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**Forms of Redistributive Cooperation between
Center and Periphery in the US and the EU.
Some Comparative Considerations in terms
of Welfare Federalism and the Federal
Social Contract.**

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Abstract

IT *L'articolo esamina alcune forme di cooperazione redistributiva tra governo centrale e governi periferici negli Stati Uniti, dopo la riforma del welfare del 1996, e nell'Unione Europea, nell'ambito della politica di coesione. In particolare, l'analisi si sofferma sul programma Temporary Assistance for Needy Families (TANF) negli Stati Uniti, e sull'operato dei fondi strutturali nell'Unione Europea alla luce dei regolamenti quadro per il periodo 2007-2013 e 2014-2020. Un elemento comune a tali programmi di redistribuzione è il concorso di operatori a livello federale/ soprannazionale, statale e locale nella pianificazione e attuazione dei relativi interventi. Tale somiglianza di approcci invita alcune riflessioni in tema di federalismo e patto sociale negli Stati Uniti e nell'Unione Europea. Le forme analizzate di cooperazione redistributiva tra centro e periferia danno vita a una nuova forma di federalismo cooperativo, che si pone come terza via tra federalismo cooperativo legislativo e federalismo cooperativo esecutivo. Inoltre, i rispettivi meccanismi di funzionamento suggeriscono una comune evoluzione del contratto sociale, in Europa e negli Stati Uniti, verso un modello basato su obbligazioni reciproche dei governi e dei beneficiari.*

Keywords: Federalismo cooperativo, fondi strutturali, coesione, TANF, welfare, contratto sociale.

EN *This article explores forms of redistributive cooperation between center and periphery in the US after the welfare reform of 1996, and in the EU in the frame of cohesion policy. In particular, the article looks at the operation of the Temporary Assistance for Needy Families (TANF) program in the US, and at the mechanisms, which inform the functioning of structural funds in the EU in the 2007-2013 and in the forthcoming 2014-2020 framework program. It highlights how these programs call for redistribution of resources through similarly structured partnerships of federal/Union, state and local actors. These similarities call for reflection on the nature of welfare federalism, and the underlying social contract, in the US and the EU. In particular, this article argues that the exposed forms of redistributive cooperation between centre and periphery signal a new structure of cooperative federalism, which represents a third way between "legislative" cooperative federalism and "executing" cooperative federalism. In addition, these patterns of cooperation suggest a similar evolution of the social contract in the US and the EU towards a model based on mutuality of obligation.*

Keywords: Cohesion policy, structural funds, cooperative federalism, TANF, welfare, assistance programs.

**FORMS OF REDISTRIBUTIVE COOPERATION BETWEEN
CENTER AND PERIPHERY IN THE US AND THE EU.
SOME COMPARATIVE CONSIDERATIONS IN TERMS OF
WELFARE FEDERALISM AND THE FEDERAL SOCIAL
CONTRACT.**

FRANCESCA STRUMIA*

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Introduction

Comparisons between the US federal model, and the EU supranational one are, in several fields, tempting, yet risky, fascinating, yet easily misleading. They reveal affinities when one would expect difference, and *vice versa*, and compel careful scrutiny of such differences and affinities in order to distil from them informed and reliable considerations on the constitutional and organizational choices of the two entities.

The social sphere is one of such fields. Different actors, governance structures and inspiring philosophies make for a distinct outlook of the welfare state, of social rights and social citizenship in each of the two polities. First, while the European Union has a competence in matters of social policy and some of its programs have a marked redistributive character,¹ there is no proper EU level welfare and the budget of the Union does not entail a chapter devoted to welfare aid for the Union citizens. In the US, the federal government has had a clear cut welfare responsibility at least since 1935 and

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¹ See Treaty on the Functioning of the European Union, consolidated version, in OJ C83, of 30 March 2010, at 49 (in the following TFEU).

there is a federal budget for this.² In the EU welfare legislation is mostly member States legislation, and EU measures in this field are of a complementary and coordinating nature.³ Consequently, the EU is the theatre for an ample spectrum of welfare systems, northern and southern, contributory in focus or needs-based, more generous and less, which the EU endeavors to some extent to reconcile and coordinate to allow for unconstrained free movement rights. In the US federal law has a defining role in matters of welfare.⁴ The US portray an array of different solutions and criteria at the state level, however these represent different implementing choices within a common federal frame. In addition, while the US and the EU share the same system of political and civic values, different ideals and distinct constitutional principles orient choices of redistribution in each of the two entities. While the EU states, and their constitutions, defend an idea of collective solidarity,⁵ the U.S, and their long-established constitutional tradition, are informed by principles of individualism and self-pursuit of prosperity.⁶

At first sight, thus, distinct federalism recipes, and different clauses in the overall social contract, make for a different outlook of the welfare state in each of the two polities, and for a different respective role of the centre and the periphery.

² The 2013 budget of the European Union is approximately EUR 150 billion. The main financial framework headings are sustainable growth (approximately EUR 70 billion); preservation and management of natural resources; citizenship, freedom, security and justice; EU as a global player; and administration. Actions entailing a solidarity aspect are funded, within the first heading, in the frame of cohesion for growth and employment. This chapter, to which approximately EUR 54 billion have been reserved for in 2013, includes the expense for actions funded through the structural funds. This is not, however, a budget for welfare expenditure. See General Budget of the European Union for the Financial Year 2013 – The Figures, at http://ec.europa.eu/budget/library/biblio/publications/2013/budget_folder/FINAL_EN_DG_BUDG_general_budget_2013.pdf (last visited June 2013). The US government budget for 2013, which provided for outlays amounting approximately to USD 3,600 billion, included an appropriation of approximately USD 800 billion just for social security, and another USD 800 billion between Medicare and Medicaid. See White House Office of Management and Budget, <http://www.whitehouse.gov/omb/budget> (last visited June 2013).

³ Parliament and Council Regulation 883/2004, of 29 April 2004 on the coordination of social security systems, 2004 O.J. L 166.

⁴ See Social Security Act of 1935, 42 USC Chapter 7.

⁵ See *e.g.* Constitution of the Italian Republic, art. 3 “La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale”.

⁶ Echoes of these principles are already evident in the 1776 Declaration of Independence, where among the inalienable rights of men, Life, Liberty and the Pursuit of Happiness, are listed. Governments, according to the declaration, are instituted to secure these rights.

Yet, a closer look reveals comparable patterns of cooperation for redistributive purposes between central and peripheral actors. This article proposes to explore some of these patterns, and to question their implications for notions of welfare federalism and social contract in the US and the EU. The article focuses on forms of redistributive cooperation between centre and periphery in the US after the welfare reform of 1996,⁷ and in the EU in the wake of cohesion policy. In particular, the article looks at the operation of the Temporary Assistance for Needy Families (TANF) program in the US, and at the mechanisms which inform the functioning of structural funds in the EU in the 2007-2013 and in the forthcoming 2014-2020 framework program. It highlights how these programs call for redistribution of resources through similarly structured partnerships of federal/Union, state and local actors. Analyzing these patterns of involvement allows some corrective considerations in respect of welfare federalism in the US and the EU, and with regards to their respective social contracts. In particular, this article argues that the exposed forms of redistributive cooperation between centre and periphery signal a new structure of cooperative federalism, which represents a third way between “legislative” cooperative federalism and “executing” cooperative federalism. In addition, these patterns of cooperation suggest a similar evolution of the social contract in the US and the EU towards a model based on mutuality of obligation.

The first part of the article illustrates the main features of welfare federalism, and of the social contract, in the EU and the US, looking at some fundamental features of their respective welfare systems. It also considers how the process of European integration has affected the outlook of the welfare state in Europe and how the evolution of the welfare state in the US echoes evolutions in underlying conceptions of federalism. The second part focuses on comparable patterns of redistributive cooperation in the US and the EU. It highlights how cohesion policy in the EU, and certain block grants schemes in the US after the 1996 welfare reform call for similar partnerships of Union or federal level actors, states or member States, and local actors. The last part reflects on the implications of these similar patterns of cooperative redistribution for the functioning of welfare federalism and the outlook of the underlying social contract in the US and the EU.

1. Welfare Federalism and the Social Contract in the US and the EU

Structural and functional features distinguish the welfare system in the US and in the EU. These distinctions echo, in part, different compromises reached in the two entities respective social contracts, and different balances of functions and powers in the respective federal, or supranational, systems.

⁷ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

The European Union as a supranational organization had originally no competence in the social sphere. The welfare state in Europe is organized at the level of the member States, and a social contract is sealed between each member State and its citizens or residents. With the evolution of the process of integration, however, a social element has gradually been built into the Treaties, and secondary legislation has laid the grounds of a system of coordination among the welfare schemes of the individual member States.⁸ Social rights, social citizenship and the welfare state have thus been projected into the supranational realm, albeit remaining firmly anchored to national premises and rules. In the United States, where the national level and the federal level coincide, the federal government is a fundamental party to the social contract with the US citizens and has had a role in respect of welfare provision at least since 1935.⁹ Consistent with the trends of federalism, the involvement of the states in the organization and provision of welfare has expanded and retreated cyclically in the subsequent history of the United States. The following paragraph illustrates briefly the main features of the welfare state respectively, in the European Union, and in the United States.

1.1 *The Welfare State in the EU*

The organization of welfare provision is heterogeneous throughout the various member States and varies for inspiring philosophies, targets, assortment of benefits, institutional involvement and methods of financing.¹⁰ Some states rely more heavily on contributory welfare systems, where the entitlement to welfare provision depends on the enrollment of the beneficiary in a certain scheme of insurance, usually in dependence of occupation or family status. It is the contributions of the insured, in this case, which mostly pay for welfare benefits; other states give more weight to social assistance schemes, where welfare is awarded on a need basis to qualifying categories of members, such as nationals or residents. In this case, it is general taxation, which mainly funds the provision of benefits.¹¹ Contributory and non-contributory models coexist in different mixes in several member States. Some observers have classified these models into families: at the very least, one could distinguish a Scandinavian, an Anglo-Saxon, a continental and a

⁸ See paragraph 1.2.

⁹ See paragraph 1.3.

¹⁰ Fritz W. Scharpf, 'Economic integration, democracy and the welfare state', in *Journal of European Public Policy* 4 (1) (1996), 18-36, at 26.

¹¹ Dorte S. Martinsen, 'Social Security Regulation in the EU: the De-Territorialization of Welfare', in Grainne de Burca (ed.), *E.U. Law and the Welfare State: In Search of Solidarity*, Oxford University Press, New York, 2005, at 91-92. Also see Siofra O'Leary, 'Solidarity and Citizenship Rights in the Charter of Fundamental Rights of the European Union' in Grainne de Burca (ed.), *E.U. Law and the Welfare State: In Search of Solidarity*, Oxford University Press, New York, 2005, at 55.

southern model of welfare organization in Europe.¹² In the Scandinavian welfare model, entitlement to social provision is directly tied to membership in a national community as a citizen or resident. High tax contributions pay for a generous system of welfare provision, where benefits are mostly provided directly by state providers.¹³ In the Anglo-Saxon model need is rather the key, as the system of social assistance through the award of means-tested benefits is particularly developed. Some benefits, such as health care and social services are paid through general taxation. Others, such as cash benefits, are mostly reconnected to contributions. Contributions are fundamental also for the operation of continental welfare systems:¹⁴ it is not the fact of belonging as citizens, which grounds social entitlement here, but rather the fact of belonging to an occupational category or being linked through family ties to the member of an occupational category, which justifies inclusion in the social net. Beneficiaries are insured according to different schemes depending on their occupation, and employers and trade unions have an important say in negotiating such schemes.¹⁵ For those who fall through the gaps of the contribution system, social assistance, based on need rather than on belonging, provides a safety net. Continental systems have been criticized for their high costs and for their inability to tie social entitlement to some form of desert.¹⁶ Finally southern welfare systems similarly give little importance to citizenship for purposes of welfare provision, while they rely heavily on contributions and on the role of the family as a “welfare broker”.¹⁷

1.2 *The Impact of EU Integration on the European Welfare State*

Harmonization of social assistance and social security throughout the EU has never been high on the agenda of integration.¹⁸ Harmonization would not only be difficult and demanding, it would also impose high costs for the independent choices of the member States in terms of welfare provision: it

¹² Maurizio Ferrera, Anton Hemerijck, Martin Rhodes, *The Future of Social Europe: Recasting Work and Welfare in the New Economy, Report for the Portuguese Presidency of the European Union*, 2000, at 21.

¹³ Ibidem, at 27-28. Also see David Purdy, ‘Social Policy’, in Artis Mike, Nixon Frederick (eds.), *The Economics of the European Union-Policy and Analysis*, Oxford University Press, New York, 2001, at 208.

¹⁴ Maurizio Ferrera, Anton Hemerijck, Martin Rhodes, *The Future of Social Europe*, supra note 13, at 29-33.

¹⁵ This is the case for instance in Germany. See David Purdy, Social Policy, in THE ECONOMICS OF THE EUROPEAN UNION-POLICY AND ANALYSIS (Mike Artis and Frederick Nixon eds.) 4th ed. at 209.

¹⁶ Maurizio Ferrera, Anton Hemerijck, Martin Rhodes, *The Future of Social Europe*, supra note 13, at 35-36.

¹⁷ Ibidem at 38-41.

¹⁸ Anne P. Van der Mei, *Free Movement of Persons within the European Community*, Hart Publishing, Oxford (2003), at 62.

would either impoverish the flourishing welfare system of some northern European countries to adapt to the skinnier schemes of the southern ones; or on the contrary, in order to extend the generous standards of the North throughout the continent, it would impose a strain on the economies of the South; also any project of harmonization would face the difficult task of choosing one common standard among many in terms of institutions involved, types of offered benefits, amalgams of contributions and need-based assistance, relative role of different sectors of welfare.¹⁹ What is more, different recipes for the welfare state do not simply express varying institutional and organizational choices but may be taken to express different social contracts to which national enclaves have committed on the basis of their national constitutional settlements. Electing one of those systems over the others would entail picking just one of these social contracts and thus indirectly muting or emptying the social constitutional choices of several national communities within the EU.²⁰

A proper European welfare system seems very far on the horizon. However, evolving integration has certainly exacted its toll from European welfare states and gradually taken on increasing objectives in the social sphere.²¹

In particular, a system of coordination among the social security provisions of the member States has gradually evolved in support of free movement of workers among the member States.

Already the first version of free movement rights, tailored to workers and their needs, was complemented by a range of legislative tools aimed at coordinating welfare benefits and entitlements at the European level. The first regulation to this extent was adopted in 1958,²² and most of its key principles

¹⁹ Fritz W. Scharpf, 'Economic integration, democracy and the welfare state', supra note 10, at 26.

²⁰ Fritz W. Scharpf, 2002, 'The European Social Model: Coping with the Challenges of Diversity' in *Journal of Common Market Studies* 40 (4), at 651.

²¹ The German Bundesverfassungsgericht in its 2009 judgment on the Treaty of Lisbon has emphasized this evolving social dimension of the project of European integration. According to the German judges, the idea that a social dimension would have remained excluded from the project of integration is based on a misplaced assumption that the term of comparison for integrated Europe should be a full-fledged state order. In fact, social issues have gained increasing room in subsequent renegotiations of the legal frame of the Community. German judges underline how the Treaty of Lisbon improves on this line, by committing the European Union to the goal of developing a "highly competitive social market economy, aiming at full employment and social progress". See Judgment of the German Constitutional Court, of June 30, 2009 BVerfG, 2 BvE 2/08 of 30.6.2009, Absatz-Nr. (1 - 421), available at http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html par. 393-397.

²² Regulation 3/1958 concerning social security for migrant workers, 1958 O.J. B 030, at 561.

passed later into regulation 1408/1971,²³ which remained for many years the main tool for welfare coordination in the European Union. Already in 1958, workers could claim equality of treatment in different member States, export benefits to other member States and sum up periods of insurance matured in different parts of the European Community.²⁴ The subsequent 1971 regulation was specifically aimed at coordinating the member States social security schemes in the interest of employed persons who are nationals of a member State, stateless persons and refugees residing in one of the member States, and family members of persons belonging to the preceding categories;²⁵ equality of treatment,²⁶ application of the law of the place of employment,²⁷ exportability of benefits²⁸ and aggregation of insurance periods²⁹ remained the main features of the system of coordination. Coordination evolved in part through the extension of the material scope of regulation 1408 to include new kinds of benefits and largely through the expansion of the personal scope of the regulation, which came to affect also self-employed people and students.³⁰ Ultimately, in 2004, regulation 1408 has been repealed and replaced by regulation 883/2004,³¹ which confirms the structure and approach of the previous instrument but renounces the labor market link and makes coordination of social security schemes applicable to all nationals of a member State, regardless of their employment condition.³² The 2004 regulation is expansive in both personal and material scope.³³

The system of coordination was originally based on a distinction between social security and social assistance benefits. Social assistance has been traditionally explicitly excluded from the coordinating regulations.³⁴ On the one hand, however, the European Court of Justice has induced a certain

²³ Council Regulation 1408/71 of 14 June 1971, on the application of social security schemes to employed persons and their families moving within the Community, 1971 O.J. L 249, at 2.

²⁴ Maurizio Ferrera, *The Boundaries of Welfare, European Integration and the New Spatial Politics of Social Protection*, Oxford University Press, Oxford, 2005, at 101-102.

²⁵ Regulation 1408/71, art. 2.

²⁶ Regulation 1408/71, art. 3.

²⁷ Regulation 1408/71, art. 13.

²⁸ Regulation 1408/71, e.g. art. 25 with regard to the exportability of unemployment benefits and art. 52 for the exportability of benefits relating to accidents at work and occupational diseases.

²⁹ Regulation 1408/71, e.g. art. 18 for aggregation of periods of insurance relating to sickness and maternity and art. 45 for aggregation of periods of insurance relating to old age benefits.

³⁰ Maurizio Ferrera, *The Boundaries of Welfare, European Integration and the New Spatial Politics of Social Protection*, supra note 24, at 119-120.

³¹ Parliament and Council Regulation 883/2004, of 29 April 2004 on the coordination of social security systems, 2004 O.J. L 166, at 1.

³² Regulation 883/2004, art. 2.

³³ Dorte S. Martinsen, 'Social Security Regulation in the EU: the De-Territorialization of Welfare', supra note 11, at 91.

³⁴ See Regulation 1408/71, supra note 23, art. 4, sect. 4.

pressure for social assistance, together with social security, to be included in the coordination system and to be made available to intra-Community migrants within certain terms.³⁵ And on the other hand the distinction between social assistance and social security benefits has lost in clarity over the years.³⁶ A 1992 regulation³⁷ has extended the scope of the coordination system into the domain of social assistance, by clarifying that non-contributory benefits may be granted to nationals of other member States, who are legally resident in the territory of the providing member State.³⁸ Over the years, the member States have gradually lost terrain in their ability to independently grant residence rights to EU citizens: their power in this respect has reached a minimum with directive 2004/38 on the rights of movement and residence of European citizens;³⁹ this directive brings social assistance fully within the scope of coordination of welfare measures for the benefit of European migrants. The directive specifies that European citizens are not entitled to social assistance during the first three months of their stay in a host member State. It also keeps the right of residence of European citizens subject to financial and sickness insurance conditions.⁴⁰ While in principle migrant European citizens cannot reside in a member State other than their own if they are liable to become a burden on its social system, the test to be applied before taking an expulsion measure against them is quite restrictive.⁴¹ What is more, after five years of legal residence in another member State, European

³⁵ Maurizio Ferrera, *The Boundaries of Welfare, European Integration and the New Spatial Politics of Social Protection*, supra note 24, at 132-133.

³⁶ Dorte S. Martinsen, 'Social Security Regulation in the EU: the De-Territorialization of Welfare', supra note 11, at 92.

³⁷ Council Regulation N. 1247/92 of 30 April 1992 amending Regulation N. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, 1992 O. J. L 136, at 1.

³⁸ Maurizio Ferrera, *The Boundaries of Welfare, European Integration and the New Spatial Politics of Social Protection*, supra note 24, at 134-135.

³⁹ Parliament and Council Directive 2004/38/EC, of 29 April 2004, on the right of the Citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2004 O.J. L 158, at 77.

⁴⁰ Directive 2004/38, art. 7 and 24.

⁴¹ According to the directive, measures taken on grounds of public policy or public security "shall be based exclusively on the personal conduct of the individual concerned" [...] "the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society". Directive 2004/38, art. 27; also "before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his or her age, state of health, family and economic situation, social and cultural integration in the host Member State and the extent of his/her links with the country of origin"; art. 28. Also see Dorte S. Martinsen, 'Social Security Regulation in the EU: the De-Territorialization of Welfare', supra note 11, at 94.

citizens qualify for the status of long term residents, and as such they are entitled to full social assistance in the state of their residence.⁴²

The welfare state remains thus national in the EU but some of its elements have come to project their shade in the supranational arena through the EU provisions on coordination, exportability, non-discrimination. The process of integration has certainly induced a degree of opening in the European welfare state.⁴³ The member States remain in any case the main actors in matters of welfare and the role of the Union is complementary at best. Welfare federalism is at the embryonal stage on the continent, and while systems of redistribution are anchored to a common underlying idea of collective solidarity, such idea is spelled differently in the social contracts of each EU nation.

1.3 *The US System of Welfare Provision*

The welfare state in the US is based on closer cooperation between the federal government and state and local governments than happens in Europe, and on a more thorough integration of federal, state and local resources.

In the early history of the United States, the federal government did not play any significant role in the provision of public assistance and in the relief for the neediest. For good part of the 19th century, systems of relief for the poor were mainly handled at the state and local level, and relied largely on the intervention of non-governmental institutions.⁴⁴ With the turn of the century, the federal government started to be progressively more involved in the field of social assistance and security, beginning with debates and later a program for the relief of needy children.⁴⁵ The federal role became more intense in the aftermath of the 1929 economic crisis and the first truthful federal instrument of welfare was adopted in 1935. The 1935 Social Security Act included both forms of contributory social insurance and forms of public assistance. It introduced social insurance for the old-age and for the unemployed; it also provided for the funding of plans of assistance to the blind, disabled and needy children of single-parents.⁴⁶ Administrative institutions were also created in order to cope with the implementation of the Act and some of them

⁴² Directive 2004/38, art. 16.

⁴³ In this sense, see Maurizio Ferrera, *The Boundaries of Welfare, European Integration and the New Spatial Politics of Social Protection*, supra note 24.

⁴⁴ Walter I. Trattner, *From Poor Law to Welfare State, A History of Social Welfare in America*, The Free Press, New York, 1999, at 42-43.

⁴⁵ Ibidem at 214-221.

⁴⁶ Ibidem at 289. Also see Anne P. Van der Mei, 'Freedom of Movement for Indigents: a Comparative Analysis of American Constitutional Law and European Community Law', in *Ariz. J. of Int'l and Comp. L.* 19 (3) (2002), 803-861, at 808.

would later converge into the Department of Health, Education and Welfare, instituted in 1953.⁴⁷

The rest of the 50s and the 60s witnessed the gradual expansion of the federally sponsored system of welfare, with the passing of new acts targeting the issues of housing, permanent disability and full employment.⁴⁸ The program for assistance of needy dependent children was expanded in 1961 to include children in two-parent families, where the head of household is unemployed. One year later, federal funding for state-provided public assistance was significantly increased.⁴⁹

The next significant achievement in the evolution of the US welfare system came with the 1973 Supplemental Security Income Program, which federalized the funding and administration of the programs for relief of the blind, the disabled and unemployed. Eligible persons falling within one of these categories had now matured a federally-backed entitlement to support in the form of guaranteed income.⁵⁰ The twentieth century trend in the United States welfare system has thus been one of increasing involvement of the federal government.

The 1996 welfare reform introduced however a counter-trend. The reform marked the passage from a system based on a form of cooperative federalism, where states received federal grants if they correctly implemented within their boundaries the federal eligibility criteria for assistance programs, to a system based on devolution, where states receive block grants, and are then free to administer the assistance programs in their own discretion and adopting their own eligibility criteria.⁵¹ In particular, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act has abolished the preexisting Aid to Families with Dependent Children (AFDC) program, replacing it with the Temporary Assistance to Needy Families (TANF) program,⁵² which provides for the conferral of grants to the states, leaving them free to decide eligibility criteria and time frames, but with some overall temporal caps imposed at the federal level.⁵³

⁴⁷ Walter I. Trattner, *From Poor Law to Welfare State, A History of Social Welfare in America*, supra at note 44, at 295.

⁴⁸ See e.g. Aid to the Permanently and Totally Disabled (1950), Housing Act (1949) and Full Employment Act (1946).

⁴⁹ Walter I. Trattner, *From Poor Law to Welfare State, A History of Social Welfare in America*, supra at note 44 at 319-320.

⁵⁰ Ibidem.

⁵¹ Christine N Cimini, 'The new contract: devolution, welfare and due process', 61 *Maryland Law Review* 246 (2002), at 249-251 and at 256.

⁵² See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, supra note 7.

⁵³ Walter I. Trattner, *From Poor Law to Welfare State, A History of Social Welfare in America*, supra at note 44 at 397.

The current welfare system then is subdivided into three sets of schemes. Part of the welfare provision programs is entirely funded and administered at the federal level; this is the case under the Supplemental Security Income Act for the benefits for old-age, disability and blindness. A second set of welfare benefits is funded by the federal government but administered by the states; this is the case for the TANF program after the 1996 reform. Finally, there still remain additional forms of general relief for those not falling within any of the previous categories, which are administered at the local level.⁵⁴

In the US, thus, the social contract has been sealed at the federal level, although the states are actively involved in its implementation. The nature and extent of their engagement in the administration of assistance programs has changed throughout US constitutional history, in part in conjunction with the evolution of federalism and its dynamics. It has been observed how US federalism has evolved, from the New Deal on, from a system based on dual federalism, and on the separate competences of two distinct sovereigns, to a system based on cooperative federalism, and on shared power.⁵⁵ These background changes in the system of separation of powers have had their reflections also in terms of welfare responsibilities. Assistance programs have operated in the insignia of cooperative federalism at least until the 1996 reform, which has brought about further devolution to the states. The reform has not severed, in any case, the underlying social pact, which binds the federal government to the citizens. However, as it will be examined in further detail in the following, it has altered in part its nature.

2. Redistributive Cooperation between Centre and Periphery: the Case of Cohesion and TANF

The analysis conducted above suggests that the core of the welfare state is situated at different levels respectively in the EU and the US, and that federal, or Union, actors, and state actors play a different role, in each of the two entities, in the implementation of the social contract. In the EU, the member States express, through different choices on the priorities and means for redistribution, their distinct national and constitutional identities. The role of the Union is limited to promoting and favoring a measure of coordination among the national systems. In the US on the contrary, the federal government has a primary role in devising welfare schemes and identifying priorities and requirements for redistribution. The states have a complementary role, in part by implementing federal programs, in part by

⁵⁴ Anne P. Van der Mei, 'Freedom of Movement for Indigents: a Comparative Analysis of American Constitutional Law and European Community Law', *supra* note 46, at 809.

⁵⁵ Robert Schütze, *From Dual to Cooperative Federalism-the Changing Structure of European Law*, Oxford University Press, Oxford, 2009, at 76-79 and at 101.

filling the gaps of the federal social system through state-planned and -administered forms of redistribution.

Despite these first sight contrasts, if one looks further into the operation of selected redistributive schemes in the US and the EU, unexpected affinities can be found. In particular, certain schemes in both entities pursue the goal of redistributing resources through the constructive cooperation of the states or member States, and the federal or union level. This is, for instance, the case of structural funds in the EU,⁵⁶ and the TANF program in the US after the 1996 welfare reform.⁵⁷ The operation of these programs involves a comparable partnership of central and local actors. Structural funds, and TANF, represent two expressions of a common choice of redistributive cooperation between centre and periphery, which deserves some attention in order to spell out its possible implications for notions of welfare federalism and social contract in the US and the EU. The following paragraph analyzes the operation of the relevant programs in further detail.

2.1 *Cohesion Policy*

European cohesion policy aims at narrowing gaps in wealth among different member States, and different regions within the Union. It finds its legal basis in article 174 and following of the TFEU (former article 158 TCE introduced by the Single European Act in 1988) and it represents the evolution of European regional policy, which had pursued similar objectives ever since the late 60s. Within the frame of cohesion policy, objectives of convergence, regional competitiveness and territorial cooperation⁵⁸ are pursued through an array of structural funds, such as the European Social Fund, the European Cohesion Fund, the European Regional Development Fund, the European Agricultural Guidance and Guarantee Fund. The European Commission, the member States, as well as municipalities and civil partners, cooperate in the planning and implementation of interventions funded through the structural funds. Tailored objectives and operational mechanisms are defined through multi-annual programs. Four such programs have been adopted ever since the inception of cohesion policy in 1988. The current program covers the period 2007-2013 and is based on a set of

⁵⁶ See paragraph 2.1.

⁵⁷ See paragraph 2.2.

⁵⁸ These three objectives, in particular, have been set forth in the frame of the 2007-2013 multi-annual framework for the operation of cohesion policy. See “Growing Regions, Growing Europe”, European Commission, Fourth Report on Economic and Social Cohesion, May 2007, available at http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/cohesion4/pdf/4cr_en.pdf (last visited June 2013), at xiv-xv.

regulations adopted in 2006.⁵⁹ Proposals for regulations for the following period 2014-2020 are currently under discussion.⁶⁰

Regulation 1083/2006 which includes the gist of the principles of operation of cohesion policy for the period 2007-2013, details the respective roles of the EU and of the member States. The regulation provides for close cooperation between the Commission and the member States in defining the strategic guidelines and the framework of intervention,⁶¹ and for shared management of the budget allocated to the funds.⁶² The member States then have to prepare, in dialogue with the Commission, a national strategic reference framework consistent with EU priorities and with national reform programmes.⁶³ Close cooperation between Commission and member States has to continue in the concrete pursuit of the objective of the funds. According to the regulation, the member States have to organize partnerships with competent regional, local and urban authorities, and with economic and social partners, and other bodies representing civil society in order to prepare, implement, monitor and evaluate operational programmes.⁶⁴ Operational programmes must be submitted to the Commission for its evaluation.⁶⁵ In the course of the implementation of national programmes, Commission and member States share in evaluating results. The member States on their side have to organize management and control systems, and are required to submit

⁵⁹ Relevant Regulations for the period 2007-2013 are the following ones: Regulation 1080/2006 on the European Regional Development Fund; Council Regulation 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund and repealing Regulation 1260/1999, 2006 O.J. L210; Regulation 1081/2006 on the European Social Fund, 2006 OJ L210 at 12; Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), 2006 OJ L210, at 19; Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94, 2006 OJ L210 at 79.

⁶⁰ See Amended Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation EC 1083/2006, of 22 April 2013, COM (2013) 246 Final, 2011/0276 (COD).

⁶¹ Regulation 1083/2006, art. 25.

⁶² Regulation 1083/2006, art. 14.

⁶³ Regulation 1083/2006, art. 27.

⁶⁴ Regulation 1083/2006, art. 11.

⁶⁵ Regulation 1083/2006, art. 32.

annual reports to the Commission.⁶⁶ The Commission monitors and may organize audits from time to time.⁶⁷

The operation of structural funds calls thus for the close involvement of both member States and Union level. Proposals for the next multi-annual program refocus in part the objectives of cohesion policy, strengthening the emphasis on promoting growth and occupation, and favoring the efficient use of resources.⁶⁸ Operational mechanisms, however, remain in good part unaltered. The framework for 2014-2020, as set forth in proposed regulations currently under negotiation preserves this cooperative approach. In the new proposed regulation,⁶⁹ the requirement to partner with localities and civil society is formalized into the provision for an actual partnership contract. Through the partnership contract, the member States shall set out the strategy, priorities and arrangements for using the funds, ensuring alignment with the Union strategy.⁷⁰ The Commission assesses the consistency between the program entailed in the contract and the common strategic framework.⁷¹ The discipline of operational programmes in the new proposed regulation entails the same phases and involves the same actors as in the current regulation.

The rules of operation of the structural funds call thus for close cooperation between the member States level and the Union level in the planning and management of relevant redistribution interventions. Fulfilment of the redistributive effort occurs through a partnership of state and local, government and civil society actors which cooperate within the framework rules provided by the EU and under the monitoring eye of the Commission. The resulting arrangement of shared power and responsibilities may represent a novel form of EU-style cooperative federalism.

⁶⁶ Regulation 1083/2006, art. 58-70.

⁶⁷ Regulation 1083/2006, art. 72.

⁶⁸ For an overview of the objectives and priorities for the next multi-annual programming see Future Cohesion Policy, http://ec.europa.eu/regional_policy/what/future/index_en.cfm (last visited June 2013).

⁶⁹ Amended Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation EC 1083/2006, of 22 April 2013, *supra* note 60.

⁷⁰ Proposal for Regulation of 22 April 2013, art. 13-14.

⁷¹ Proposal for Regulation of 22 April 2013, art. 15.

2.2 TANF

In the US the 1996 welfare reform with the Personal Responsibility and Work Opportunity Reconciliation Act⁷² has introduced welfare schemes jointly managed by the federal and state governments, which result into vertical structures of cooperation towards redistribution comparable to the one underpinning the operation of structural funds.

In particular, the 1996 reform has introduced the Temporary Assistance to Needy Families (TANF) program, which replaced the pre-existing program for Aid to Families with Dependent Children (AFDC).⁷³ While through AFDC qualifying beneficiaries had a federal entitlement to welfare aid, the TANF scheme is based on a block grant from the federal government to the states, the territories and the tribes. After its introduction in 1996, the TANF program has been in part amended with the Deficit Reduction Act of 2005,⁷⁴ which also reauthorized the program until 2010. Then in 2009, the Recovery Act 2009 has brought further amendments to the relevant sections of the Social Security Act and it has provided for an additional emergency fund for temporary assistance to needy families.⁷⁵ The scheme operation involves both the states (and in relevant part the tribes and the territories) and the federal government.

The purpose of the TANF program is to provide benefits and services to needy families, with a focus on supporting the beneficiaries' transition into work. A beneficiary's participation into the welfare program is thus intended to be temporary. The TANF program also poses an emphasis on supporting two-parent families and encouraging marriage.⁷⁶

Cohesion policy and the TANF program are certainly distinct in several ways. First, while cohesion policy promotes interventions of territorial redistribution, the TANF program is a welfare scheme at all effects and is based on personal redistribution and cash transfers. In addition, while cohesion policy pursues a broad goal of economic convergence through the reduction of regional disparities, and thus encompasses a broad range of interventions, TANF is tailored to specific objectives of assistance to needy

⁷² Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), *supra* note **Errore. Il segnalibro non è definito.**

⁷³ See PRWORA, *supra* note 7, Title I. Relevant provisions on TANF have amended corresponding sections of the Social Security Act of 1935 and are codified at 42 USC 601 ss.

⁷⁴ Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 135.

⁷⁵ Recovery Act of 2009. Also see 42 USC 603.

⁷⁶ For details on the objectives of the TANF program, see <http://www.tanfprogram.com/> (last visited June 2013). Also see US Department of Health and Human Services, Administration for Children and Families, Office for Family Assistance, Temporary Assistance to Needy Families (TANF), Ninth Report to Congress (2012) available at <http://archive.acf.hhs.gov/programs/ofa/data-reports/> (last visited June 2013).

families. In light of these fundamental distinctions, any comparison of the two programs needs to proceed with care.

However, the two programs portray to some extent an affinity of intents, albeit pursued within different scopes and with different means. Both programs put an emphasis on requalification and on favoring the economic involvement of recipients. Under the TANF program, the states have to encourage the requalification and work participation of parents, by providing them with job preparation and support services. The goal is for the recipients to leave the aid program and enter the labor market after a certain period. States are even subject to penalties if they do not reach a set minimum work participation rate among the aid recipients.⁷⁷ In the frame of cohesion policy, on the other hand, it is particularly the Social Fund which provides support for interventions aimed at the requalification of workers in disadvantaged regions. Supporting occupation levels is, in a broader perspective, one of the goals functional to the overall objectives of cohesion, such as competitiveness and convergence. This correspondence of objectives warrants a comparison of the mechanisms of operation of the structural funds with those of the TANF scheme.

In particular, under TANF provisions, the federal government provides the funding and sets certain frame conditions for the scheme operation. The states are responsible to draw precise eligibility criteria and to manage applications for aid. Federal-imposed requirements are, for instance, that no assistance may be provided under the program to families comprising at least one adult who has already received federal welfare assistance for five years or more.⁷⁸ Further, as mentioned above, the states have to show at all times that the work participation rate of families receiving TANF aid in the state is at least 50%.⁷⁹ States are also required to apply a certain quota of their own funds, in each fiscal year, to provide aid to TANF eligible families.⁸⁰

On the other hand the states have their own share of responsibility in running the program, as they have to draw and submit to the federal government a plan detailing proposed family assistance programs. Such plans must include among others, objective criteria for eligibility and for the delivery of benefits, within the broader goal of providing assistance to needy families. In particular, they must include indication of the state agency which will be responsible for the administration of the program; assurances that local government and private sector organizations have been consulted; standards

⁷⁷ See 42 USC 607-609.

⁷⁸ 42 USC 608.

⁷⁹ 42 USC 607.

⁸⁰ See US Department of Health and Human Services, Temporary Assistance for Needy Families (TANF) Overview, <http://www.hhs.gov/recovery/programs/tanf/tanf-overview.html> (last visited June 2013).

and procedures to avoid program fraud and abuse.⁸¹ Some of these elements resonate with the partnership principle which informs the operation of structural funds in the EU. Both TANF and structural funds schemes call for the involvement of local governments and civil society partners, for instance. And both entrust a monitoring role to the states or member States. As states are closer to the level at which intervention occurs, they are best placed to detect and avoid fraudulent behavior.

The required cooperation between federal, or Union level, and state, or member State, level in the planning and administration of aid programs represents a strong element of affinity between the two considered schemes. For TANF, as for the schemes funded within the frame of cohesion policy, broad objectives are set at the central level, and then the states are responsible for drawing operational programs, for identifying managing authorities, and for controlling the operation of the programs. The source of the funds and the principles of operation are found in a combination of federal and state determinations, and the entitlements of beneficiaries have a federal and a state counter-party.

As suggested above, cohesion policy and the TANF aid scheme are distinct in structure and objectives. Only one of the two is a welfare scheme in the traditional sense of the term. Cohesion policy, on the contrary, supports interventions of territorial redistribution to help regions of the EU which are lagging behind, rather than laying the grounds of a proper EU welfare system. However, the two programs share a commitment to comparable social goals. Both target situations of disadvantage, disparity and social exclusion, for which they aim at providing relief. And in both cases the provision of relief occurs in part by encouraging requalification,⁸² and economic involvement of persons receiving aid, or residing within a region to which aid is addressed. Operational dynamics of the two schemes reveal similar elements of cooperative federalism.⁸³ These similarities suggest that, despite the fundamental differences exposed at the beginning of this article, the welfare federalism of the US and the EU shares in some components. Further, notwithstanding distinct underlying ideas of collective solidarity and individualism, the social contracts of the US and the EU show some common terms. The last section of this article questions, and spells out these potential implications of the examined forms of redistributive cooperation.

⁸¹ 42 USC 602.

⁸² See art. 162 TFEU on the European Social Fund, under whose terms the objective to the fund is to render the employment of workers easier and to increase their occupational and geographical mobility, in good part through vocational training and re-training.

⁸³ For an overview of the operation of cooperative federalism in the US see Daniel Elazar, *American Federalism: a View from the States*, Crowell, New York (1972)..

3. Welfare Federalism and the Social Contract

The comparison presented in the first part of this article has highlighted certain fundamental differences in the nature and organization of the welfare system in the US and the EU. This conclusive part relies on the similarities uncovered through the analysis of forms of redistributive cooperation in the two entities, to reassess some of those differences. In particular, it argues that comparable forms of redistributive cooperation make for a cooperative federalism *sui generis*, which brings the US welfare and the EU one a step closer to one another. In addition, the requirements to be complied with by potential recipients in the context of structural funds, and in the context of TANF, in order to benefit of social aid, signal some interesting turns in both the US and the EU social contract.

3.1 *Cooperative Federalism of the Third Type*

The concept of cooperative federalism implies an arrangement for the sharing of concurring powers between a central and a peripheral level of government. In this sense, it stands in contrast to dual federalism, which predicates a rigid distinction of spheres of action between two separate sovereigns.⁸⁴

There are several versions of cooperative federalism, and comments on the US and the EU constitutional systems have evidenced different forms of the same in each of the two entities, focusing on distinct elements. Speaking of the US, for instance, Christine Cimini has underlined that the 1996 welfare reform represents departure of the US welfare system from cooperative federalism.⁸⁵ Cooperative federalism required in her view a silent pact between the federal government and the states for the implementation of assistance programs. The pre-1996 system entailed such a pact. The states would receive federal money to fund assistance interventions, subject to their implementing recipients' eligibility requirements set forth by the federal government.⁸⁶ The states thus had a fundamental role in administering and implementing the relevant programs, but very limited discretion in selecting priorities, beneficiaries and objectives. The scope of, and the conditions for, welfare assistance were decided at the federal level. Notwithstanding this, the involvement of both federal and state level to deliver the final result, the cash transfer to the recipient, represented, in Cimini's view, the enactment of cooperative federalism.⁸⁷ This reading of cooperative federalism would

⁸⁴ Robert Schütze, *From Dual to Cooperative Federalism-the Changing Structure of European Law*, supra note 55, at 76-79.

⁸⁵ Christine N Cimini, 'The new contract: devolution, welfare and due process', supra note 51, at 249-251.

⁸⁶ *Ibidem*.

⁸⁷ *Ibidem*, at 256.

probably not persuade Robert Schütze, who, in comparing the US and the EU, preliminarily specifies that cooperative federalism is not to be confused with commandeering. There is no cooperation of the wills, and thus no federalism, if the states are simply required to execute something that has been decided at the federal level.⁸⁸ Cooperative federalism requires that the states be able to make their own legislative and political decisions in implementing federal framework requirements or guidelines. Schütze distinguishes between US cooperative federalism and EU cooperative federalism precisely in terms of constitutional guarantees available to the states that their space of political and legislative decision making will not be occupied.⁸⁹ According to Schütze, in the US there is no constitutional guarantee of the continuing coexistence of a federal and a state legislative space.⁹⁰ In the EU on the contrary, the principle of subsidiarity,⁹¹ and the several subjects in which the EU has but a concurring competence stand as bulwarks of cooperative federalism, providing a constitutionalized guarantee to the member States that their sphere of power is not endangered.⁹²

Constitutional guarantees apart, two types of cooperative federalism may be distinguished on the basis of the above considerations in terms of power sharing arrangements. On the one hand “executing cooperative federalism”, of the kind Cimini identifies in the US pre-1996 welfare reform. On the other one “legislative cooperative federalism”, the only kind possible according to Schütze.

The power sharing arrangements which cohesion policy in the EU, and the TANF program in the US, respectively portray do not fall squarely within either type. The role of the member States in the context of the operation of structural funds, and of the US states in the context of TANF is not simply executive. In both cases, the states are responsible for planning their own intervention schemes and for identifying recipients. This is beyond the tenets of executing cooperative federalism. On the other hand, while the planning and strategizing entrusted to the states certainly implies a measure of political will, it does not call, or leave room for, full fledged legislative intervention. The label of legislative cooperative federalism is at the same time both over- and under-inclusive, as the implementation of the programs under discussion does not involve the states’ legislative function, yet it implies their political judgment and calls for some “creative” implementation on their side. Three elements characterize redistributive cooperation between the federal

⁸⁸ Robert Schütze, *From Dual to Cooperative Federalism-the Changing Structure of European Law*, supra note 55, at 8.

⁸⁹ *Ibidem* at 104.

⁹⁰ *Ibidem*.

⁹¹ See Art. 5(2) of the Treaty on European Union, consolidated version of 26 October 2012, 2012 O.J. C 326.

⁹² *Ibidem* at 242-243.

government, or the union, and the states, as exemplified by structural intervention and by TANF. First, states have in both cases a critical planning role; they have to propose plans, respectively to the federal government, or to the Commission, detailing proposed interventions, involved actors and eligibility criteria.⁹³ Second, state level and federal/union level remain engaged in a continuing dialogue throughout the implementation of the program. States have to account to the federal/union level for interventions enacted and results achieved. The Commission and the federal government respectively perform a monitoring role.⁹⁴ Third, the concrete implementation of the interventions takes place through a partnership of state and local actors, which include, particularly in the case of the EU, both government and civil society partners.⁹⁵ This is to ensure in both cases that intervention is effective and capillar and trickles down to all levels of society.

In light of these common features, the redistributive efforts entailed by TANF and by cohesion policy may come to embody a cooperative federalism of the third type. This could be named “partnership cooperative federalism”. Such novel form of cooperation cuts across underlying differences between the EU and the US welfare systems, and entails an innovative model of redistribution calling for the involvement of actors on several levels and in different capacities. It represents an attempt at a public-private partnership in the redistribution of resources, and at the same time it overcomes rigidities tied to traditional constitutional and federalism categories.

The partnership cooperative federalism perspective unveils an undetected point of contact between the US and the EU welfare systems and potentially opens up a new floor for comparative discourses of welfare, social rights and social citizenship. Regardless of considerations of sovereignty and of the venue of the welfare state, it reveals a common concern for giving voice and room to local sensitivities and interests in the implementation of redistributive programs.⁹⁶ This cooperative federalism of the third type expresses in other words a comparable disposition towards subsidiarity. The principle of subsidiarity is explicitly protected in the EU and works as a

⁹³ See Regulation 1083/2006, art. 27. Also see 42 USC 602.

⁹⁴ See Regulation 1083/2006, art. 32 and art. 58-70. Also see art. 42 USC 607.

⁹⁵ See Regulation 1083/2006 art. 11, and Proposal for Regulation of 22 April 2013, art. 13-14. Also see 42 USC 602.

⁹⁶ On the role of the states and member States, respectively in the US and in the EU, in protecting attentiveness to local peculiarities and differentiated needs, see Cary Coglianese, Kalypso Nicolaidis, *Securing Subsidiarity: the Institutional Design of Federalism in the United States and the European Union*, in Kalypso Nicolaidis, Robert Howse (eds.), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford University Press, New York, 277-299 (2001). For a discussion of the protection and value of state autonomy in the U.S. also see Roderick Hills, , ‘Federalism in Constitutional Context’ in 22 *Harvard Journal of Law and Public Policy* 1998, 181-196, at 181.

constitutional safeguard of federalism.⁹⁷ In the US, there is no expressed constitutional guarantee in this sense. However, the involvement of central and peripheral actors in redistributive cooperation implements in both systems a de facto rule of welfare subsidiarity.

3.2 *The New Social Contract*

Beyond considerations of cooperative federalism, the comparison of forms of redistributive cooperation in the US and the EU reveals an affinity also in the evolution of the social contract underlying interventions of redistribution and assistance in each of the two systems. Both programs of assistance in the US after the 1996 reform, and the structural funds interventions in the EU seem to rely on a contractual model based on mutuality of obligation, rather than on an entitlement model. In both cases, recipients have to do something in order to benefit, whether directly or indirectly, of assistance.

Albeit in a different context, the evolution of the European social contract through the process of European integration had already been anticipated by Miguel Maduro in his opinion in the Viking case.⁹⁸ Maduro underlined here how the process of integration inevitably displaced the interests of certain economic actors on the common market. However, in his view, this was the result of a novel European social contract, whereby workers throughout the Community accept the negative consequences of the building of a fully integrated Europe-wide market, and the Community in return commits to the improvement of their life and work conditions in the medium and long term.⁹⁹ This implied pact already contemplates mutual obligations between the Union and the citizens. Cohesion policy can be seen as implementing, to some extent, the Union's commitment to an improvement of social conditions throughout the EU. The mutuality of obligation approach is preserved in the same operation of the interventions sponsored and funded within its frame. The Union administers the relevant funds. The member States build a strategy to distribute relevant funds in their territory and build a partnership of state and local actors to implement such strategy. Ultimately, the citizens and workers, in order to benefit of the planned interventions have to engage into some positive behaviour, whether attending a requalification program funded through the Social Fund, or seek economic involvement and reward through the involvement in building new infrastructures funded through cohesion, or more in general through pursuing any of the economic

⁹⁷ Art. 5(2) of the Treaty on European Union, *supra* at note 91.

⁹⁸ See case C-438/05, *The International Transport Workers Federation and the Finnish Seamen's Union v Viking Line ABP*, opinion of Advocate General Miguel Maduro, 2007 E.C.R. I-10779.

⁹⁹ *Ibidem* at par. 59.

and social opportunities that the narrowing of development gaps through cohesion opens up.¹⁰⁰ The Union commits to intervene to reduce disparities throughout the Union and thus improve the economic prospects of a number of citizens and residents.¹⁰¹ On the other hand, such citizens and residents are silently called to take active part in the single market, in order to improve their conditions. If they do, they cherish a number of entitlements in terms of social security, working conditions, consumer protection. If they don't, they fall out of the scope of the European social pact.

The 1996 reform in the US sanctioned, as has been observed,¹⁰² the passage from a model of welfare provision based on the entitlement of recipients to federal aid, to a contractual devolved model, where prospective recipients have to contractually undertake to do something in order to receive aid. They may be required for instance to attend schools, or to participate in requalification programs aimed at preparing them to go back to the labor market, after having received cash assistance for a certain time.¹⁰³ If prospective recipients do not comply with their contractual obligations, they lose their entitlements under the relevant assistance program. Similarly to what happens with cohesion policy in the EU, the social pact between government and recipient becomes dynamic. It is no longer a one way relation, where the citizen in need can claim his entitlement in front of the government. This is the case under the welfare system of the EU member States, and was the case in the US under relevant federal programs before the 1996 reform. The social pact underlying programs such as TANF in the US, and underlying cohesion policy in the EU, is one where there are undertakings, expressed or implied, on both sides.

There are of course important differences between the US assistance programs in discussion, and the redistribution programs funded within the frame of cohesion policy. As mentioned above,¹⁰⁴ the nature of the benefit ultimately tendered to the recipient is different. The US citizen benefiting of TANF can expect a cash transfer, while the EU citizen or EU resident taking advantage of the programs funded through structural intervention, can expect,

¹⁰⁰ The objective of the Social Fund is to facilitate workers' geographical and occupational mobility within the Union and to support workers' adaptation to industrial changes and changes in production systems, by providing opportunities for training and retraining. See TFEU, article 162.

¹⁰¹ For a more detailed analysis of the role of EU cohesion policy in narrowing disparities throughout the Union see Francesca Strumia, *La Duplice Metamorfose della Cittadinanza in Europa-Da Cittadinanza Sedentaria a Cittadinanza Itinerante. Da Cittadinanza Sociale a Cittadinanza Economica*, Jovene, Napoli, 2013 at 133-140.

¹⁰² Christine N Cimini, 'The new contract: devolution, welfare and due process', supra note 51, at 254-256.

¹⁰³ Ibidem.

¹⁰⁴ See paragraph 2.2.

depending on the cases, a job, the opportunity to participate in a requalification and training program, or an increase in his salary expectations. Further, the nature of the recipient's obligation is different. In the US, recipients have to contractually undertake to engage in a certain behaviour in exchange for assistance. In the EU, the nature of the undertaking varies depending on the nature of structural intervention. It can be an expressed contractual undertaking in certain programs, or just the response to a tacit call for economic involvement, in order to take advantage of the benefits of cohesion.¹⁰⁵ Ultimately the social contract between the US citizen and the federal government is direct and clearly expressed, while the social pact between the EU and its citizens is a whispered one, which may be read in between the lines of the single market operation. It is nowhere written or officially sealed. The founding treaties recognize social responsibilities to the Union, and the social rights of the people of the Europe.¹⁰⁶ The people of Europe in turn have to grasp the fact that, in order to benefit of their entitlement, they are called to act, to study, to move, to work.

In conclusion, the US and the EU remain oceans apart when it comes to the organization and substance of the welfare state. Yet, in both polities, reforms of the last two decades may be traced back to comparable underlying concerns in terms of federalism and the nature of the social contract. Further study of these underlying concerns may yield interesting perspectives on the prospects of the welfare state, the social contract, and welfare federalism in the multi-tiered polities of the XXI century.

¹⁰⁵ For an analysis of the role of economic citizenship in the frame of cohesion see Francesca Strumia, *La Duplice Metamorfosi della Cittadinanza in Europa-Da Cittadinanza Sedentaria a Cittadinanza Itinerante. Da Cittadinanza Sociale a Cittadinanza Economica*, supra note 101, at 142 and following.

¹⁰⁶ TFEU, art. 151.; Treaty on European Union, art. 3(3).