

THE WELFARE (SOCIAL) STATE, EUROPEAN UNION AND GLOBALIZATION

Josef Blahož*

Abstract: *The relation of power, state, law and poverty. State according to law (Rule of Law) and social policy. The origin, definition and development of the welfare state. Welfare state in the framework of the European Union. The relation of the welfare state and social state. Constitutional, legal and socio-economical targets of the welfare (social) state. The welfare state typologies. The three worlds of the welfare state. Global processes and the welfare state reforms and transformations. Welfare state and bureaucracy, centralization and decentralization in the implementations of the welfare state. The welfare state and highly developed countries and central european countries of the European Union.*

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I. STATE, POWER, LAW AND POVERTY

Power and law are mutually closely related categories from both the historical and present viewpoint, especially if we understand power as the power of State, even though not exclusively, as every power influences, whether positively or negatively, law and poverty, however different these phenomena are. State power is, to a certain and we can say prevailing extent, the creator of law, as in a democratic society law is prevalently the manifestation of the will of state power. If we say prevalently, we want to say that in a democratic society it is not exclusively the democratically established legislative power-the representative body, the parliament-that creates law in the form of acts. There are also the generally recognized norms of international law as well as the generally binding legal principles forming the substantive and adjective content of the concept of the State according to Law (Rule of Law) and which must (or should) be respected in the legal system of every democratic state.¹ In this respect, primarily, law is above the State.²

A State according to Law, consequently, is not only the State which is bound by law or which observes law which it arbitrarily creates. It is a State creating and observing law inherent to the norms of international law and generally recognized legal principles. From this viewpoint the State is a subject of law, as it was expressed as early as the nineteenth century. Therefore, law is superior to State power and is above the State.³ At the same time

* Associate professor JUDr. Josef Blahož, DrSc., Institute of State and Law of the Academy of Sciences of the Czech Republic, Prague. The work was created under subsidies for long-term conceptual development of the Institute of State and Law of the Academy of Sciences of the Czech Republic, v. v. i. (RVO:68378122).

¹ DYZENHAUS, D. *Constitutionalism in an old key: Legality and constituent power, Global Constitutionalism*. Cambridge University Press, 2012, pp. 229–260; BARBER, N. W. *The Constitutional State*. Oxford, New York, 2010, pp. 36–43.

² BREWER-CARIAS, A. *Judicial Review in Comparative Law*. Cambridge 1989, pp. 7 ff; BLAHOŽ, J. Consensual character of democratic constitutional principles and Human Rights. *The Lawyer Quarterly*. 2013, Vol. 3, No. 1, pp. 20–27.

³ BURGESS, J. W. *Political Science and Comparative Constitutional Law*. General Books LLC.: Danwers, 2009, p. 43 ff.

the author is well aware of the fact that all that can be stated in a theoretical paper is considerably more difficult to implement in practice, especially in the states which are subjected to considerable social fluctuations and are passing through a transition period.

When speaking under these circumstances about the relation of power, law and poverty, we must realize also that the concept of power in these relations does not involve only state power, but also the actual political, economic and in modern times also information power which could be called more adequately as influence. In the very relations of power, law and poverty, this influence which is actually, with reference to its sociological character, power also plays a decisive role.⁴

Therefore we can say that the domestic economic situation, power and law limited by international law and the generally recognized legal principles jointly create social environment significant for the existence or non-existence of poverty in a certain state. Naturally, they are by far not the only factors relevant for the existence or non-existence of poverty.

Peter Saunders highly appreciates the definition of poverty by British sociologist P. Townsend: “Individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities and have the living conditions and amenities which are customary, or at least widely encouraged or approved, in the societies to which they belong”. According to P. Saunders “this definition is more explicit about which kinds of things are indispensably necessary in a modern society, including the avoidance of social exclusion amongst these and raising questions about how poverty and exclusion are related”.⁵

According to Kees Van Kersbergen and Barbara Vis ... “many of the liberal, conservative, and christian social reformers saw themselves as pragmatic politicians experimenting with social laws that would substitute for charity and other traditional forms of social security. Still others tend to stress the social control and discipline that are exerted through social legislation. And yes, the rich did see poverty and deficient urban sanitation as threats to their own safety and health, and they did fear the revolting masses and hoped to quiet them down with social policy”.⁶

Power, in all of its aforementioned dimensions, consequently determines the policy of the state with respect to poverty. This power, with certain limits determined by respecting the principle of the State according to Law, finds its expression in the acts and other legal regulations of the given state concerning poverty. The substance is the economic and social policy of state power. We believe that is how it is possible to qualify the present relations of poverty, power and law. If we look back at the period of undeveloped industrial society and the corresponding situation of liberal state based on the so-called rugged individualism, the picture of these relations was entirely different. Power and law were officially entirely neutral in their relation to poverty. Actually, however, power and law can

⁴ DEUTSCH, K. W. *Politics and Government: How People Decide Their Fate*. Boston 1980, pp. 26–32; FIERLBECK, K. *Globalizing Democracy, Power, legitimacy and the interpretation of democratic ideas*. Manchester, New York, 2008, pp. 199–226.

⁵ SAUNDERS, P. Poverty. In Greve B. (ed.). *The Routledge Handbook of the Welfare State*. London and New York, 2013, p. 60.

⁶ KERSBERGEN, K., VIS, B. *Comparative Welfare State Politics*. Cambridge University Press: New York 2014, p. 31.

never be entirely neutral to poverty, because power and law participate in the creation of social conditions and, consequently, even when they are not concerned with poverty, all the same, they influence significantly the existence or non-existence of poverty.

In relating to law the author applies the category of experience, which is not accidental: he respects deeply the idea expressed long ago by the great legal practitioner, but perhaps even greater theorist of law, the Justice of the United States Supreme Court, Oliver Wendell Holmes, namely, that law is based not on logic, but on experience.⁷

If we start seeking the time in which power and law begin to be concerned with the measures against poverty, we find that this problem is identical with the problem of origin of the Welfare State—that sociological and legally-economic category which has become and still is the object of different opinions both with respect to definition and its content.⁸ We consider it extremely significant to follow the origin and development of the differentiated types of the Welfare State. As a starting point, we take the premise that the democratic organization of the State, of which the Welfare State forms part, is connected inseparably with the free market and private enterprise, i.e., capitalism. The opposite relation, however, does not hold – an entirely totalitarian political system can exist parallel with the existence of market economy.⁹

Lutz Leisering says: “The history of social policy has been riddled with debates about individualism versus collectivism, about state versus market and related dichotomies. In current controversies about “globalisation”, free marketeers quarrel with advocates of social and ecological regulation of global markets. While these are world – wide issues, Germany, more than any other country, has developed an intense political discourse on „the state“ and on the distinction between “state” and “society” that goes back to the early nineteenth century and is worth looking at”.¹⁰

II. THE WELFARE STATE CONCEPT AND SOCIAL STATE CONCEPT

The concept of Welfare State has been highly frequented primarily since the 1930s (although it is of a much earlier origin) as a reaction to the deep economic crisis which affected the world economy in 1929. The endeavour to overcome it gave rise, in the course of the thirties, to numerous theoretical and practical concepts, further developed after the Second World War. The experience with these concepts in the past 65 years has enriched both the theoretical basis and practical application not only of individual states, but of the whole world community in the social field. It was not merely a straight way up to the theoretical and practical maturity of the Welfare State. It included also the discovery of shortcomings and errors of some of these concepts or their implementation as well as the

⁷ WOLF-HOWE M. (ed.). *Holmes-Pollock Letters, I*. Cambridge 1941, p. 139 ff.; HOLMES, O. W. *The Common Law*. Boston 1881, pp. 1–2.

⁸ BARBIER, J. C. *The Road to Social Europe*. London and New York, 2013, pp. 10–35; KOTOUS, J., MUNKOVÁ, G., ŠTEFKO, M. *Obecné otázky sociální politiky*. Praha: Ústav státu a práva AV ČR, 2013, pp. 59–62.

⁹ DEUTSCH, K. W. op. cit., note 4, pp. 100–101.

¹⁰ LEISERING, L. Nation State and Social Policy: An Ideational and Political History. In: Kaufmann, F. *Variations of the Welfare State*. Berlin and Heidelberg, 2013, p. 2; KOTOUS, J., MUNKOVÁ, G., ŠTEFKO, M. *Obecné otázky sociální politiky*. Praha: Ústav státu a práva AV ČR, 2013, pp. 100–158.

shortcomings existing in the very foundations of economic and political systems to which the model solution of the Welfare State was to be applied. A highly typical example is the concept of the Welfare State applied to the concept of the New Deal¹¹ by the President of the USA, Franklin Delano Roosevelt, in the thirties of our century.¹² The Welfare State implemented in the framework of Roosevelt's programme of economic recovery and substantial improvement of the social security of citizens was the first example (with all shortcomings and problems) of the endeavour to replace market economy with socio-market economy. It is only natural that its regulative measures exceeded the possibilities of the then system of market economy. That is why they failed. This statement is by far no criticism of the Welfare State in the concept of the New Deal. Indubitably it was an attempt which has become a historical stimulus of further social progress.¹³

At the same time we would not like to give the impression that the foundations of the Welfare State had been laid as late as the thirties of our century in the USA. Different, although substantially more restricted concepts of the Welfare State have been known from last century, when they were implemented for the first time in Germany and Great Britain,¹⁴ and, after some time, also in other industrially developed countries.

The genesis of the concept of Welfare State dates from the beginning of the last century. Its author obviously is Lord W. Beveridge who participated in 1911 in the preparation of the insurance law.¹⁵ The use of this term attained its greatest boom at the time of Roosevelt's, New Deal, when this term was deduced from the interpretation of Article 1, section 8 of the Constitution of the USA, under which the power of the Congress of the USA includes also "to ... provide ... general Welfare". The economists participating in the creation of the concept of Roosevelt's New Deal referred to this Article.¹⁶

The key problem left more or less open by the present theory is the definition of the Welfare State or Social State. The preliminary problem is whether the terms of Welfare State and Social State are identical in concept. Numerous authors (as well as politicians) tend to believe they are, while others refuse this identity emphasizing that the concept of Social State is substantially broader. In their opinion Social State is the state which assures the basic standard of living required for the sustenance of life to those of its citizens (or legal residents in its territory—there are differences of opinion in this aspect, too) who are not capable to ensure this standard of living themselves, as well as the state which ensures its citizens acceptable standard of living. On the other hand, the Welfare State is—or should be, in our opinion—something somewhat more significant, as its term

¹¹ LEUCHTENBURG, W. E., FRANKLIN, D. *Roosevelt and the New Deal, 1932–1940*. New York 1963; RAUCH, B. *The History of the New Deal, 1933–1938*. New York 1944; ROZWENC, E. *The New Deal: Revolution or Evolution*. New York 1944.

¹² BURNS, J. M. *Roosevelt, The Lion and the Fox*. New York 1956, pp. 139–140, 162 ff., 180–181, 218–222, 266–268. FUSFELD, D. *The Economic Thought of Franklin D. Roosevelt and the Origin of the New Deal*. New York 1956.

¹³ BLAHOŽ, J. Boj o reformu Nejvyššího soudu USA a jeho význam pro stát a právo Spojených států. *Právněhistorické studie*. 1969, č. 14, pp. 85–116; KAUFMANN, F. *Variations of the Welfare State*. Berlin and Heidelberg, 2013, pp. 74–75.

¹⁴ KERSBERGEN, K., VIS, B. *Comparative Welfare State politics*. Cambridge University Press: New York, 2014, pp. 38–40; KAUFMANN, F. X. *Variations of the Welfare State*. Berlin, Heidelberg, 2013, pp. 101–108.

¹⁵ PENNING, E. Social Security. In: Greve, B. (ed.). op. cit., note 5, pp. 322–323.

¹⁶ RAUCH, B. op. cit., note 11.

implies. These doubts about the sign of equality between the Welfare State and Social State arise, naturally, from the dual meaning of the term Welfare, meaning in this context affluence, prosperity (which is its initial meaning) on the one hand, and public social care (which is its secondary meaning) on the other hand. It is then up to the social science orientation of the authors whether they understand the concept of Welfare State in the same way as the Social State in its historical version originating in the nineteenth century and further developing at the beginning of the twentieth century in Great Britain and continental Europe.¹⁷

“The welfare state exists to enhance the welfare of people who a) are weak and vulnerable, largely by providing social care, b) are poor, largely through redistributive income transfers, or c) are neither vulnerable nor poor, by organizing cash benefits to provide insurance and consumption smoothing, and by providing medical insurance and school education”.¹⁸

We consider it correct to consider the Welfare State, with reference to its goal, as the assurance of dignified life and general standard of living of the citizens of the given state, i.e., not only as the assurance of social benefits for the needy (the minimum of the generally recognized standard of living), but also in the field of public health (standard medical care on the basis of health insurance and security codified by the state), in the fields of ecology and culture, to which we shall yet return.¹⁹ Moreover, it is not only the terms of Welfare State and Social State that we encounter in historical development. Less frequented were also the terms of societal state, social service state, social security state, welfare capitalism, or social Welfare State.

According to Franz-Xaver Kaufmann “After World War II social policy expanded in an unprecedented way, connected to two new formulas designed to denote the place of social policy in post – war society. The first formula, Social Market Economy aimed to integrate the economic and the social. The second formula social state, the German version of welfare state, was contained in the post – war constitution of the Federal Republic of Germany 1949, the Grundgesetz (1949). (The year before, 1948, had witnessed the creation of the British welfare state). The year 1949 marked a double state building ... which reflected the link between social policy and nation building. ... the West German Constitution of 1949 was the first to establish the social state as constitutive principle of the German polity, not to be changed even by a majority in Parliament”.²⁰

We should like to emphasize that we see no fundamental difference between the concepts and terms of Welfare State and Social State. Rather it is possible to say that in some countries the Social State with the quality of its services to the citizens approaches the concept of Welfare State, while in other countries it merely affords the basic social and he-

¹⁷ ESPING-ANDERSEN, G. *The Three Worlds of Welfare Capitalism*. Oxford, Cambridge, 1991, p. 3 ff.

¹⁸ BARR, N. *The Economics of the Welfare State*. Oxford 2004, p. 7; VEČEŘA, M. Sociální stát, východiska a přístupy. Praha 1996, pp. 25–29, and pp. 86–100; KOTOUS, J., MUNKOVÁ, G., ŠTEFKO, M., op. cit., note 10, pp. 59–71.

¹⁹ FUJII, T. Ecology and Development, IFSSO (International Federation of Social Science Organizations). *Newsletter*. 1993, No. 31–32, pp. 33–58.

²⁰ KAUFMANN, F. X. *Variations of the Welfare State*. Heidelberg, New York, 2013, p. 3., According to Article 20 (1) of the Basic Law “The Federal Republic of Germany is a democratic and social federal state” Cf. KOMMERS, D. P. *The Constitutional Jurisprudence of the Federal Republic of Germany*. Durham, London, 1997, pp. 35–36 and p. 510.

alth care required for the sustenance or life.²¹ If the difference between the Welfare State and the Social state for us is a difference in theoretical approach, the very substance of activities connected with the Welfare State or Social State is much more significant. In our opinion it is desirable to consider these activities as social services granted to the citizens by the state as its duty arising from the service role of the state in relation to its citizens, and not as a charity of the state which stigmatizes the citizen. This attitude is based on the democratic concept of the state. The state is here for the citizens and not vice versa. The political, constitutional and legal targets of Welfare State activities include, in our opinion: 1. to secure man so that he could implement all fundamental qualities of the right to life²² contained in the internationally recognized codes of human and civil rights (including the EU Charter of Fundamental Rights – the Lisbon Treaty which incorporated the EU Charter into EU primary law); 2. to reduce inequality and to create the feeling of security;²³ 3. to prevent undesirable social tension in society²⁴ contributing substantially: a) to the increase of criminality, b) to the increase of extremist and terroristic movements, whether of extreme left or extreme right wing character, c) to the possibility of origin of new social revolutions. Particularly in the last mentioned case (sub c) it would be erroneous to believe that with the exit of communism from the historical stage the possibilities of social revolutions have also disappeared forever. These revolutions may manifest themselves under the most diverse ideological labels including religious fundamentalism.

The socio-economical targets of Welfare State include in our opinion: 1. to ensure manpower reproduction²⁵ (through universal health care²⁶ and preparation for employment) in accordance with the needs of national economy and social standard; 2. to organize active employment policy²⁷ and 3. to increase the purchasing power of the population and so enhance the development and stability of economy.²⁸

²¹ “One example to illustrate this is the difference between the German understanding of the social state (Sozialstaatlichkeit) and the Anglo-American or Scandinavian understanding of the welfare state. In the German conception, Sozialstaatlichkeit is chiefly an element of the constitutional identity of the state, which is today for the most part understood as one goal of the state among others ... By contrast, welfare state refers to the (nationally differently defined) totality of the welfare institutions that are also articulated in such terms as „social security”, “social welfare” and / or “social services”. Many misunderstandings result from the circumstances that in the German case the institutional result of legislation legitimated by the social state idea is itself not necessarily an institution of the state. Especially for Germany, it is characteristic that the bearers of social measures are for the most part autonomous public law entities, such as social insurance funds or municipalities; in some instances, the tasks are even taken on in part by private bearers, while in Great Britain and Scandinavia the bearers are typically integrated into the sphere of state and local administration. In the wake of the recent problematization of a provisioning of services under the exclusive guidance of the bureaucracy, perspectives of “welfare state pluralism” are “gaining influence also in those countries ...”. cf. KAUFMANN, F.X. op. cit., note 20, pp. 33–34.

²² KERSBERGEN, K., VIS, B. *Comparative Welfare State Politics*. Cambridge University Press: New York, 2014, pp. 78–102; YERKES, M. A., PEPPER, B., BAXTER, J. Welfare states and the life course. In: Greve, B. (ed.), op. cit., note 5, pp. 105–113.

²³ BARBIER, J. C., op. cit., note 8, pp. 36–61.

²⁴ POJMAN, L. *Terrorism, Human Rights and the Case for World Government*. Lanham 2006, p. 75 ff. and p. 80; BLAHOŽ, J. Human Rights and the Fight Against Terrorism. In: BLAHOŽ, J., BALÁŠ, V., KLÍMA, K., MRÁZEK, J., VEČEŘ, J. et al. *Democracy and issues of Legal Policy in Fighting Terrorism: A Comparison*. Praha 2009, pp. 256–261. KERSBERGEN, K. and VIS, B. op. cit., note 22, p. 40.

²⁵ KERSBERGEN, K. VIS, B. op. cit., note 22, pp. 48–50.

²⁶ WENDT, C. Healthcare. In: GREVE, B. (ed.). op. cit., note 5, pp. 347–357.

²⁷ NORDLUND, M. Active labour market policies. In: GREVE, B. (ed.). op. cit., note 5, pp. 115–124.

²⁸ KERSBERGEN, K., VIS, B. op. cit., note 22, p. 185 ff.

Therefore the concept of Welfare State must be considered not only as a concept of a humanitarian state protecting the really needy human beings (particularly the intention to ensure that social assistance be addressed to individuals requires the continuous improvement of this concept), but simultaneously also as a means of protection of the whole society and global community against increasing social as well as ecological tension the consequences of which could threaten seriously the stability of human coexistence on the world scale.²⁹

It should be noted even in the present social science research, highly successfully based on the application of the most updated computers, that it is very difficult to elaborate indicators of social tension in society enabling the measurement of its intensity and recognize in time the greatest potential danger points. It is a phenomenon hard to quantify and cope with on the basis of experience, although the endeavors to provide it accurate research on a global scale, must be supported and developed.

To simplify the analysis which follows we shall use the uniform term of Welfare State with the aforementioned reservations.

The standard of Welfare State in the individual regions will not be the same for a long time to come – a fact confirmed by the present reality. It will involve also the well-known problem of solving absolute and relative poverty. While the poorest world regions in the first phases of development obviously will endeavor to create a Welfare State overcoming absolute poverty, other regions will probably consider higher, mutually differentiated standards of Welfare State-overcoming relative poverty, but not only that. Another important standard will be the creation of a universally dignified life. There are many typologies of the welfare state but the most important is the commonly accepted typology presented by Esping – Andersen.

1. Liberal Welfare State is based on a moderate support of the lowest strata with the lowest income. It is a concept based on ethical standards. The moderate social security project prevails for the state-dependent workers. The benefit claiming rules are strict and very often stigmatize the recipients. At the same time while guaranteeing the real general minimum income to the population, this type of Welfare State does not violate the principles of market economy. By the equality of benefits the liberal Welfare State creates simultaneously the equality of the population strata living on the verge of poverty. Concrete assessment in the highly developed countries, where this system is applied (USA, Canada, Australia), considers rather the limit of relative (or subjective) poverty. Decisive role in these countries is played by private insurance.³⁰

2. The second type is called Conservative Corporate Welfare State by Andersen who states correctly that it developed historically particularly in Germany, Italy, France and Austria. What prevails in this model is the preservation of the differentiation status: the rights to obtaining Welfare State benefits are connected with the appurtenance to a certain social

²⁹ BLAHOŽ, J. On the Concept of Fundamental Human Right to Favourable Environment. *The Lawyer Quarterly*. 2011, Vol. 1, No. 3, pp. 170–180.

³⁰ ESPING-ANDERSEN, G. (ed.). *Welfare States in Transitions*. London 2007, p. 121 ff.; KERSBERGEN, K., VIS, B. op. cit., note 22, pp. 64–65; KERSBERGEN, K. What are welfare state typologies and how are they useful, If at all? In: GREVE, B. (ed.). op. cit., note 5, p. 143; DONNELLY, C. M. *Delegation of Governmental Power to Private Parties, a comparative Perspective*. Oxford 2009, p. 64 ff.

stratum or a professional group. They are determined by the personal status, and private insurance plays merely a marginal role. We do not consider the denomination of this type as conservatively adequate. In many countries this type has been developing in comparison with its original concept. The simple label of “corporate” seems more adequate.³¹

3. The last type, labeled Social Democratic by Andersen, should be called more accurately universalist with reference to content, and not according to the political orientation of the governments which have introduced it in the largest extent, Sweden; it was not only the social democratic governments that have introduced it. Once again it should be noted that also Roosevelt’s New Deal had the same concept. This type includes also the middle class.³² It is characterized by the fact that (a) the services, benefits and preferences of the Welfare State apply both to the lower and to the middle class equally, (b) it is based on the principle that the principle of equality must have always a social dimension, i. e., that it must guarantee the possibility of the full participation in the enjoyment of other rights,³³ (c) the whole population-workers, clerks, etc.- are subjected to a single universal insurance system, (d) the market, in this consistently implemented system is excluded from social security.³⁴

In our opinion all these Welfare State types have their positive and negative aspects.

If we consider the regionalization (in the framework of the European Union) and the globalization of the Welfare State, it will be necessary indubitably not to implement any of the above mentioned models in its pure form on global scale. Experience has shown that these types do not exist in pure form even at present, in numerous highly developed states. At the same time we are witnessing that the ingeniously mixed types are most adequate also in the individual developed states. Therefore it is possible to assume that this thesis will apply also to the global level or the level of world regions.

If we consider the existing works on Welfare State and particularly the classification of Welfare State types defined in writings, we shall observe the classification given in the work by Gosta Esping Andersen which is still valid, although with some significant modifications.

“The problem is that Esping-Andersen is confusing his typological method with both the ideal type approach and cases with types, a misunderstanding and subsequently and often uncritically reproduced in the literature ... An ideal type is a theoretical construct that has no empirical cases that fit any of the types, whereas – as we argued earlier – a typology is a classification device in which all empirical cases must find a place as belonging to one of the types and to one type only. In ideal – typical analysis, the question concerns not whether an empirical case fits the theoretical ideal, but the extent and degree to which it does. The question of goodness of fit makes sense only when working with ideal types ...

The distinction between a typology and an ideal type is important because it helps to distinguish between constructive and to – the – point criticisms of the original regime typology and not very useful (because ill – conceived attacks on the three worlds as ideal

³¹ KERSBERGEN, K., VIS, B. op. cit., note 22, pp. 64–65.

³² ESPING-ANDERSEN, G. op. cit., note 17, p. 30.

³³ *Ibid.*, p. 28.

³⁴ KERSBERGEN, K. op. cit., note 30, p. 143; KERSBERGEN, K., VIS, B. op. cit., note 22, pp. 64–65; ESPING-ANDERSEN, G. op. cit., note 17, pp. 26–27.

types and between adequate and deficient replies to criticism). For example, a valid criticism would be that the regime typology is not exhaustive because it did not include all the theoretically relevant features of welfare states in the tool box of classification, including the institution of the family or household and social services ... as a result, it does not capture well the important differences and similarities between the regimes ... We conclude that it is important to remember that Esping-Andersen's story of the three worlds of welfare capitalism is for all intents and purposes, a typological classification that effectively grouped together empirically the many worlds of welfare capitalism and rearranged them into three distinct types. To a considerable degree this seminal typology, so the data tell us, is still relevant for understanding the various worlds of welfare capitalism today".³⁵

However, not only the concept of the Welfare State proper, but even its implementation, will represent a very serious problem. Both problems can be expected to undergo substantial changes in the process of Welfare State regionalization and globalization.

III. GLOBAL PROCESSES AND THE WELFARE STATE REFORMS

After reaching its maximum in the seventies, the parabola drawn by the Welfare State of the western European Countries has begun its declining phase.³⁶ The deceleration in the rates of growth in the Industrialized Countries, the progressive expansion in the range of services provided by the State to wider and wider shares of the population, the introduction of automatism which loosened the check on public expenses, the run up of increasing expectations nourished for political-lobbying purposes all these attitudes and events have eventually produced that "fiscal crisis of the State" which now calls for sharp corrective measures aiming to provide again the economic system with efficiency and energy.

"The reduced ability to provide generous social programmes, infrastructure, and low rates of taxation is a direct consequence of the massive levels of debt that have been built up for the past several decades; and these debt burdens, according to rational choice theorists, are a consequence of political officials spending public money as a means of ensuring their re-election, or of unaccountable bureaucrats demanding excessive budgets".³⁷

The deep changes that took place in the morphology of contemporary society, in which the industrial sector no longer plays a central role, produced important modifications in the structure of social demand. With the segmentation of the old social classes we are witnessing the emergence of new social elements, new values and new needs which, according to the circumstances, take up the features of demands for a better quality of life, enhanced autonomy and opportunities of self-realization, and more frequent and wider

³⁵ KERSBERGEN, K., VIS, B. op. cit., note 22, pp. 68, 69, 77.

³⁶ ESPING ANDERSEN, G. After the Golden Age? Welfare State Dilemmas in a Global Economy. In: ESPING-ANDERSEN, G. (ed.) op. cit., note 30, pp. 1–31.

³⁷ FIERLBECK, K. *Globalizing Democracy*. Manchester 2008, p. 158. According to Colin Crouch "The rising political importance of the global firm, the vacuum left by the decline of the working class, and the way in which a new political class of political advisers and business lobbyists was filling that vacuum all helped explain why government social policy was becoming increasingly obsessed with giving work to private contractors. This debate was also part of the postdemocracy debate, and in fact provided a major example of the practical consequences of post – democracy". CROUCH, C. *Post-Democracy*. Cambridge, Malden, 2005, p. X.

social participation.³⁸ Such demands are met neither by the centralized and bureaucratic structures of the Welfare State, nor by the neo-liberal policies.³⁹

The building-up of a trade-off between efficiency and economic growth on the one side, and solidarity among the different social groups on the other side, pose the undeferrable problem of entirely reform the structure of the Welfare State.⁴⁰ The crux of the matter lies in the need for maximizing equity together with efficiency and the sustainable growth of the economic system. And yet no formula is able to define the optimal relationship among equity, efficiency and growth.

Although it is true that equity brought beyond a certain limit is prejudicial to efficiency and growth, it is not easy to understand where this limit lies. In this situation all a social researcher can do is to analyze the most significant elements cropping up out of the existing crisis of contemporary societies and to investigate their likely evolution.⁴¹

According to Kees van Kersbergen and Barbara Vis ... “globalization is an important functional pressure for welfare state reform to reckon with, probably of more importance than the sectoral shifts in employment (from agriculture to industry and from industry to services) that have been taking place in the same time span ... welfare state reform is formulated, proposed, and implemented in response to the pressing challenges that contemporary welfare states face. Institutional conditions and political power struggles determine the extent to which these responses are effective or deficient in how the reform helps to adjust the welfare state’s arrangements to new challenges and to allow it to continue performing by securing socially and politically acceptable levels of employment, social security, and equality ... Why do we need to reform the welfare state? First, because we found that no welfare state offers full coverage of social risks, prevents poverty entirely, and is capable of continuing to reduce income inequality, reform is needed. Second, we need to reform the welfare state because globalization generates major pressures to adapt, either “positively” so as to compensate domestically, for the social costs of economic integration via expansionary social policies, or “negatively” so as to concede to capital demands by rolling back the welfare state, taxes, and social expenditures. Third, the postindustrialization of society has created a new social risk structure that fundamentally challenges the existing social policy arrangements financially, organizationally, and politically. In short, welfare state reform is a necessity”.⁴²

E. X. Kaufmann says: “Comparing the United States with European Union welfare states leads easily to inappropriate results. In many respects, a comparison with the European Union as a whole would be more appropriate. Which EU has so far stayed away from interpersonal redistribution aims and leaves this to member states, the US has, in the Social Security Act, a basic social policy document for the standardized federal regulation of the important issues of old age, survivor, and disability insurance. By contrast, all other socio-

³⁸ BARBIER, J. C. *The Road to Social Europe, A contemporary approach to political cultures and diversity in Europe*. Abingdon, New York, 2014, pp. 65–75.

³⁹ DONNELLY, C. M. op. cit., note 30, p. 62.

⁴⁰ KERSBERGEN, K., VIS, B. op. cit., note 22, pp. 27–30 and p. 103 ff.

⁴¹ FIERLBECK, K. op. cit., note 37, p. 112, p. 191, p. 211 ff. GEARTY, C. *Can Human Rights Survive*. Cambridge 2006, p. 17 ff. and p. 60 ff. CROUCH, C. op. cit., note 37, p. 3 ff.; KELLER, J. *Soumrak sociálního státu*. Praha 2005.

⁴² KERSBERGEN, K., VIS, B. op. cit., note 22, p. 121, p. 136 and p. 186.

political concerns are regulated – if at all – at the level of the states, with considerable differences as to the kinds and levels of benefits that are extended. The history of American social policy is rich ... it has been shaped by continued clashes between the federal government and states with respect to the jurisdiction over and the financing of social benefits and services”.⁴³

IV. WELFARE STATES IN TRANSITION

A certain tendency to regard the activities of the Welfare State or Social state as charity has been brought about by negative experience with central management and, particularly, implementation of Welfare State activities in the course of which these activities in almost all countries of the European Union were subjected to excessive bureaucracy, abuse and waste of public means. The correct trend, even on global scale, is the maximum decentralization of Welfare State activities to the lowest tiers of local government while preserving the conceptual and control power of central authorities, in the future possibly including the authorities above state level and regional communities.

The experience with the negative impact of centralization in the implementation of Welfare State functions are well known from European countries – Great Britain, Italy, France – as well as from the USA and the third world countries. At the same time the decentralization of Welfare State activities connected with concrete benefit distribution brings about incorrect tendencies to consider Welfare State activities as charity stigmatizing the recipients of these benefits. I consider it necessary to emphasize again that the activities arising from the functions of the Welfare State are the activities of the modern responsible and responsive state or the activities arising from the concept of supranational institutions, should the concept of Welfare State be implemented on global scale.

“The welfare state was the way in which society came to terms with the consequences of modernization. The enormously dynamic character of capitalism implies that political actors are permanently confronted with the new social, economic, and political issues to solve. Since the capitalist system has an inbuilt tendency... to produce periodic crises, the welfare state must respond and seems to move from crisis to crisis. Its demise has been predicted more than once. Yet, in the light of the permanently changing circumstances of development and recurring economic tribulations, the welfare state’s survival skills have proven to be remarkably well developed.”⁴⁴

A considerable amount of scientific literature concerned with globalization and the processes of unification of the European Union and the present world has been produced for several decades. This literature concerns not only social sciences, although the attention focused on this problem by social sciences is most intensive. The authors seek not only a system of world security, but also joint responsibility for its development as a whole and in its individual parts, as the world is being increasingly integrated.⁴⁵

⁴³ KAUFMANN, F. X. op. cit., note 20, p. 89.

⁴⁴ KERSBERGEN, K., VIS, B. op. cit. note 22, p. 30.

⁴⁵ MERRIT, R. L., RUSSETT, B. M. (eds.). *From National Development to Global Community: Essays in Honor of Karl W. Deutsch*. London, Boston, 1981, pp. 145–183.

In the past, until the end of the eighties, the bipolarity of the contemporary world seemed to represent the greatest obstacle of the globality of political, economic, ethnic, social, ecological, cultural and other processes. The world was divided into the first, the second and the third world (and the socioeconomic problem simplified as the discrepancy between the rich North and the poor South was observed, too). However, the principal problem was seen in that diverse bipolarity which manifested itself in the struggle between the first world and the second world for position in the third world.

The fast collapse of the communist world system⁴⁶ (the relicts of which still remain in Asia), i.e., actually the end of the second world, has aroused great expectations in respect of globalization and universal integration processes in all fields. However, these expectations proved short-termed and short-lived. Equally surprising as the speedy collapse of the socialist system for social science as well as for the political public was the development which followed. That expected enthusiastic ethos of democratic and national understanding,⁴⁷ emphasized so intensively after the fall of the communist system, disappeared from the development of the countries previously forming part of the socialist system in the course of two years and was replaced with national, ethnic, cultural and political clashes, and a prevailing political and economic instability. What is worse, however, is the fact that this process of local or regional instability exercised a snowball effect in other areas. In this context it is necessary to ask why it happened. It was obvious that after the fall of totalitarian order maintained by force in national and economic relations primarily in the Soviet Union an explosion of social disorder and national animosities would follow, and that these tendencies would arise with major or minor intensity also in other postcommunist countries. However, what has given rise to the snowball effect of nationalism, separatism and general intolerance also in the areas which have never formed part of the second world? The reason can be seen, on the one hand, in the disappearance of the threat to the world, represented by the totalitarian Soviet Union and its nuclear potential, and on the other hand, in the disappearance of the equilibrium brought about by this threat.⁴⁸ This threat and the urgency of equilibrium brought about by it imposed restraint on practically every judicious politician of every state, nation or ethnic group in the solution of the concrete problems of his state or nation.

In relation to poverty, power and law, there arises the question, whether the communist system collapsed or broke down because they applied the egalitarian and bureaucratic function of paternalist, care-taking state. This question is sometimes asked in these countries. We believe however, that it is not so. The power of the communist state and communist system collapsed primarily because the planned economy applied by it was incapable of competing with capitalist economy and the political totalitarian system fell in competition with pluralist democracy. The care-taking paternalist state is merely a by-product of the socialist economic and political system and this function participated only to a relatively small extent in its bureaucratic rigidity and its collapse.

⁴⁶ LAWSON, K. *The Human Polity, A Comparative Introduction to Political Science*. Boston 1993, p. 348; BLAHOŽ, J. Political Parties in the Czech and Slovak Federal Republics: First Steps Toward the Rebirth of Democracy. In: LAWSON, K. (ed.). *How Political Parties Work, Perspective from Within*. Westport, London, 1994, pp. 229 ff.

⁴⁷ FIERLBECK, K. op. cit., note 37, pp. 227–230.

⁴⁸ BROOKS, S. B., WOHLFORTH, W. C. *World Out of Balance*. Princeton 2008, p. 26 ff. and pp. 58–59.

In many states, where market economy had not existed for over forty years and in which their citizens in productive age had never come into contact with it in their own country, the market economy was introduced in the course of two years. The questions of the methods of privatization and introduction of market economy, whether society was prepared for such fast introduction of market economy, remained mostly outside the sphere of interest.

Guy Standing states: “While the reform process in Central and Eastern Europe began with a legacy of deep distortions, the “shock therapy” that various governments have attempted to various degrees introduced new distortions and compounded some of those already existed. The countries of the region were suddenly plunged into the global economy, when their industries were chronically uncompetitive suffering from antiquated technology, low and declining labour productivity and a pattern of integrated trading between themselves that became severed extraordinarily rapidly. Yet there was a traumatic rupture since, by design or by default, the reforms removed the three pillars on which the former system had been legitimized, and on which a majority of the population had come to rely and value, namely guaranteed employment, social protection via subsidized prices, and enterprise – based social benefits, mostly through the direct provision of goods and services.

What is a less contentious statement is that the reform of social policy has had considerable redistributive objectives and outcomes. There has been an enormous increase in inequalities, and the poor have lost benefits as well as wage incomes. In the process, there has also been a worrying undercurrent among policy – makers, politicians and national and foreign “advisers”, which is that under the previous regimes the populations were over – protected so that they need a period of re-education to alter their consciousness”.⁴⁹

We are witnessing a remarkable phenomenon. In all post-communist countries the state-planned economy is transformed into market economy, based on private property, by means of laws. In this analysis, we abstract from the fact, whether it is accomplished completely (e.g., in the Czech Republic) or whether this process has not been fully completed yet. Decisive is the fact that in the developed pluralist democracies market economy developed very slowly and without, we could say “creative” intervention of law. We can speak only about regulative intervention of the state proceeding since the end of last century. It goes without saying that so developed market economy and the rules of its function related to it have become part of the general civil consensus with the social, economic, political and legal system of the given state. The same applies to the relation of state, law and poverty. It means that social consensus in traditional pluralist democracies originated gradually and on long-term development basis also in respect to the type of Welfare State.

It should be noted that social consensus concerning fast privatization and introduction of market economy, if we consider consensus generally and without detailed specification, originates relatively fast. In a specific approach, concerning such problems as whether privatization should be total and covering all sectors, including transport, public health, telecommunications, etc., there are substantial differences in social consensus.

⁴⁹ STANDING, G. Social Protection in Central and Eastern Europe: A Tale of Slipping Anchors and Torn Safety Nets. In: ESPING-ANDERSEN, G. (ed.). *Welfare States in Transition*. London 2007, pp. 230–231.

Even greater differences can be observed in the creation of social consensus in the social field and, consequently, in the creation of the Welfare State. This is due to several factors: (a) historical development of Welfare State codification before the communist rule was partly different in the individual countries. This codification did not change significantly even in the course of communist rule; (b) while in all other aspects of public life, communism was rejected very fast by the majority of society, the general distribution of social security benefits and free medical service was accepted by a relatively strong consensus of most citizens and therefore, is surviving to a considerable extent. It is also necessary to add the relatively low standard of living of the population in comparison with the standard of living in developed democratic states.

In this context it is necessary to consider the role of state power and law in relation to poverty and in relation to the creation of a certain type of Welfare State. It is unthinkable to preserve the paternalist care-taking state of socialist type in the situation in which privatization of national economy has been carried out completely or in a prevailing part. The opinion of a major part of the population of these countries, however, is considerably schizophrenic in this respect (and it is no wonder): on the one hand they welcome privatization and introduction of free market, on the other hand they cherish subconsciously a wish, which is difficult to overcome, that the care-taking state should continue.⁵⁰

The Czech Republic asserted the introduction of the liberal model, based primarily on the responsibility of the individual. With regard to the problem of social tension which could be connected with this transformation the legal model of the transition from the paternalist socialist type to the residual system of liberal type is gradual and phased. The target is evident—the reduction of social expenditure. It goes without saying that the attainment of the liberal model of social security or the liberal model of Welfare State (the concept of Welfare State or its translation are not used in the Czech Republic, though) obviously will be a long-term process, as it is a model entirely new in the conditions of the Czech Republic. It is also entirely new in all other Central European post-communist countries where, however, it is only under discussion without gaining general support.⁵¹

Steven Saxonberg states: "... the exact welfare mix differs from place to place, the post-communist countries all seem to have developed hybrid models that combine conservative – Bismarcksian legacies from the pre-communist era with communist-era policies (which combined certain aspects of conservatism, liberalism, and universalism) and tendencies toward neo-liberal residualist reforms. Despite great differences in some policy areas, all the countries discussed here have adopted healthcare policies that come closer to German healthcare model than the American liberal one; they have also maintained family policies that largely encourage separate gender roles ...; and they have all allowed benefit levels to decay and become more residualist over time".⁵²

⁵⁰ SAXONBERG, S. Eastern Europe. In: GREVE, B. (ed.). op. cit., note 5, p. 175 ff.; STANDING, G. op. cit., note 48, pp. 238–239.

⁵¹ VEČEŘA, M. op. cit., note 18, p. 105. BLAHOŽ, J., BROKL, L., MANSFELDOVÁ, Z. Czech political parties and cleavages after 1989. In: LAWSON, K., RÖMMELE, A., KARASIMEONOV, G., (eds.). *Cleavages, Parties and Voters*. Westport, London, 1999, p. 130.

⁵² SAXONBERG, S. op. cit., note 49, p. 180.

The situation in the developing world is very uneven. While some of the countries formerly called developing countries ceased to be developing countries a longtime ago in our opinion (by way of example we could mention South Korea and Thailand), other developing countries are dropping continuously lower. This applies primarily to the situation of numerous developing countries of Africa and Asia. The reason is obvious: highly unstable political, ethnic, social and economic situation is not favourable for investments on the part of developed countries.

How can we qualify the present situation? We believe that the world, after the extinction of bipolarity and a transient phase of unipolarity is developing towards multipolarity, to a multipolar world where, apart from the U.S.A., there will be – in spite of all difficulties – unified Europe (European Union) as well as economically and socially strong groups of states of Asia,⁵³ Africa⁵⁴ and Latin America.⁵⁵

The area of the greatest instability, however, will be represented by those developing countries, in which the economic and social drop continues.

The question arises how (and whether) can we speak about the globalization of social processes and the Welfare State under these circumstances? Is it not merely an utopia? In spite of growing and seemingly insuperable difficulties, we believe it is not. We think that these very difficulties and problems will be the limiting factor of the development of every state and the world community in general.

We see the basic positive feature in the fact that with reference to the general needs of man, the development of science and civilized culture, globalization has become the only possible objective process which will not result in social ruin. In this situation it is unthinkable that it should not be accompanied with the development of the Welfare State concept, even though the process will be very difficult.

V. CONCLUSIONS

We can hardly expect the origin of a uniform universal model of the Welfare State in the foreseeable historical future. However, in our opinion it is realistic to consider regional types of Welfare State or Social State corresponding with the social systems which have been accepted for a long time by civic consensus in the individual regions of the world and particularly in their significant states. It is also possible to expect regional agreements of Welfare State concepts and systems and the methods of their implementation.⁵⁶ In this respect it is possible to consider the creation of global-trans-state-standards of Welfare State.⁵⁷ A certain example is provided, in our opinion, by the present European Union (the

⁵³ GOODMAN, R., PENG, I. The East Asia Welfare States: Peripathetic Learning, Adaptive Change and Nation – Building. In: ESPING-ANDERSEN, G., (ed.). op. cit., note 30, pp. 192–209.

⁵⁴ CERAMI, A., WAGUÉ, A. Africa. In: GREVE, B. (ed.). op. cit., note 5, pp. 252–254.

⁵⁵ HUBER, E. Options for Social Policy in Latin America: Neoliberal versus Social Democratic Models. In: ESPING-ANDERSEN, G. (ed.). op. cit., note 30, pp. 146–191; LLOYD-SHERLOCK, P. Inequality and social policy in Latin America: A new analytical Framework. In: Greve, B. (ed.). op. cit., note 5, pp. 232–241.

⁵⁶ HUBER, E. Options for Social Policy in Latin America: Neoliberal versus Social Democratic Models. In: ESPING-ANDERSEN, G. op. cit., note 30, pp. 141–142; CERAMI, A., WAGUÉ, A. Africa. In: GREVE, B. (ed.). op. cit., note 5, pp. 254–258; GOODMAN, R., PENG, I. The East Asia Welfare States: Peripathetic Learning, Adaptive Change, and Nation Building. In: ESPING-ANDERSEN, G. op. cit., note 30, pp. 209–224.

mixed systems of social democratic, liberal and conservative Welfare state with the prevalence of neoliberal tendencies – above all the impact of the policy of the World Bank, IMF, WTO, OECD and WHO).⁵⁸

In the global concept of the Welfare State, in our opinion, it will be necessary to expand this concept from its social aspects, on which it has concentrated so far, to ecological and cultural aspects. Human poverty will not be measured in the future only by social indicators, but also and above all by ecological indicators and, last but not least, also by general cultural indicators. It is possible to imagine that the citizen, generally well-secured socially, whether by his own activities or by the state or community, will be de facto substantially and absolutely poorer, if he has to live in a catastrophic environment. And that is where liberalism and rugged individualism cease to be satisfactory, because the thesis that everyone or every private enterprise is responsible for the environment he creates, as it would be consistent with die-hard liberalism (in its theory and practice of everyone's responsibility for himself) would be absurd.

It is in this context that the question arises, and not only sociological, but also legal, whether the concept of Welfare State should not include also the so-called third generation of human rights (repeatedly proposed and repeatedly rejected), which include particularly the right to healthy environment, protection of nature, solidarity, cultural heritage of humanity, etc. The author of this paper is an advocate of the concept of the third generation human rights including its natural law basis. The right to life, which represents the basis of human rights in general, cannot be exercised at all without the third generation human rights, in our opinion, reflecting its individual qualities. That is also why the Welfare State concept as one of the significant guarantees of the right to life cannot get along without the aspects implementing the requirements of the third generation human rights.

This gives rise simultaneously to the question of social system as a whole. Churchill's dictum that democracy is the worst form of government except for those which have been tried from time to time, which is being confirmed every day, is equally valid as the statement that capitalism is still the most viable economic system in spite of all its shortcomings. When surveying its development, however, we can see enormous differences between the capitalism of the beginning of the nineteenth century and the capitalism entering the twenty-first century. And that is where the question arises: is not a system change taking place, a change of the quality of society and its system? We should like to identify here with the ideas of Professor Takashi Fujii who calls this qualitative change, knowledge society into which the capitalist society is presently changing.⁵⁹ This qualification of knowledge society is not merely an ornamental term; it emphasizes entirely new parameters and criteria of growth and development in comparison with capitalist society. The principal parameters of growth include knowledge, education and sound develop-

⁵⁷ ANTTONEN, A., HÄIKIÖ, L., STEFÁNSSON, K. The future of the welfare state: rethinking universalism. In: ANTTONEN, A., HÄIKIÖ, L., STEFÁNSSON, K. *Welfare State Universalism and Diversity*. Cheltenham, Northampton, 2012, pp. 187–196.

⁵⁸ GUIRAUDON, V., MARTIN, C. Drivers for change. In: GREVE, B. (ed.). op. cit., note 5, pp. 283–290.

⁵⁹ FUJII, T. Economics and Economic Policy Science in the New Century: Basic Trends of Thought in the Dramatically Changing Area of the Social Science, IFSO (International Federation of Social Science Organizations). *Newsletter*. 1993, No. 29–30, pp. 38 ff.

ment in all sections of human society and its natural as well as social environment. The parameters and standards of wealth and poverty of human society, regional communities, communities and individuals, consequently, will acquire entirely different dimensions.⁶⁰

It should be emphasized that the present Welfare State in all of its types and with all of its real or artificially emphasized shortcomings and crises is not merely a by-product of industrial development. It is a powerful social mechanism predetermining the future of mankind.⁶¹

⁶⁰ FUJII, T. Ecology and Development, IFSSO (International Federation of Social Science Organizations). *Newsletter*. 1993, No. 31–32, pp. 33 ff.; SIROVÁTKA, T., WINKLER, J. Význam nových sociálních rizik v současné společenské vědě. *Sociální studia*. 2010, č. 1, p. 15 ff.

⁶¹ “In fact, as we stressed ..., reform is continuous feature of the politics and policies of the welfare state. During the last 20 years or so, welfare states have continually adjusted to new economic and social demands, and governments have pursued, albeit with considerable variation, apparently well adapted and innovative social policies. But under increasing functional stress, especially in the wake of large budget deficits and pressures from financial markets, it is not evident that core social programs can be protected through reform; they may become victims of the pending distributional battles or of further policy drift. Welfare states have been remarkably flexible and capable in their adjustment to their permanently changing environments. Their core social arrangements remain highly popular so that any attempt at radical overhaul continues to meet public resistance. Yet, severe budgetary problems, the unpredictable but threatening responses of financial markets, and the real economic consequences of the financial crisis not only press for further reform but possibly undermine the political capacity to implement those reforms needed to guarantee the continued protection of people against social risks that the welfare state has so far offered”. KERSBERGEN, K., VIS, B. op. cit., note 22, p. 205.