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THE ROOTS OF FRENCH WELFARE STATE

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Introduction

"Humanity, religion oblige us to relieve our fellow men," wrote Robert Jacques Turgot (1721-1781). If this duty makes a consensus, its terms are subject to debate. How can this help be achieved? Should it be provided by the State or not? That is the question.

In 1893, the French representative Leon Say (1826-1896) answered in the negative. He denounced the interference of the State in the economy in the name of solidarity. He saw in it "the worst of the socialisms, a bourgeois socialism". Some eminent French jurists relayed this criticism. For example, a few years later, Maurice Hauriou (1856-1929) declared to regret it: "We say it is serious, because our State has been changed"¹.

These personalities condemned the transformation of the State constable into the welfare State.

Due to the rallying of politicians to liberal dogma, the State constable is characterized in the 1890s by a limited intervention of public power. Its action is indeed confined to the regulatory functions necessary for the good work of the free market: coining money and ensuring transaction security (justice, police inside; diplomacy and national defense outside).

On the contrary, the development of the welfare State leads to a greater intervention of public power in the economic sector.

It is the French representative Émile Ollivier (1825-1913) who forged the French expression of Etat-providence that can be translated by "welfare State". He forged it in 1864 in a pejorative sense, to condemn the claim of the government to substitute a "welfare State" to the "Divine Providence". "Do not appeal to the welfare State because the State is after the

¹ Note under TC 9.12.1899, Assoc. synd. du canal de Gignac. Paris : *Dalloz* 1899 (3), p. 50.

man. Before it was formed, the man had already received from nature the right to live and protect its own existence" cried Pope Leo XIII in 1891².

This is what the Church calls the "Divine Providence", an expression referring to dispositions by which God guides his creation toward its ultimate goal that is perfection. The most famous manifestation of this "Divine Providence" is Jesus Christ, because Catholicism teaches that God sent him as a gift for the men to be led to salvation³.

But what characterizes the welfare State? The aim of this article is to show that it is not so much its intervention in the socio-economic, that the goal of this intervention. A study of the positive law enlightened by a historical approach and a study of its ideological foundations shows that it aims to ensure a fair redistribution of wealth to fight against poverty. That is to say to help anyone who cannot live only of the resources of his work. Because of its religious connotation, the French concept of Etat-providence is sometimes questioned. Some prefer the one of "social State" or of "redistributive State" that seems more consistent with the secular nature of that assistance to the poor. But the fact is that its popular foundations make

Whatever, this intervention takes place in practice with the recognition of certain social rights to individuals, that is to say, rights they may require the State to set up. The main tend to the establishment of a welfare system, by which the society supports the risks of disease, old age, unemployment or family. Other social rights, however, can also be assigned to promote access to education or housing. The important thing is that these different rights are thought as complementary. If it's necessary to fight against the disease or professional risks, it's because they are synonymous with unemployment for the individual and therefore loss of income for him and his family. Similarly, if it is necessary to educate the masses, it is to allow them to escape to their social status by improving their income. Finally, social housing aims to improve hygiene and to fight certain diseases which could cause mortality or certain work disabilities, such as tuberculosis.

This overall coherence shows that the welfare State is an "instrument of national solidarity." It "is the born defender of the poor, the unfortunate victim of social fate" because "only it has (...) the authority to impose collective duties and assign obligations to each people"⁴. Its originality is to exploit the legal system in order to collectivize risks to members of society and thus to protect everyone. Through this "interventionist right" (N. Luhmann),

² *Rerum Novarum*. may 15th, 1891.

³ Lacroix, P. What is the Divine providence. *City of the Father*. October-November, 2005.

⁴ *JO Ch. député CR*, session of may 18th, 1893, p. 318.

the State becomes "propulsion"⁵: it interferes in the economy "to achieve true equality, rather than formal, in the name of the imperative of social justice"⁶. Its development is linked to the rise of socialist ideas even if it's not identical with them. More precisely, we can indeed say that its appearance was prepared by largest ideological evolutions (1) even if it appeared primarily as a sociological reality (2).

1. IDEOLOGICAL FOUNDATIONS OF THE WELFARE STATE

The advent of the welfare State finds its source in philosophical-religious (Chapter I) and politico-economic considerations (Chapter II).

1.1. THE RELIGIOUS AND PHILOSOPHICAL FOUNDATIONS OF THE WELFARE STATE

1.1.1. THE RELIGIOUS FOUNDATIONS: THE CHRISTIANISM

The duty of assistance that characterizes the welfare State is founded on the Christian religion. While Catholicism had first justified to entrust the Church with the help of the poor (I), Protestantism has transferred that duty to the society (II).

1.1.1.1. CATHOLICISM OR THE DUTY OF THE CHURCH TO HELP THE POOR IN THE NAME OF CHRISTIAN CHARITY

Until the early sixteenth century, the sacralization of poverty leads Catholicism to promote Christian charity. That one entrusted the Church with the duty of supporting the disadvantaged. The idea was that the "duty of Christian charity" to help the most disadvantaged" can not be achieved by the action of the law"⁷. The root of this duty is to be found in this passage of the Gospels where Jesus says: "what you do to the least of my brothers, you do it to me". Because the Church "always commented this text by saying that you must not refuse alms" to "a poor creature without fearing refusing it to the Christ himself"⁸. It is indeed well known that Jesus had a life of suffering.

⁵ Morand, C. A, *Weighing global interests*. Bâle: Helbing & Lichtenhahn, 1996.

⁶ Chevallier, J. *The post-modern State*. Paris: LGDJ 2004, p. 23.

⁷ Leo XIII, *Rerum novarum. op. cit.*

⁸ Foucault M. *History of Madness*. Paris: Plon, 1961, p. 75.

Of course, the Church doesn't require the faithful to renounce to the goods that are necessary for their livelihood, their families' one or the lifestyle that goes with their official qualities. As St. Thomas said: "No one must live contrary to conventions"⁹. But the Gospels invite the faithfuls to give their surplus of wealth to the clergy, so that it can fulfill the will of the Lord. "What remains, give it to charity" it is said in St. Luke (v. 11, 41).

This conception of assistance will however be challenged by Protestantism.

~~SOCIETY, PROTESTANTISM OR THE DUTY OF THE BENEFICENCE HELP THE POOR IN THE NAME OF~~

From 1517, Martin Luther (1483-1546) forged the Reformation. It led to the desacralization of poverty and to the promotion of another conception of charity called beneficence.

This semantic change resulted from a new conception of the relation between the men and God. In the eyes of Protestants indeed, Jesus Christ is not embodied only in the most miserable. He is in every men. Therefore, no need to give to the Church to be worthy in the eyes of the Lord. You just have to be faithful. Thus one can prove that he has faith by helping directly the poorest. From this point of view, beneficence reflects a secularization of assistance to the poor. That is to say that poverty becomes a "social problem" before becoming "a State policy"¹⁰.

This development marks a major milestone in the development of the welfare State, because the secularization of the poor relief will allow the State to substitute Christian charity. Rid of the action of the Church, the State will take the responsibility of erasing inequalities by repairing the injustices of birth or twists of fate.

Some philosophical currents will encourage this development.

1.1.2. PHILOSOPHICAL FOUNDATIONS: IUS NATURALIS AND MARXISM

The philosophical foundations of the welfare State are to be found in the Ius naturalis (I) and Marxism (II) dogmas.

⁹ Are theological. II-II, q. 32. 6.

¹⁰ Ewald, F. *History of the Welfare State*. Paris: Grasset, 1986, p. 44.

1.1.2.1. Ius naturalis dogma

The contribution of the school forged by Grotius to the welfare State is ambiguous. While, on the one hand, the goal of the Lockean social contract leads to reject the most needy out of the State sphere (A), the Hobbesian one justifies instead to bring them back (B).

1.1.2.1.1. The Lockean conception of the social contract or the reject of the poorest out of the State sphere

The conception of the Social Contract inherited from John Locke (1632-1704) found the liberal society. From its point of view "society can not help its members" because "by contracting the association (...) each is supposed to bring his livelihood"¹¹. Thus the poor cannot solicit the State power to improve their fate, since such an help is not in the jurisdiction of the authorities.

There are two reasons for that.

The first is the belief that helping the poor is a matter of morality and not of law because the virtues of morality cannot be imposed. "These are things that can not be ordered, commanded"¹².

The second results from the desire to not weaken the rule of law. Two new considerations lead the Liberals to refuse to legally oblige the rich to help the poor.

The first is the need to ensure the effectiveness of the rule of law. Liberals fear that it could become a factor of disintegration of social ties rather than an instrument of pacification of social relations if it imposed a duty of caring to the poor. Because it'd draw the hostility of the rich while it fuels the claims of the most disadvantaged. As a liberal politician summarized it, in the eyes of liberalism: "Recognizing the poor a right to alms, it is allowing them to demand alms by force; it is destroying the right of property (...). Thus the principle of poverty law undermines the foundations of social order"¹³.

The second is the need to preserve the legitimacy of the rule of law. In the liberal dogma indeed, the law cannot be legitimate unless it aims to ensure freedom. But the requirement that the rich help the poor cannot rely on such an idea of freedom.

¹¹ Say, J.-B. *Complete Course of Political Economy*. Paris: Brussels, 1843, p. 478.

¹² Jourdan, A. *French law*. Paris: Plon 1875, p. 32.

¹³ Duchatel, T. *From Charity in its relations with the moral and welfare of the lower classes of society*. Paris: Mesnier, 1829.

As a result, liberalism imposes to the poor to take charge of his fate if he wants to improve his destiny. Indeed "nobody can unload on another the weight of its existence, the twists of fate or misfortune he may suffer"¹⁴. As summarized by a Liberal politician in 1829: you must "always reminded the poor that his destiny is in his own hands (...). Never forget: The greatest good you can do to the working classes is to teach them to do without your help"¹⁵. It's still the same idea that was expressed by Adolphe Thiers (1797-1877) in 1848, after the French Three glorious days, when he said: "The fundamental principle of any society is that every man is responsible to provide by himself his needs and his family one's, by resources acquired or transmitted".

With liberal dogma, poverty is therefore presumed to reverse itself when its victims have nothing to expect from others or the State. It is why workers' protection was based on personal or collective protection of private initiative (Mutual employees, employers institutions) until the twentieth century.

1.1.2.1.2. The Hobbesian conception of social contract or the assistance of the poor by the State

On the contrary the Hobbesian conception of the social contract contains the idea of mutual assistance on which is based the french welfare State.

According to Hobbes (1588-1679) indeed, by contracting the social contract the parties did not intend to ensure their safety only. Admittedly, he does not deny that the subject of this agreement is to establish "a common power, able to defend people from foreign attack and harm they could do to each other"¹⁶. But it is not limited to this because the assistance of the most disadvantaged is also one of the terms of the contract.

According to Hobbes, when "men become, due to unavoidable circumstances, unable to support themselves through their work, they should not be left to private charity. It's to the laws of the Republic to assist them, to the field required by the necessities of nature. Indeed, if it is a lack of charity for everyone to not worry about invalids, it is also one, from the ruler of a republic to expose them to such an uncertain charity"¹⁷. Montesquieu shared the same feeling. He wrote: "Some alms done to a naked man in the streets do not fulfill the obligations of the State since it has to assure to all citizens subsistence, food, proper clothing, and a kind of life that is not contrary to health"¹⁸.

¹⁴ Ewald, F., *op. cit.*, p. 32.

¹⁵ Duchatel, T., *op. cit.*

¹⁶ *Leviathan*. Paris, 1971, p. 117.

¹⁷ *Id.*, p. 369.

¹⁸ *The Spirit of laws*. 1, 29.

This idea will be challenged by Marxism dogma. But the latter indirectly justify the advent of the French welfare State.

1.1.2.2. Marxism dogma

On the eve of the french Revolution until the first half of the nineteenth century, the philanthropic movement was concerned about the effects of the industrialization of France on workers. Recognizing that it favors the growth of inequalities, its members, private and policymakers, saw in it a danger for the society. Although liberals, they doubt part of the virtue of the "invisible hand". The industry, wrote J.-M. of Gerando (1772-1842), "heals the wounds it made. But these results are not absolute and do not take place without the sacrifice of some victims"¹⁹. Thus they put pressure in the early nineteenth century on the employers and the State for them to take more responsibility. Their action saw few concrete achievements with the creation of gardens and public housing, savings banks, schools or technical rules of distribution of charity. But it proved to be insufficient to counter the negative effects of industrialization.

In the second half of the nineteenth century, the exploitation of man by man becomes a reality admitted by everyone. It was denounced by writers like Emile Zola (1840-1902) for who capital is "a sort of (...) living God eating the workers in the shadows"; by churchmen such as Pope Leo XIII who condemned "the concentration" of the wealth "in the hands of few people from the industry and commerce" who profit of it to "impose an almost servile yoke to the infinite variety of proletarians"²⁰. But it's Karl Marx (1818-1883) who made the most radical criticism.

In *The Capital* (1867), he did not only condemn the enslavement of the proletariat by the owners of capital. He saw between the two groups, an insurmountable contradiction. So that only the Revolution of the proletariat may terminate this class struggle leading to the disappearance of this instrument of domination in the hands of the bourgeoisie that is the State.

His philosophy will influence some politicians especially under the French Third Republic and will inspire the construction of the welfare State under a political and economic point of view.

1.2. THE POLITICAL-ECONOMIC JUSTIFICATION OF THE WELFARE STATE

¹⁹ *From the public charity*. Paris: Hauman 1839, p. 198.

²⁰ Leo XIII, *Rerum Novarum. op. cit.*

The political and economic dogmas gave a theoretical foundation to the welfare State, respectively through the idea of Social Democracy (Section 1) and redistributive State (Section 2).

1.2.1. THE POLITICAL JUSTIFICATION: SOCIAL DEMOCRACY

The development of the western welfare State was favored by the rise of the Social Democracy.

Until 1848, the term is synonymous with Marxism. Social democracy is thus analyzed as a political doctrine advocating the Revolution as the only way for the proletariat to take power and to end the class struggle, that is to say his enslavement by the bourgeoisie.

But, from 1848, the Social Democracy distanced itself from the Marxism. At that time indeed, "a coalition of low bourgeois and workers took off the revolutionary edge of the social demands of the proletariat to give it a democratic turn. It took off the purely political form of the democratic demands of the low bourgeoisie to add its socialist concerns. Thus was created the Social Democracy "(Marx).

The originality of this movement in relation to Marxism is therefore the rejection of the Revolution as the only means of action. From this point of view, social democracy appears as a doctrine of moderation. It is a reformist line. If the market is inevitable, it also creates wealth for the Social Democrats. And that wealth can be divided according to powerful systems of solidarity to benefit to all the members of society.

On the one hand, it is true that the Social Democracy recalls the liberal doctrine, as it accepts the existence of the market. But in the other hand, it differs from it by entrusting the State with the task of regulating the market in order to fight the inequalities of wealth. In other words: the doctrine is social since it aims to ensure better distribution of wealth and democratic since it accepts political pluralism and the use of universal suffrage. It advocates indeed the organization of political parties that can enable the proletariat to improve its condition, by influencing the appointment of the representatives through the election.

This synthesis is the "constitutive compromise of the social State" to which it gave a political base²¹. But in the twentieth century, Keynesianism gives it an economic legitimacy.

1.2.2. THE ECONOMIC JUSTIFICATION: THE STATE REDISTRIBUTION

Economically speaking, the welfare State found a theoretical justification with the work of John Maynard Keynes (1883-1946) and his disciples.

²¹ Habermas, J. *After the Nation-State*. Paris: Fayard 2000, p. 29.

For them, States must try to conciliate three things: economic growth, social justice and individual freedom²². But they reject the idea that the nationalization of the means of production and exchange is the only way to fight injustice and irrationality of capitalism.

Noting the economic impact of consumption of the working classes, they believe that the State can consolidate growth by promoting the maintenance of high consumption. However, in their view, the achievement of this goal requires two things. On the one hand, creating new consumer needs by stimulating investment in research / development. On the other hand, conducting an incomes policy to ensure the purchasing power of the masses (the multiplier principle). It justifies well the intervention of the welfare State, since this means that, by investing in social policies, the State would only revive the economy.

To prevent loss of control, however, Keynesians advocate the implementation of countercyclical policies. Such policies tend to stabilize the economy by adjusting spending to the State's prosperity. Thus, in a recession, the State should favor cyclical deficits by spending more money than it receives, while, conversely, during periods of growth, tax incomers should pay the additional revenue to provisions. In this way, a balanced budget and through it the viability of the welfare State would be guaranteed.

"The regulatory State could, through measures to stimulate growth on the one hand, the social policy of the other, both supports a strong economy and ensure social integration"²³.

These different theoretical constructs have certainly influenced and fueled the development of the welfare State. But it appeared, however, primarily as a sociological reality.

2. SOCIOLOGICAL ROOTS OF THE WELFARE STATE

In practice, two conceptions of the poor relief faced from the 18th century to the end of the First World War. These reflected the clash between two groups in society. On one side, the ruling elite that first imposed a bourgeois conception of poor relief based on liberalism dogma (Chapter I). On the other, the masses that eventually imposed a more democratic one (Chapter II).

2.1. THE ELIST CONCEPTION OF POOR RELIEF: 1789-1830

This initial conception can be described as liberal, since it was implemented by the bourgeoisie in power since the Revolution and since it seeked to apply the liberal ideas of its

²² Keynes, J.-M. *The End of Laissez-faire*. London: Woolf, 1926.

²³ Habermas, J., *op. cit.*, p. 28.

time. This conception prevails globally in positive law from 1789 until 1830. Thereunder, the old systems of solidarity based on Christian Charity were dismantled without being replaced by the State interventionism.

On the one hand indeed, the Revolution removed previous assistance mechanisms. The Church losted a significant portion of its means of intervention because of the nationalization of its property and the declining of its incomes. This was the result of the abolition of privileges by the Decree of August 4th, 1789, since their disappearance put actually an end to its duty to protect the poors through alms. Meanwhile, by prohibiting corporations, the Le Chapelier Act of June 17th, 1791 obliged relief corporations to dissolve at the same time it forbidden them to recreate.

On the other hand, the government wasn't allowed in anytime to support the poors. The aim was to prevent them from falling into assistantship. Maybe the State came to help people unable to work (children, elderly and infirms). But the authorities' faith in the liberal dogma give to this action the form of a popular insurance system based primarily on individual initiative. This aspect of the system is highlighted by two of the most important constitutional texts of the French post-revolutionary history:

- Constitution of September 3rd, 1791, first title: "- It will be created and organized a general establishment of poor relief, to raise abandoned children, relieve the poor infirm, and provide work for able-bodied poor who could not get it by themselves".

- Constitution of April 11th, 1848, Pr, section 7: "Citizens must (...) ensure, through work, livelihoods, and, by the foresight, resources for the future and should contribute to common welfare by helping each other fraternally with each other, and observing general moral laws and written laws that govern society, family and individual".

It is clear from these dispositions that State interventionism is secondary. It is first and foremost to individuals themselves to improve their conditions. The main support systems set up under the influence of these texts reflect this idea.

This is the case of the establishment of public emergency, which was a failure and was limited to "provide work for able-bodied poor" so far as they can justify unsuccessful positive steps of job hunting.

This is also the case of savings banks. Historically, their creation aimed to allow the workers to secure their future by accessing to the property. But their savings is optional, since

they are not obliged to put money aside. It was also up to them to take dispositions for having short-term funds and providing for long-term needs²⁴.

It is the case of National administration of retirement too, since its membership is based on volunteerism.

Finally, one word summarizes the philosophy that guides the action of the State at that time: to the poors who complain about their fate, the ruling elite responds with Guizot (1787-1874): "Get rich!"²⁵.

This conception of poor relief will, nethertheless, quickly be challenged by the masses.

~~1980~~ 2.2. THE POPULAR CONCEPTION OF POOR RELIEF: 1830-

The second conception of poor relief can be described as popular, since it was designed to satisfy the needs of the disadvantaged masses. From this perspective, it appears more democratic.

Sketched from 1790-1793, it emerged in the 1830s before being completely adopted at the end of World War II. It results in the recognition of social rights.

In 1790, La Rochefoucauld-Liancourt, a founder of the philanthropic movement, said: « the poors have some rights on the society"²⁶. In 1793, the Mountaineers returned to this idea, stating the duty of the State to support the most disadvantaged. They wrote this obligation at the article 21 of the Declaration of Human and civil rights of June 24th, 1793 which states: "Public assistance is a sacred debt. Society owes subsistence to unfortunate citizens, either procuring work for them, either by ensuring means of existence to those who are unable to work".

This idea eventually felt asleep because of the spread of the liberal dogma. But the State finally broke with liberalism to help the most disadvantaged because of the impoverishment of the working classes between 1830 and 1880 (1) and the need to prevent the appearance of a new world war in 1945 (2).

2.2.1. THE IMPOVERISHMENT OF THE WORKING CLASSES

This impoverishment of the masses derived from the pauperization of society from the 1830s (a) and especially its proletarianization from 1880 (b).

2.2.1.1. PAUPERIZATION OF THE SOCIETY

²⁴ Ferrouillat, J.-B., *Report of the Committee, work of the Constituent Assembly of 1848, February 19th, 1849*, print No. 895.

²⁵ *JO Ch. des députés CR*, session of the march 1st, 1843.

²⁶ The 4th report of the Committee of begging. august 31st, 1790.

In 1830 appeared in western democracy the "pauperism," a "permanent state of poverty, indigence in a part of society" (Clarendon Press). It didn't born of a lack of work but of the work itself. It was indeed a consequence of the industrialization of the country. So that poverty became a product of the capitalist system.

Given the threat it rised to the future of society, the State was obliged to remedy to the situation. It attempted to do it by substituting relief Laws to the duty based on the idea of morality. This is reflected in two different ways.

It is first reflected by the apparition of social laws. Thus, a Law of March 22nd, 1841 on child labor²⁷ prohibited the exploitation of children under eight years old ; limited to 8 hours per day the one of children aged 8 to 12 and to 12 hours per day the one of children aged 12 to 16 years old (art. 2). However, this limitation must be understood in the light of the requirement made in parallel to the legal guardians of children in school until 12 or until they get their certificate of elementary education (Article 5). Because this shows that the aim of the measure was to allow children to raise their living conditions through education. It was ultimately to allow them to support themselves and their loved one. Through this text, the State seeked so to substitute the private initiative to improve the lives of the unfortunate.

Secondly and most importantly, this evolution is reflected by the creation of an insurance system no longer optional but mandatory. The idea was to make insurance a solution against poverty, enabling the poor to protect themselves against the twists of fate in exchange of a small contribution. Various laws were passed in this goal from the year 1850.

These are Law of June 18th, 1850, on the establishment of a National Provident Fund; Law of July 15th, 1850, on the fraternal benefit societies; Law of April 1st, 1898 called Charter of mutuality. These texts gave birth to the so-called "imperial mutuality". Inspired by the Philanthropic society, these companies were established in order "to incite the workers to gather to ensure resources for illness, or when they would be unable to continue their work due to the infirmities came with age". According to this idea, they were entrusted with the care of old aged and disease risks. They had three advantages that made them the indispensable complement of Savings Banks: their funds were collective; their membership mandatory and the mutualisation of their resources allowed everyone to have the money he needed.

These texts opened the way for the first social insurance policies, since social security was becoming a political program in 1852 thanks to Emile de Girardin.

²⁷ *Bull. l.*, 1841, No. 795, Text No. 9203.

This system was not without interest for the stability of the regime, since the contractual link through the insurance between the citizens and the State was a factor of social peace. "Politically speaking, this institution (...) has (...) a (...) great importance" because "it is a guarantee of order and security for the country. It creates between the State and workers a solidarity, a community of interest which can only benefit to the public peace (...). The workman, once entered this vast association, is interested in his entire life to the consolidation of society, the development of public prosperity. His fortune is tied to the State's one. However, the day the man that misery and suffering, exploited by criminal passions, armed against the society will actually believe 'I am the State', that day, you can be confident, citizens, the era of revolution will be closed"²⁸.

The development of this policy was full of significance since insurance is not only the expression of a practical repair of a risk based on the calculation of probabilities. It "is" not only a way to "offset the effects of jeopardy by following the laws of statistics" (Albert Chaufton). It is beyond the traduction of the renouncement of the liberal conception of a subjective damage based on the idea of fault, in favor of the social conception of an objective damage based on the idea of risk.

2.2.1.2. PROLETARIANIZATION OF THE SOCIETY

In the second half of the nineteenth century, the development of the proletariat led western governments to react in order to counter the rise of Marxist ideas.

Germany did it by creating the "Sozialstaat"²⁹ or "social State". In the late nineteenth century, Chancellor Otto von Bismarck (1815-1898) assigned indeed to the new German State the mission of promoting the welfare of all its members. He tried to achieve this objective by establishing a social insurance system, covering sickness (1883), workplace fatality (1884), disability and old age (1889). Originally confined to workers, this system was gradually extended to other professions found disadvantaged.

The French Republic followed a nearly identical approach a few years later. Two texts plaid a catalytic role in this evolution. These are:

- Law Waldeck of March 21th, 1884, on the establishment of trade unions which recognized freedom of association;

- Law of February 11th, 1892, on child labor, underage girls and women in industry which created Labor inspection;

²⁸ Ferrouillat, J;-B. *op. cit.*, p. 4.

²⁹ von Stein, L. *Der Geschichte von Frankreich sozialen Bewegung in 1789 Tage bis auf unsere*, Darmstadt : Wissenschaftliche Buchgesellschaft 1972.

While the second text gave to the State means of verifying the respect of its legislation, the first gave employees a way to make their demands heard. Combined with the development of Social Democracy and universal suffrage, these texts led the government to create a welfare system into two parts.

The first created a system of public or social assistance through several texts:

- Act of July 15th, 1893, on free medical assistance which ordered the establishment of annual lists of needy eligible for free cares at home or in hospital;
- Act of July 7th, 1889, which brought the first attack on parental authority in the name of the duty of the State to provide assistance to children;
- Act of July 14th, 1905, on assistance to the elderly, the infirm and the incurables.

The second part created a system of social insurance and family benefits through provisions whose actions were relayed or anticipated by courts:

- Cass. June 21st, 1841: the victim of an accident caused by the lack of security of working conditions may ask his employer for compensation.

- State Council June 21st, 1895, *Cames*³⁰: the State may ensure its workers against the risk resulting from public duty on the basis of liability without fault. This judgment will inspire the legislature in 1898.

- Act April 9th, 1898, about the liability of working accidents;

- Act of May 30th, 1930, on social insurance, which provided coverage of old age, sickness, maternity, death and disability;

- Act of March 11th, 1932, on family allowances.

The development of the welfare State was also driven by the will of the people and their government to prevent the repetition of the World War II.

2.2.2. THE WILL TO END WAR

The 45 million victims of World War II led some Western governments to try to establish the institutions necessary to prevent the repetition of history. Thus the Atlantic Charter of 14.8.1941 drafted by Franklin Delano Roosevelt (1882-1945) and Winston Churchill (1874-1965) promised "improvement of working conditions, economic progress and social security "(Art. 5).

Two considerations explain this.

The first is the origin of the war of 1939-1945. Its run was facilitated by the consequences of the crisis of 1929. By multiplying the number of unemployed, it indeed

³⁰ Rec. CE, p. 509.

increased the tensions within the society that allowed Adolf Hitler to come to power. However, he had cemented his popularity on social legislation ahead the one of the Western States³¹. Therefore, they found it necessary to increase social protection at the end of the war, to avoid further divisions within the nation.

The second is linked to the consequences of the war itself. Given the number of dead and mutilated with special needs or unable to work, States could hardly stay inactive.

Internationally, the Atlantic Charter gave birth to large international organizations that form the UN. While World Health Organization aims to improve health conditions in the worldwide, the World Bank seeks to organize a pension system based on international savings and private insurance and the International Labour Organization to "improve the fate of workers" throughout the world by promoting "humane conditions of labor" inspired by "social justice"³².

Internally, it inspired two new forms of struggle against poverty and exclusion.

The first, inspired by the work of Keynes, appeared in England in 1942 in the report of William Beveridge (1879-1963) entitled "Social Insurance and Allied Services". It is the concept of "welfare State" (William Temple, 1943) as opposed to "Warfare State" who distinguished itself during the war. The originality of the mechanism Beveridge advocated was the rejection of a system of social insurance and public assistance respectively reserved exclusively to workers and poorest. He advocates instead an universal welfare system financed by taxes and benefiting all citizens. The Beveridge report was indeed in favour of a social security system generalised, unified, uniform, centralized and global.

- Generalized: each, due to his membership of the society, is entitled to have its minimum needs guaranteed by the national solidarity;
- Unified: one fee is required to access various services; they can come in the form of fringe benefits or cash allowances;
- Uniform: social benefits are the same for all;
- Centralized: the system is managed by a single public body;
- Overall: the system includes all the aid and insurance.

The second form of social security appeared in France after the war. During the conflict, the National Council of Resistance announced its intention to establish "a comprehensive social security, to ensure all citizens livelihoods". On the 10.04.1945 the

³¹ William, P. Birth of the welfare State. *Rev. Ec.* 2000, 51(2): 373–379.

³² ILO Constitution of 1919, Preamble.

lawyer Pierre Laroque tried to realize this goal. He reaffirmed the idea that "the French social policy (...) must (...) seek to build a new social order, focused (...) to make social security, that is to say to ensure all members of the population that they will enjoy in all circumstances sufficient income for their livelihood Family"³³. The Law No. 46-1146 of 22.05.1946, on the general social security, created thus an universal system of social security based on the right of "any French" to "benefit the legislation on social security "(art. 1st). The originality of the system is finally to synthesize the former French insurance protection and the English universal protection ones; the Bismarckian system based on employer and employee contributions and the Beveridge system based on Tax³⁴. From the first, it inherits the logic of a system financed by contributions from workers, jointly managed by unions and employers. From the second, it inherits the idea of a generalized social security system, centralized and global.

This system eventually developed with the creation of unemployment insurance. It appeared in 1957 with the creation of ASSEDIC and UNEDIC³⁵ and was consolidated with the creation of the National Fund for Employment in 1963³⁶ and the National Agency for Employment in 1967³⁷.

The existence of this protection scheme was implicitly guaranteed by the French Constitution of 27.10.1946, as its preamble States, in his paragraph 11: "- (...) Every human being who, because of his age, physical or mental condition, the economic situation, is unable to work has the right to obtain the community suitable means of existence". The Constitution of 10.04.1958 confirms this evolution in its 1st article by saying that "France is a social Republic". Through this constitutionnalization the existence of the welfare State is sacralized.

The emergence and development of the welfare State was a clear progress, cause "for the first time, capitalism, rather than thwart the Republican promise of equal rights for all citizens, made it possible"³⁸. Yet the development of the crisis and the rising of neoliberalism jeopardize this progress.

Conslusions

³³ Laroque, P. The French social security plan. *French Review of Labour*. 1946, 9-10.

³⁴ Majnoni of Intignano B., *Social Protection*. Paris: LGF, 1993.

³⁵ Agreement of December 31th, 1958.

³⁶ Law No. 63-1240 of december 18th, 1963 on the National Employment Fund.

³⁷ Ord. No. 67-578 of july 13th, 1967, establishing a National Employment Agency.

³⁸ Habermas, J., *op. cit.*, p. 128.

Is the french welfare State a "giant social" with "feet of clay"³⁹? An OECD report entitled: *The crisis of the welfare State* rised the question in 1981.

According to it, this crisis was one of effectiveness and legitimacy.

First, it was a crisis of effectiveness, because its redistribution did not prevent inequalities' increase and emergence of new forms of exclusion. For "the welfare State" indeed the "only answer for exclusion is individual financial compensation"⁴⁰. And it isn't the right answer since disadvantaged people cash the money without finding their place in the society.

Second, it was a crisis of legitimacy, due to the tax burden on households. State interventionism in economy favoured a redistribution of income through a significant increase in the tax. Representing 10% of Gross Domestic Product in the early twentieth century, they increased to more than 50% in some European countries in the 1980s. At that date however, the very existence of the welfare State was questioned because of the financial effort increasingly significant as its funding requested for national solidarity. The true question is therefore what is the level below which people won't accept to fund social spending anymore.

This crisis has several causes whose effects combine⁴¹. Some are institutional. They are due to the deficit of social representation. It is related to the desecration of the major institutions, in particular the weakening of traditional political parties and the emergence of private decision-makers, such as associations or multinational firms. But the deeper causes are economic and ideological. While the first results of the decline in population and development of globalization, the second results from the rising of neo-liberalism.

Since the 1970-1980's, the welfare State is subject of repeated attacks from the neoliberals. Led by Friedrich Hayek (1899-1992)⁴² and Milton Friedman (1912-2006)⁴³, neoliberals reject the Keynesian dogma in the name of a revival of the classical liberal theory. In their point of view, State interventionism is bad because it distorts without reason competition.

These criticisms echoed in a certain number of discussion forums. Some were founded by the civil society, such as the Mont Pelerin Society that Hayek created at the end of the World War II; and the Davos forum created in 1971 by the Klaus Schwab Foundation to

³⁹ Bebear, C. Less government. *Powers*. No. 94, p. 121.

⁴⁰ Sadoun, M. The individual and the citizen. *Powers*, No. 94, p. 10.

⁴¹ Cole, A. Networks and the Public Sphere. Lessons from France and Britain. In: Francis B. ; Neveu, E. *Public Spaces*. Rennes: PUR 1999, p. 250.

⁴² *The Road to Serfdom*, Paris: Médicis, 1946; *Law, Legislation and Liberty*, Paris: PUF, 1980 ; *The Constitution of Liberty*, Paris: Litec, 1994.

⁴³ *Capitalism and freedom*, Paris: Laffont, 1962; *Freedom of Choice*, Paris: Belfont, 1980.

allow private decision-makers to share their expectations with policymakers. Other forums were founded on the initiative of the States themselves, such as the international financial institutions (IMF, WB), the G7 and 8 or the OECD.

This lobbying gave birth to an "intellectual orthodoxy" making liberalism the only viable economic system in a globalized economy. This international pressure led States to review their interventionist policies. The idea triumphed over that as "part of a global economy, the States can not improve the competitiveness of their economy without reducing their administrations". "Policies of 'dismantling'" were thus justified despite their bad "effect" on "social solidarity" and "the democratic stability of the society"⁴⁴. "Social disinflation" was thus the cost of the competitiveness increase⁴⁵.

Maybe this disinflation was more or less important depending on the country. But if it is usually marked in Anglo-Saxon countries, it becomes more and more important in European ones.

The question is not so far if the welfare State is in crisis. A consensus now exists on this point. But others questions remain. On the one hand, is the dismantling of social protection systems the condition of the growth return?⁴⁶ Is it possible to aid unemployment without digging national deficits? ; to share growth gains without weakening it? On the other hand, and most importantly, isn't a society doing without a welfare State doomed to implode?

Obviously yes, because without effective social justice, social ties disintegrate. Thus, if the welfare State must be reformed due to new economic constraints resulting from globalization, its existence can't be threatened.

First, because this State interventionism reflects a social demand. In 1992, 66% of EU citizens were up to the continuation of social security benefits, even at the cost of a tax burden increase⁴⁷. Therefore, actions led by the ILO in favor of an improvement of the workers' fate primarily reflect the aspiration of individuals to "give a human face to the globalization"⁴⁸.

Second, because the subprime crisis showed that State interventionism is necessary since the self-regulation of the market is a myth. "High performing Asian economies" (HPAE: Japan, Hong Kong, China, Taiwan, South Korea, Indonesia) are for that matter those who succeeded in mixing "quick economic growth" and "social justice" through for example "land

⁴⁴ Habermas, J., *op. cit.*, p. 30.

⁴⁵ Mauroy, P. *The Future of the Welfare State, op. cit.*, p. 12.

⁴⁶ *Id.*, p. 12

⁴⁷ Chassard, Y. *Social Protection in Europe*. In: *The Future of the Welfare State*, Paris: L'Ours, p. 110.

⁴⁸ Laroque, M. *Administration of welfare State. Powers*. No. 94. 72.

reforms". It is indeed "by investing in people, their education, their technical competence and their health, that HPAE won their current status"⁴⁹.

For some the alternative is: either level social protection from above by requiring developing countries to adopt a social system similar to the one of Western countries or from the bottom by forcing rich countries to dismantle their welfare system to reduce it to a "safety net"⁵⁰ close to that of countries developing. Neo-liberalism pushes in the latter direction and social democracy in the former.

But for others, between the status quo and reflux, inaction or abandonment of social benefits, different options are available to policymakers. There is indeed a "third way"⁵¹ between maintain or dismantling of the welfare State⁵². The solution may consist in the appearance of a "welfare mix", a "smart" welfare State⁵³ characterized by a more rational and therefore respectful interventionism on the market. Maybe also the creation of an international or, at least, European Tobin tax may be a good way to solve the problem links to the funding of the welfare state.

Whatever, some politicians paved the way for such a third way by forging the concept of Social-liberalism. Thus in 1997 the Labour Tony Blair denounced "welfare State laxism" and asked "social assistance beneficiaries" for accepting all "adequate offers of employment". Similarly, in 1998, the Social Democrat Gerhard Schröder said it was "more important to fund the work" than to "pay unemployment". They were in favour of sanctions against unemployed who lives from assistantship. Moreover by abandoning the revolutionary perspective of Marxism and the idea of the State's disparition, the Social-liberalism is characterized by a condemnation of those who abuse the system.

Where is the balance point between fight against the assistantship and maintain of the redistributive nature of the welfare State? The answer to that question is undeniably one of those that challenge European politicians in the early twenty-first century.

⁴⁹ Meghad, *The East Asian miracle East: Economic Growth and Public Policy*. Washington: Report of the World Bank 1993, p. 132.

⁵⁰ Desai, M. The Welfare State in Asia. In: *The Future ... op. cit.*, p. 130.

⁵¹ Ferrera, Redesigning European welfare States. *Powers*. No. 94. 104.

⁵² *Id.*, p. 107.

⁵³ Hewitt and P. Miliban D., National Social Policy: Opportunities and Constraints. In: *The Future ... op. cit.*, p. 66.

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Summary. What are the roots of the welfare State? The study of the French example shows that if some are ideological, they are sociological too.

The ideological roots are linked to the rise of socialist ideas. But it's not identical with them as its appearance was prepared by largest ideological evolutions. Some are religious and have to be found in the substitution of the catholic conception of the Christian charity by the protestant conception of Beneficence. Others are philosophical and linked, in addition to the Marxism theory, to the rise of the Jus naturalist dogma. Admittedly, the Lockean conception of social contract condemns the help of the poorest by the State. But the Hobbesian one makes of such a help a duty for the State. Others are political and come out with the development of the social democracy, as this one advocates the organization of political parties that can enable the proletariat to improve its condition, by influencing the appointment of the representatives through elections. Others, at last, are economics and linked to the Keynesianism as it entrusts the State with the mission of stimulating growth on the one hand and leading social policy on the other, to support a strong economy and ensure social integration.

Whatever, these ideological evolutions wouldn't have been able to justify the transformation of the State constable into the welfare State if they hadn't responded to a social demand. Indeed, the impoverishment of the western populations at the beginning of the 18th century due to the industrial revolution obliged the political power to develop social policies to ensure the stability of the society. This need became more obvious at the end of the World War II to prevent a new conflict.

The popularity of the Welfare State shows that its dismantlement is impossible in the democratic States. Yet, its crisis due to its cost in a globalized world asks the question of the balance point between the fight against assistantship and maintenance of the redistributive nature of the welfare State. The answer to that question remains one the key challenge that defies European politicians in the early twenty first century.

Keywords: State Constable, Welfare State, État-providence, Social State, Redistributive State, Social rights.
