbier, 'When Words Matter. Dealing Anew with Cross-National Comparison', in J.-C. Barbier & M.-T. Letablier (eds), *Social Policies. Epistemological and Methodological Issues in Cross-National Comparison* (P.I.E.-Peter Lang, Brussels, 2005), 51.

Together, these three sets form what could be called the hidden, or unknown, face of the US welfare state.

It must be added right away that the first two of these three sets are framed and perceived as anti-poverty policies by American scholars themselves, while this is not the case for the third one. We will nevertheless argue that the schemes encompassed by this third set to some extent play the role of functional equivalents to several European social security benefits. For this reason, they cannot be completely ignored by comparatists.

By giving a few representative examples, the main features of each of the three types of mechanism will successively be dealt with, along with their impact on the situation of the poor.

A. In-kind benefits

In-kind benefits, as opposed to cash benefits, constitute the first category of policies that should deserve more attention. In the Old World, in-kind benefits, with the exception of health care and social services, no longer make up a significant part of the national systems of social protection. They are considered to be too reminiscent of charity and the 19th century, the background against which the European welfare states were built. Across the Atlantic, however, in-kind support continues to play a non-negligible role in the architecture of anti-poverty policies.

Food stamps

One programme in particular is of major importance: the food stamps. The food stamps were renamed Supplemental Nutrition Assistance Program (SNAP) in 2008, but they have remained better known under their former denomination. As their name suggests, they aim at providing food assistance to low-income persons and families. Initiated by administrative action under Kennedy in 1961, the programme was consolidated by the Food Stamps Act under his successor, Lyndon Johnson, three years later. Although the Food Stamps programme is a product of the War on Poverty, it was borne not only out of a will to relieve the needy. Its establishment was the result of an agreement between urban Democrats, who were preoccupied with the persistence of the plague of hunger, and rural Congressmen, whose concern was rather to sell off farming surpluses.[90] This origin explains why the programme is supervised by the US Department of Agriculture, and not the one of Health and Human Services.

The rules governing the programme are elaborated by the federal power, but states enjoy some significant options. Moreover, they are responsible for the issuance of the benefit. The day-to-day administration is usually carried out by the states' public assistance offices that run TANF and, when it exists, General Assistance. Regarding the main features of the benefit, the net income eligibility equates to the official poverty line.[91] As for the benefit itself, it is theoretically calculated to allow eligible households to purchase a low-cost diet designed by the Department of Agriculture that meets minimal nutritional standards. The exact amount allotted depends on the applicant house-

90 K. Finegold, 'The United States: Federalism and its Counter-Factuals', *op cit*, 167.

91 For more details on the eligibility requirements, see *Green Book*, *op cit*, XV-6 to XV-13.

hold's income. In 2011, the maximum benefit for a single person was $ 200 a month. Indexed to food price inflation, the benefits are entirely funded by the federal government, while the states only bear a part of the costs of the administration of the system.

Concretely, the food stamps used to exist in the form of paper coupons, which could be exchanged in grocery stores for food and drinks, to the exclusion of tobacco and alcohol. In the 2000s, the coupons were replaced by electronic cards similar to a bank debit card. The aim was to reduce the stigma associated with the use of food stamps. Since then, beneficiaries only have to swipe the card at the store checkout, so that in practice the benefit is now near-cash. However, the purchase of tobacco and alcohol is still prohibited. This suggests that the programme remains marked by the concern to exercise some social control over the behaviour of the poor.

Since the beginning of the Great Recession in 2007, the food stamps caseload has literally skyrocketed. It has almost doubled in only four years, up from 25 to about 45 million people. In 2011, no less than one in seven Americans, or 15% of the population, was using food stamps. That is why Barack Obama has been called the 'food stamps president' by prominent Republicans. In fact, the soaring of the food stamps caseload illustrates that in times of economic turmoil, and in the absence of a real safety net, federally funded nutritional assistance is the only benefit broadly available to the impoverished segment of the American population. For want of a universal social assistance scheme, food stamps help to at least reduce hunger. When added to TANF, SSI or General Assistance, they make public assistance a bit less miserly and somewhat relativise the lack of a minimum income. For that matter, it has been shown that the food stamps programme notably reduces the prevalence of income poverty, especially for children.[92]

B. Refundable tax credits

A second type of scheme to which European observers, at least those on the continent, might pay more attention are the various tax credits, usually conditional upon the exercise of a job. The best and most notorious example of this technique is the Earned Income Tax Credit (EITC). It has no well-established and similarly important counterpart in Europe, apart from the British Working Tax Credit, which was directly modelled after its American cousin (a). Another example of tax credit is the Child Tax Credit (b).

a. The Earned Income Tax Credit

The Earned Income Tax Credit is a refundable credit against federal income tax designed to supplement low wages. It is said to be refundable in the sense that if the credit exceeds tax liability, the extra amount is paid as a cash transfer. As a consequence, workers making less than the threshold that triggers federal income tax liability get money from the Department of the Treasury instead of having to pay contributions. EITC therefore operates as a direct earnings subsidy for low-income working households. The programme was initiated as an experimental measure in 1975, before

92 For estimates, see L. Tiehen, D. Jolliffe & C. Gundersen, 'Alleviating Poverty in the United States: The Critical Role of SNAP Benefits', *Economic Research Report* No 132, Washington DC, Department of Agriculture, 2012.

becoming permanent three years later.[93] Entirely designed, managed and funded by the federal government, the programme both supports low income and rewards work: the more you work, as employee or self-employed, the higher the refunded tax credit. It is this linkage between financial help and economic activity that convinced Congress to enact EITC, while it had defeated the more radical Family Assistance Plan a few years earlier, fearing that it would reduce work efforts of individuals living on the margins of the labour market. It is also this linkage that explains why EITC has, since its creation, often enjoyed a broad bipartisan backing.

Initially very modest in size, the programme has been greatly expanded over time, particularly in the 1990s under Clinton. It is indeed important to specify that Clinton, while advocating a significant downsizing of welfare, also pushed to increase financial support to the working poor. It is the cornerstone value of work that simultaneously justified a major dismantling of the entitlement accessible to non-working poor and an expansion of government transfers to low-wage workers.[94] Combined with important increases in child-care subsidies and a flourishing economy, the growth of EITC helped many 'welfare mothers' to leave the rolls during the second half of the 1990s. EITC has now become the largest means-tested anti-poverty programme after Medicaid. It is a bigger source of income support than the classic social assistance benefits such as TANF and SSI.

The subsidy amount is determined by the household level of income, which must be below a certain threshold, and by the household composition.[95] The rate at which the refunded credit grows increases with the number of children. Modest for childless workers, this rate reaches 35% for families with one child, goes up to 40% for families with two children, and, since the passage of an important stimulus bill in 2009, peaks at 45% for families with three children or more. This means that, for large families, the government adds up to 45 cents to each dollar earned through work. Thanks to this massive subsidy of poor parents' work, the Earned Income Tax Credit lifts several million Americans above the official poverty line every year. Combined with food stamps, it significantly boosts the disposable income of low-wage working families. It is estimated that EITC can be credited with reducing the poverty rate by 10%, which makes it the most efficient of cash means-tested programmes. Furthermore, EITC can, as SSI, be supplemented by states, which about half of them do.

Needless to say that outlining this data does not aim at embellishing the situation of precarious American families. In particular, EITC offers no solution to people durably disconnected from the labour market – nor to their children. The point is simply to underline that this programme is a major source of financial support for the working poor in the US. Hence, not taking it into account due to its unfamiliarity to Continental eyes affords a truncated view of American anti-poverty policies.

93 On EITC's genesis and its subsequent evolutions, see J. Hotz & J.K. Scholz, 'The Earned Income Tax Credit', in R. Moffit (ed), *Means-Tested Transfer Programs in the United States* (University of Chicago Press, Chicago, 2003), 143-147.

94 N. Zatz, 'Welfare to What?', *op cit*, 1131.

95 The figures that follow are all excerpted from B. Meyer, 'The Effects of the Earned Income Tax Credit and Recent Reforms', (2010) 24 *Tax Policy and the Economy*, 153-180.

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b. The Child Tax Credit

Another example of an analytically important tax credit is the Child Tax Credit. Enacted in 1997, during Clinton's second term, it allows American taxpayers to reduce their annual federal income tax by up to $1,000 for each dependent child aged 16 or younger.[96] It was later made refundable, so that low-income families receive a cash transfer from the Treasury if the credit exceeds their tax liability. While EITC is targeted at low-income and working households, the Child Tax Credit is universal, in the sense that it raises the income of all families with children and is not tied to employment. Although the credit amount does not increase with the rank of the child or his age and remains relatively modest, it nonetheless approximates universal family allowances.

C. Tax breaks for social purposes

Finally, a third and last type of mechanism needs to be outlined to complete this panorama. Allocating cash entitlements, such as unemployment compensation or old age pension, is not the only way to pursue a social policy. Using the tax code is another one. Refundable tax credits such as EITC and the Child Tax Credit are a first illustration. What are sometimes in international comparisons called tax breaks for social purposes, or tax expenditures, constitute a second one. It consists in tax exemptions aiming at fostering private coverage of social risks. This technique is particularly widespread in the United States,[97] while it remains comparatively quite marginal in most European countries – although it is gradually gaining importance in some of them.

In the US, the two best examples of tax expenditures are the huge tax breaks for employer-sponsored pension and health benefits. Under some conditions, contributions to employment-related retirement and medical plans are largely exempt from income tax. From the government's point of view, the effect of such tax breaks is exactly the same as the one of direct social spending: in the short run, it creates a shortfall. It is for this reason that these exemptions are also called tax expenditures. Thanks to them, many American workers, at least those who enjoy good working conditions, have access to a whole range of benefits tied to their workplace called fringe benefits. As seen above with the emblematic example of health care, (quality) employment in the US often provides a private coverage that complements social welfare programmes. In relation to paid family leave, fringe benefits can compensate for the non-existence of a public programme.

This feature has important implications for the understanding of the American welfare state. We previously mentioned that public social spending as part of GDP is quite low in the United States, comparatively speaking: 16% versus an average of 23% in the European Union in its enlarged configuration. But, once the definition of social spending is expanded in order to account for tax expenditures as well as private social expenditures fostered by these, it appears that the gap between the US and the EU largely disappears. When employer-related benefits and the large tax breaks that support them are counted as social spending, it turns out that net total social spending in the US is superior to 25% of GDP, a level comparable to that of many European

96 J. Waldfogel, 'The Role of Family Policies in Antipoverty Policy', *op cit*, 250.

97 On its institutionalisation, see F. Dobbin, 'Is America Becoming More Exceptional? How Public Policy Corporatized Social Citizenship', in B. Rothstein & S. Steinmo (eds), *Restructuring the Welfare State: Political Institutions and Policy Change* (Palgrave Macmillan, New York, 2002), 51-77.

countries.[98] Taking into account the machinery of private schemes sustained by public money thus substantially increases the size of the American welfare state and leads to a drastic change of the global picture.[99]

That being said, it is very important to add that the private welfare state is considerably more unequal than public programmes. Tax expenditures disproportionately benefit the upper-middle class and the wealthiest. For instance, many low-wage workers are not offered a retirement plan by their employer, and therefore cannot take advantage of the extensive – and expensive – tax incentives designed to boost the income generated by this type of plan. The staggering drop in the unionisation rate, fallen in the private sector from a third of the salaried labour force after World War II to less than 7%, has all but reinforced this trend.[100] Figures show that the top fifth of the American population 'gobble up' no less than two-thirds of tax expenditures, with the top one per cent alone getting more than one-fifth of them. By contrast, the bottom fifth of the population receive less than 3% of the benefits.[101] As the political scientist Christopher Howard has suggested, all the money spent by the government on tax breaks for social purposes allow the haves and above all the have-lots to have more, but are not of any help, or very little help, to the have-nots. It is 'Robin Hood in reverse', or 'socialism for the rich'.[102] In other words, the American welfare state is, at the same time, larger and more unfair than commonly thought in the US and in Europe.

The continuous expansion of tax subsidies and regressive loopholes that primarily benefit the most affluent taxpayers of the American society has been depicted as a way of 'privatizing risk without privatizing the welfare state', to borrow Jacob Hacker's expression.[103] Without simply dismantling the welfare state programmes, the road taken has consisted in shifting responsibility from government to individuals, instead of seeking to adjust pre-existing programmes to the evolution of social needs. Politically, the success of this strategy can largely be explained, as Christopher Howard has well shown, by the two dominant parties' preferences and strategies.[104] On the one hand, Republicans have adopted tax expenditures – often portrayed as tax cuts – as the best tool to address some social needs, while preventing at the same time the expansion of the traditional social welfare policies that they strongly oppose. They have in particular clearly promoted tax breaks for employment-related retirement and health benefits to slow the growth of Social Security and reduce the pressure to move towards a national

98 J. Alber, 'What the European and American Welfare States Have in Common and Where They Differ', *op cit*, 104 (analysing data from the OECD social expenditure database).

99 The idea that the classic claim that the US welfare state is quantitatively underdeveloped should be reconsidered, was pioneered by Christopher Howard. See for example C. Howard, 'Is the American Welfare State Unusually Small?', (2003) 36 *Political Science & Politics* 3, 411-416.

100 On the deconstruction of collective bargaining in the US, see R. Block *et al* (eds), *Justice on the Job. Perspectives on the Erosion of Collective Bargaining in the United States* (Upjohn Institute for Employment Research, Kalamazoo (MI), 2006); C. Estlund, 'The Ossification of American Labor Law and the Decline of Self-Governance in the Workplace', (2007) 28 *Journal of Labor Research* 4, 'Public Policy: Choice, Influence, Evaluation', 591-608.

101 E. Toder & D. Baneman, 'Distributional Effects of Individual Income Tax Expenditures', *National Tax Association Proceedings. 104th Annual Conference* (National Tax Association, Washington DC, 2013), forthcoming.

102 C. Howard, 'The Haves and the Have-Lots', (2007) 4 *Democracy*, 49.

103 J. Hacker, 'Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States', (2004) 98 *American Political Science Review* 2, 243-260.

104 C. Howard, 'Party Politics and the American Welfare State', in J. Cronin, G. Ross & J. Shoch (eds), *What's Left of the Left. Democrats and Social Democrats in Challenging Times* (Duke University Press, Durham/London, 2011), 196-205.

health insurance system. On the other hand, Democrats have for their part often been compelled to support tax expenditures for lack of being politically able to expand social insurance programmes. The centrist faction of the party, the so-called New Democrats, embodied by Clinton, has even positively embraced this technique, as it became more preoccupied by how to attract upper-middle-class voters than by the issue of poverty.

Nevertheless, from a descriptive perspective, the important point here is that in the US tax tools functionally fulfil the role played in Europe by social security benefits for a segment of the population – the most advantaged one. This is hard to discern if one only looks to American counterparts of European-style social protection schemes.

V. CONCLUSION

To sum up, the American welfare state essentially consists in a patchwork of categorical cash entitlements. These cash entitlements first and foremost benefit tightly delineated categories considered to be legitimately incapable of providing for themselves: the elderly, the disabled and children. Conversely, the part of the population that is the most underserved by the system, because of its alleged undeservingness, is working-age able-bodied adults.[105] Given the limited scope of redistributive policies and their fragmentation, it is not surprising that the United States is characterised by the persistence of a particularly high rate of relative poverty. Yet, it must also be underlined that the limitations of cash entitlements are partially compensated by other means of distributing income. These alternative techniques include in-kind transfers such as food assistance, refundable tax credits and occupational benefits tied to employment. These techniques – at least the first two of them – somewhat limit the extent of poverty and favour the integration into the labour market. Overall, the global picture that emerges is one of a social protection system strongly 'work-conditioned', to use Rebecca Blank's illuminating expression.[106] Strict eligibility requirements and modest benefit levels force entitlement claimants to seek work, while at the same time low-income workers are financially aided to reach self-sufficiency.

To finish where we began: in the end, who is right about the US welfare state and its anti-poverty policies? The European public opinion or the Republican candidate in the 2012 US presidential race and his many followers? By way of conclusion, it seems fair to state that the first is excessive, while the second are wrong. On the one hand, to claim that the US is becoming an 'entitlement society' is just empirically false. There have been very serious cutbacks in the last two decades, whereas the social safety net was already marked by significant gaps. But, on the other hand, Europeans are too condescending when they claim that the US has no, or almost no, welfare state. The fact that American social policies have different features compared to European ones does not mean that they do not exist. Hence, we are tempted to conclude this comparative review by quoting the (American) historian Peter Baldwin, author of a book provocatively entitled *The Narcissism of Minor Differences. How America and Europe Are Alike*: 'The primary weakness of American social policy is its reluctance to deal resolutely with poverty.' Nevertheless, Baldwin goes on, 'comparing American and European welfare

105 Y. Ben-Shalom, R. Moffit & J.K. Scholz, 'An Assessment of the Effectiveness of Antipoverty Programs in the United States', in P. Jefferson (ed), *The Oxford Handbook of the Economics of Poverty* (Oxford University Press, New York, 2012), in press.

106 R. Blank, 'The New American Model of Work-Conditioned Public Support', in J. Alber & N. Gilbert (eds), *United in Diversity?*, *op cit*, 194.

states means identifying different styles of policy rather than a simple binary choice between absence and presence.'[107] To depict the American 'style' and contrast it with the European one is exactly what this article has attempted to do.

107 P. Baldwin, *The Narcissism of Minor Differences. How America and Europe Are Alike* (Oxford University Press, Oxford, 2009), 60 and 73.