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COMPARATIVE CAUSE AND EFFECT: CONSUMER INSOLVENCY AND THE ERODING SOCIAL SAFETY NET

Jason J. Kilborn[*]

This paper explores the connection between social welfare reform and the adoption of consumer debt relief law in Europe. Health care expenses and unemployment are significant contributors to overindebtedness in Europe, and outside the primary sources, one finds suggestions to the effect that the unraveling social safety net was a major contributing factor in the adoption of consumer debt relief laws in Europe in the 1990s. This paper critically analyzes this notion by tracking the recent scaling back of social assistance programs in Sweden, Germany, and France, and comparing that movement with the adoption of consumer insolvency regimes in those three countries. The temporal correlation seems to be quite weak, and closer examination of the individual social welfare regimes reveals latent weaknesses that were amplified by changes in consumer economic factors in the 1980s. Rather than an eroding social safety net causing the adoption of consumer bankruptcy law, other powerful variables seem to have driven both of these reform processes. In countries with both strong and weak safety nets, consumer insolvency law has become the treatment of choice for new financial risks confronting consumers in the 21st century.

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> [T]he extent to which the welfare state is diminishing remains debatable. The popular consensus is that its growth has been slowing since the 1970s and may now be going into reverse.[1]

What could ice cream possibly have to do with violent crime? In a statistical anomaly that is both surprising and amusing, the annual rate of ice cream consumption correlates strongly with the annual rate of violent crime. On further consideration, this relationship is not so anomalous or surprising. Both of these rates rise and fall with respective changes in temperature; that is, as the temperature rises, people both eat more ice cream and commit more violent crime.[2] The important nuance here makes this a common illustration of the difference between correlation and causation. Though apparently no experimental studies have explored the possible overlap between ice cream eaters and violent criminals, it seems safe to presume that there is little, if any, causal link between ice cream and violence, particularly given the third variable that obviously facilitates if not causes both—rising temperature. Just because the two variables are strongly and consistently *correlated* with each other does not imply, much less prove, that one *causes* the other.

Though welfare and consumer debt relief seem much more logically related than ice cream and violent crime, a similarly nuanced relationship exists between changes in these two legal regimes. One might reasonably presume, as many have, that the sudden appearance of consumer debt relief law in Europe in the early 1990s was at least to a significant degree an effect of eroding social welfare benefits. As the state scaled back the scope and coverage of social insurance programs and reduced transfer payment benefits, consumers were left with a financial void, which they filled with newly available consumer credit. As debt levels inevitably grew, legislators patched the hole in the social safety net with a new legal regime: consumer bankruptcy.[3]

Given the myriad of variables affecting the financial lives of modern consumers, it is quite difficult to evaluate this causal claim. Nonetheless, this paper offers a preliminary challenge to this causation hypothesis.[4] It launches this challenge from

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[1] Gertrude Schaffner Goldberg, *Introduction: Three Stages of Welfare Capitalism, in* DIMINISHING WELFARE: A CROSS-NATIONAL STUDY OF SOCIAL PROVISION 1, 4 (Gertrude Schaffner Goldberg & Marguerite G. Rosenthal eds. 2002) (systematically exploring this notion of erosion since 1980, with empirical observations from nine states).

[2] *See, e.g.,* Scott M. Lynch, *Introduction to Statistics (Soc 301)* (Feb. 2005) (class handout) http://www.princeton.edu/~slynch/SOC_301/soc301_notes5.pdf; *see also* Posting of Salvatore Cullari to MadSci Network, http://www.madsci.org/posts/archives/dec97/879402478.Gb.r.html (Nov. 12, 1997, 14:54 EST) (also noting social psychological studies of the relationship between aggression and temperature).

[3] Throughout this paper, I will use the terms "insolvency," "bankruptcy," and "debt relief" synonymously, though the terms have more or less precise distinctions in various historical and geographical contexts.

[4] This paper was inspired in part by Iain Ramsay's call for further documentation of the link between the rise of consumer debt and the fall of the welfare state in Europe. Iain D.C. Ramsay, *Functionalism and Political Economy in the Comparative Study of Consumer Insolvency: An Unfinished*

two different angles, based on an examination of the experience of three large, representative European states: Sweden, Germany, and France. First, the timing and nature of social welfare reforms in these states do not seem to correspond strongly with the rise of consumer indebtedness and the consideration and adoption of consumer debt relief law. Thus, the very notion of a correlation is not as convincing as one might have thought. Indeed, widespread consumer debt problems might have arisen even under the original social welfare systems, as their protections were never absolute. Second, one set of significant reforms to social insurance programs—primarily unemployment insurance—did occur shortly before the adoption of consumer insolvency law. Here, I propose we see the *trompe l'oeil* of the ice-cream-and-violent-crime correlation. Just as the third variable of rising temperature is the real causal factor in the connection between ice cream consumption and violent crime, I argue that unemployment in the 1980s and 1990s, unprecedented in scope and duration, was the third variable that caused both a renegotiation of unemployment benefits and the spike in consumer financial distress that most powerfully contributed to the adoption of consumer insolvency law. It may be that *subsequent* social welfare reforms are more causally connected to the sharp rise in consumer insolvency filing levels in Europe in the early 2000s. This paper leaves that question aside (though I doubt there is a strong connection there, either). As for the impetus for *adopting* consumer debt relief laws, however, this paper argues against a causal connection with welfare cutbacks.

More fundamentally, this paper contributes to the ongoing debate about the general causes of consumer financial distress and the need for more robust consumer insolvency protection. Even if the social insurance and transfer payment systems in Europe had remained as they were in the early 1980s (with adjustments for inflation), the new world of international commercial competition has introduced new risks to which the traditional regimes were never designed to respond. Further complicating the situation, another new risk emerged when legislators threw open the gates to consumer borrowing and lending. "Old Europe" has been all but totally relegated to the past in the context of consumer finance, and New Europe faces the same sorts of risks that the United States have faced for decades.

The responses to these new risks by both consumers and legislators in Europe have been consistent with U.S. experience. Consumers have capitalized on open access to credit, often pushing their financial margins to the edge. Though many have benefited from this, a few have fallen victim to the new risks of an increasingly volatile global economy, as well as the old risks of health problems, divorce, loss of a partner, and others. Not surprisingly, legislators in Europe responded in the 1990s just as U.S. legislators did in the 1970s, by extending relief to consumers to revitalize their productivity and prevent creditor claims from robbing debtors (and society) of productive individual initiative. The differences in numbers of individuals seeking relief in the United States and Europe may well be a factor of the extra protections offered by the European social safety nets. But the new debt-relief safety net was adopted for very similar reasons to address very similar economic

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Story from England and Wales, 7 THEORETICAL INQUIRIES IN LAW 625, 638, *available at* http://www.bepress.com/til/default/vol7/iss2/art13. This paper confirms Professor Ramsay's suspicions that the link is quite weak.

risks on both sides of the Atlantic, having little if anything to do with eroding dedication to universalism and solidarity in European welfare society.

Part I sets the stage by introducing the various social welfare programs in Sweden, Germany, and France. It reveals immediately that the traditional systems always allowed some people to fall through the cracks, though the numbers of such people remained relatively small before the 1980s. Part II then tracks the most notable changes in these programs in the late 1980s and early 1990s, just as legislators were considering and then adopting new consumer insolvency regimes. Though no clear-cut conclusions can be drawn from this time-series analysis, only a rather weak correlation is evident between the fall of welfare protection and the rise of consumer debt relief. Finally, Part III explores the third variable—unemployment—that, along with the new and additional risk of rising consumer debt, drove both sets of reforms. In countries with strong and weak social safety nets alike, the one-two punch of structural unemployment and uncontrolled consumer debt is a recipe for disaster, at least for some. In any country, legislators who desire the benefits of active participation in the global economy should be prepared to attend to those who suffer from the inevitable detriments. Perhaps increased global trade and competition is "efficient" because the winners could pay off the losers and still be ahead, but the winners are not paying off the losers. Governments should be ready to step in with a treatment for those afflicted by the ailments of economic globalization. Consumer bankruptcy law has emerged as the consistent cure of choice.

I. COMPARATIVE BASELINE: THE EUROPEAN SOCIAL SAFETY NET IN THE 1980S AND 1990S

To set a baseline for development over time, this section introduces the key social welfare benefits offered in Sweden, Germany, and France around 1990, just when welfare reforms and consumer insolvency law began to develop in earnest in continental Europe. Entire books have been written on the details of these programs and their development, and this section will not attempt to summarize that treatment. Instead, the focus here will be on how the various programs regulate consumer finances by offering insurance, services, or transfer payments to reduce the effect of income interruptions, unexpected expenses, and other financial shocks. This part reveals the sometimes significant differences in coverage of the regimes in various countries, often leaving groups of people vulnerable to financial shocks even before the tumult of the later 1980s and early 1990s. Though the U.S. social safety net is so rudimentary as to have no counterpart to some of these programs, and the operation of such programs in the United States often differs considerably from state to state, comparative reference will be made to analogous U.S. programs where appropriate to offer some context for U.S. readers.

A. Old Age, Disability, and Survivor Benefits (Pensions)

Perhaps the most consistent aspect of the social security systems in the United States and Europe is the notion of providing income maintenance for those who have left the workforce after retirement or disability. While the details again differ somewhat from country to country, this is one area where the United States has attained a measure of parity with Europe in providing for seniors and disabled people. Eligibility to draw state pension benefits begins generally at age 65 in all of these countries, though under certain conditions (and as a general matter in France) as early as 60. Disability benefits are generally calculated as all or a portion of otherwise applicable pension benefits, depending upon age and the extent of the disability; therefore, this section will focus on pension benefits.

As discussed below, Sweden's pension system has been in a state of flux recently, introducing privatization innovations that even U.S. lawmakers have avoided in recent years. But in the early 1990s, the traditional program was still in place. Funded by small employee payroll taxes and much larger employer contributions, along with government subsidies, it consisted of two tiers: The first was a universal, flat-rate basic income tier (the "people's pension") paying a standard subsistence amount, which in the mid-1990s amounted to about 2800 Skr ($350) per month. The second was a standard, earnings-dependent tier (the "ATP" pension) offered to workers with at least 3 years of employment, with a full benefit payable only to those with 30 years of credited employment. Benefits under this second tier were calculated using a complex formula based on the average of the worker's 15 highest earning years, up to a limit, which would in most cases at least double the basic pension, but for high earners could add over $1000 per month. These two pensions together replaced about 65% of pre-retirement income, and most workers received an additional 10% from an employer-provided supplemental pension.[5]

The German pension system is for most workers equally generous, replacing about 70% of pre-retirement income.[6] Like other social programs in Germany, the pension system is funded by payroll taxes imposed equally on employers and employees (9.6% each on wages up to about $64,000 in the mid-1990s), subsidized by general government revenues. Calculated similarly to the Swedish ATP pension, according to a complex formula based on the number of working years and wage level, the average state pension in the late 1990s amounted to about $1000 per month for men and $500 per month for women. As in Sweden, about 50% of the German workforce supplemented the public pension with private pensions.[7]

In contrast, the basic French state pension has been appraised by commentators as "totally inadequate" for most people, so additional, private pension funds play a

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[5] Helen Lachs Ginsburg & Marguerite G. Rosenthal, *Sweden: Temporary Detour or New Directions?*, *in* DIMINISHING WELFARE: A CROSS-NATIONAL STUDY OF SOCIAL PROVISION 103, 122, 124–25 (Gertrude Schaffner Goldberg & Marguerite G. Rosenthal eds. 2002); Sven E. Olsson Hort, *Sweden*, *in* THE STATE OF SOCIAL WELFARE: THE TWENTIETH CENTURY IN CROSS-NATIONAL REVIEW 125, 144 (John Dixon & Robert P. Scheurell eds. 2002). In addition, these and many other figures in this paper are drawn in part from the online database of the International Social Security Association, *Social Security Programs Throughout the World 1995–2006*, http://www-ssw.issa.int [hereinafter, ISSA database]; *see also* SOC. SEC. ADMIN., SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD: EUROPE, 2006, SSA Pub. No. 13–11801 at 309–315 (2006), *available at* http://www.socialsecurity.gov/policy/docs/progdesc/ssptw/2006–2007/europe/ssptw06euro.pdf [hereinafter, SSA Report].

[6] Gerhard Bäcker & Ute Klammer, *The Dismantling of Welfare in Germany*, *in* DIMINISHING WELFARE: A CROSS-NATIONAL STUDY OF SOCIAL PROVISION 211, 233–34 (Gertrude Schaffner Goldberg & Marguerite G. Rosenthal eds. 2002).

[7] *Id.* at 216; ISSA database, *supra* note 5.

greater role in France.[8] Funded through payroll taxes similar to those levied in Germany (with employers bearing a slightly greater burden), even the maximum benefits of the state pension in France are austere for most retirees. The full pension, payable only after 37.5 years of contributions, amounts to only 50% of previous earnings in the highest-paid 10 years of employment, up to a limit.[9] In the mid-1990s, the minimum full benefit could not be less than about 38,000 F per year ($7600), but the full benefit could not exceed 80,000 F per year ($16,000).[10] Those with fewer than 37.5 years of credited employment might face reduced pensions of as little as 25% of prior earnings. Not surprisingly, just as in both Sweden and Germany, many French workers supplement their basic state pensions with a cacophony of special retirement funds from mutual aid societies and other private sources.[11]

Indeed, the French state pension was in the 1990s (and for many retirees still is) slightly less generous than even the retiree benefit of the U.S. Social Security system. Coverage is narrower under the U.S. system (which excludes most agricultural and domestic workers, along with most self-employed people), but employee payroll contributions are quite similar to those levied in France and Germany. Even taking into account gradual erosion of the replacement rate due to wage inflation outpacing the maximum benefit, U.S. Social Security in 1981 replaced over 54% of average pre-retirement earnings for *all* beneficiaries (including highly remunerated workers) retiring at age 65, falling to 43% in 2000. For low earners, the average replacement rate began at over 70% in the 1980s, falling to just under 58% by 2000, still significantly higher than the standard replacement rate in France.[12] The maximum benefit for U.S. retirees at age 65 in the mid-1990s amounted to about $1200 per month—well behind the maximum benefit in France—though the benefit could be increased by delaying retirement for up to four years.[13]

In considering the rise of consumer debt and related financial problems, pension programs are of relatively minor importance, as debt-based financial distress was and continues to be concentrated among younger people. Even in France, where pension benefits were the least generous, among those seeking relief from their debts with the new *commissions de surendettement* in 1990, seniors (those 65 years old and older) represented only 1.7% of all filers. Only 6% of all filers were aged 55 to 64.[14] Older borrowers are increasingly finding themselves in distress today,[15] but

[8] Sophie Nadal, *The Welfare State System in France*, *in* WELFARE STATES AND THE FUTURE 97, 109 (B. Vivekanandan & Nimmi Kurian eds. 2005).

[9] ISSA database, *supra* note 5.

[10] Mark Kesselman, *The Triple Exceptionalism of the French Welfare State*, *in* DIMINISHING WELFARE: A CROSS-NATIONAL STUDY OF SOCIAL PROVISION 181, 202 (Gertrude Schaffner Goldberg & Marguerite G. Rosenthal eds. 2002).

[11] *Id.* at 190; Nadal, *supra* note 8, at 109.

[12] Gertrude Schaffner Goldberg, *More than Reluctant: The United States of America in* DIMINISHING WELFARE: A CROSS-NATIONAL STUDY OF SOCIAL PROVISION 33, 47–48 (Gertrude Schaffner Goldberg & Marguerite G. Rosenthal eds. 2002).

[13] ISSA database, *supra* note 5.

[14] Banque de France, *Surendettement: Enquête Typologique* 11 (2002), http://www.banque-france.fr/fr/instit/telechar/services/typologi.pdf.

[15] *See, e.g.* SCHUFA HOLDING AG, SCHULDEN-KOMPASS 2006: EMPIRISCHE INDIKATOREN DER PRIVATEN VER- UND ÜBERSCHULDUNG IN DEUTSCHLAND 31 abb.1.1, 35 abb.1.5, 38 abb.1.7 (2006), *available at* http://www.schulden-kompass.de/downloads/sk06_gesamt.pdf (reporting a rise in debt

this is a relatively recent trend. To get a complete picture of the social welfare system in Europe, the pensions systems deserve attention, but the relationship to rising consumer debt and insolvency system is weakest with this particular type of program.

B. Health Care

Europe famously provides for universal or near-universal health care coverage, in contrast to the very limited public health insurance systems available in the United States for the elderly and poor (Medicare and Medicaid). Though complaints have arisen with respect to long waiting periods and quality of care, the vast majority of European citizens are not faced with financial disaster (or worse) due to chronic or catastrophic illness or injury. Indeed, the European systems address both the added expenses and the lost income associated with health care problems. In addition to offering free or subsidized treatment for illness and injury, social insurance programs offer cash benefits to replace lost earnings from missed work (which I will call "sick pay"). Lost income due to work-related injuries is replaced under separate, higher-benefit programs, generally funded by employer contributions (equivalent to "worker's comp" programs in the United States), but the basic sick pay programs replace some degree of lost income for all types of injuries and illnesses. As generous as these health care systems are, even this portion of the safety net has always been somewhat porous, more so in some countries and for certain groups. All national health care programs impose some cost-sharing on patients in an effort to control rising costs. Thus, to a greater or lesser degree, many Europeans have faced at least moderate financial challenges due to health care concerns for quite some time, though not on the scale seen in the United States.

The Swedish health care system is often rightly held out as an shining example of a system that is "universally available and highly subsidized or free."[16] Of course, this generous program is funded by the infamously burdensome Swedish income tax system, but these taxes purchase the invaluable peace of mind that every resident's basic health care needs will be met. This does not mean that Swedes never have to reach into their after-tax pockets to cover medical-related expenses, though they have never had to dig very deeply for most services. The local authorities in charge of the health care delivery system establish co-payment levels for various services, though the central government limits the maximum out-of-pocket charges that can be imposed on patients for most medical treatment. Minors receive free care, and even for adults, these out-of-pocket ceilings have protected Swedish patients from all but rather modest medical expenses for most services. At the beginning of the 1990s, co-payments for doctor visits ranged from about 60-250 Skr ($7.50-$30), and for all but a few prescription drugs, patients paid up to 160 Skr ($20) for the first item on any prescription, then up to 60 Skr ($7.50) for each additional item on the same prescription. For a hospital stay, patients paid a maximum of 80 Skr ($10) per day.[17]

among older Germans and a stark rise in debt problems among those between 55 and 59 years of age). For a similar conclusion regarding Americans of the same age, see John Golmant & Tom Ulrich, *Aging and Bankruptcy: The Baby Boomers Meet Up at Bankruptcy Court*, 26 AM. BANKR. INST. J. 26 (May 2007).

[16] Ginsburg & Rosenthal, *supra* note 5, at 132.

[17] ISSA database, *supra* note 5.

For most people, these low co-payments alone likely kept medical expenses at a manageable level, though central regulations limited the burden on heavier users to an out-of-pocket maximum of 900 Skr ($112.50) in any twelve-month period (beginning with the first medical or drug charge incurred).[18]

Dental care is another story. Minors receive free dental care, but the Swedish health care system has long left most of the responsibility for adult dental care on the patient.[19] Adult dental patients must pay the first 700 Skr (about $90), then 75% of the cost between 700 and 3000 Skr ($90-$375), 60% between 3000 and 7000 Skr ($375-$875), and 30% in excess of 7000 Skr, with no out-of-pocket limitation.[20] Thus, significant dental expenses can impose a substantial burden on personal finances even in Sweden, and growing dental charges have been a cause for complaints there for years.[21]

To help cover these and other expenses during periods of missed work due to injury or illness, the Swedish system also offers cash benefits to replace earned income. As with unemployment insurance, sick pay benefits are paid as a percentage of lost income (varying over the years between 75% and 90%) up to a maximum benefit of about $500 per week (with no time limit) in the early-1990s.[22]

In Germany, state health insurance has consistently covered just under 90% of the population. Wage- and salary-earning workers are subject to mandatory coverage until their earnings exceed a certain maximum, after which they can choose to remain covered by the state system or purchase their own private health insurance. In the Mid-1990s this earnings limit was approximately 72,000DM ($48,000). Also covered by mandatory state insurance are recipients of unemployment and other social assistance benefits, students, farmers, and artists.[23] Civil servants and most self-employed people are relegated to purchasing private health insurance coverage.[24] As with other aspects of the German social security system, the state health care program is funded by equal payroll contributions from employers and employees.[25]

As in Sweden, even for those German patients covered by state health insurance, users support the health care system not only through their payroll contributions, but also with small co-payments.[26] Co-payments have been part of the German system (primarily for prescription drugs) since the 1920s, though certain classes of patients

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18 ANNA H. GLENNGÅRD ET AL., EUROPEAN OBSERVATORY ON HEALTH SYSTEMS & POLICIES, HEALTH SYSTEMS IN TRANSITION: SWEDEN 46 (2005), *available at* http://www.euro.who.int/Document/E88669.pdf.

19 *Id.* at 46–7; Ginsburg & Rosenthal, *supra* note 5, at 133.

20 ISSA database, *supra* note 5.

21 Ginsburg & Rosenthal, *supra* note 5, at 132–33.

22 Hort, *supra* note 5, at 146; GLENNGÅRD, *supra* note 18, at 43; ISSA database, *supra* note 5.

23 REINHARD BUSSE & ANNETTE RIESBERG, EUROPEAN OBSERVATORY ON HEALTH SYSTEMS & POLICIES, HEALTH SYSTEMS IN TRANSITION: GERMANY 15 tbl.4, 58 (2004), *available at* http://www.euro.who.int/Document/E85472.pdf.

24 Bäcker & Klammer, *supra* note 6, at 215, 217; Lutz Leisering, *The Welfare State in Postwar Germany in* WELFARE STATES AND THE FUTURE 113, 122 (B. Vivekanandan & Nimmi Kurian eds. 2005.

25 BUSSE & RIESBERG, *supra* note 23, at 15 tbl.4.

26 *Id.* at 73–74; Bäcker & Klammer, *supra* note 6, at 217.

are exempt from co-payments altogether, such as children and pregnant women.[27] Co-payments vary from one care provider to the next, but one source characterizes them as generally "too low to influence use substantially."[28] Beginning in the late 1970s and accelerating in the mid-1990s, cost-containment concerns for pharmaceuticals in particular led to reforms requiring patients to shoulder more of the financial burden for prescription drugs.[29] A major shift occurred with the 1989 Health Reform Law.[30] The 1989 law introduced the notion of "reference pricing," under which pharmacies and other drug providers are reimbursed for drug purchases only up to the official "reference price" for that drug. If the pharmacy or other provider charges more for a drug, the differential between the actual price and the reference price is the patient's responsibility. Until 1993, no fixed-fee co-payment was required in addition to the cost of prescription drugs in excess of the reference price, though that would change in the mid-1990s.

As in Sweden, the German health system also offers cash benefits to replace earned income lost as a result of illness or injury.[31] Sick pay benefits are not paid indefinitely, as in Sweden, but still for a considerable period: employers pay full salary for the first 6 weeks of missed work, then the sickness fund pays benefits (80% of prior earnings until the late 1990s) from week 7 up to week 78 of certified illness.[32]

Though not completely universal until 2000, 95% of the population of France has been covered by one of the three basic state health insurance schemes since the 1980s.[33] These schemes are funded primarily by employer and employee payroll taxes, with a burden on employees similar to that in Germany (6.8%, while employers pay 12.8%).[34] Unlike in the German system, however, benefit eligibility in France is tied to employment. One must earn benefits by engaging in payroll-taxed work in the relatively recent past. Working a minimum of 60 hours in a 30-day period or 120 hours in a 90-day period entitles the worker to one year of medical coverage. After at least 7.5 months (1200 hours) of employment in the course of one year, workers earn two years of coverage. The long-term unemployed in France in the 1990s faced a double threat of lost work income and lost health coverage.[35]

The work requirements for eligibility for sick pay benefits are even more stringent. For up to 6 months of sick pay the recipient must have worked 200 hours in the 3 months preceding the illness, and for more than 6 months of sick pay, 800 hours in the 12 months preceding the illness (including the 200 hours in the immediately preceding three months).[36] The French sick pay benefit replaces less

[27] BUSSE & RIESBERG, *supra* note 23, at 75.

[28] Harl Hinrichs, *The Impact of German Health Insurance Reforms on Redistribution and the Culture of Solidarity* 20 J. HEALTH POL. POL'Y & L. 653, 670 n.8 (1995).

[29] BUSSE & RIESBERG, *supra* note 23, at 17, 24.

[30] Bäcker & Klammer, *supra* note 6, at 232.

[31] *Id.* at 215.

[32] *Id.* at 213; BUSSE & RIESBERG, *supra* note 23, at 67.

[33] SIMONE SANDIER ET AL., EUROPEAN OBSERVATORY ON HEALTH SYSTEMS & POLICIES, HEALTH SYSTEMS IN TRANSITION: FRANCE 23, 36 (2004), *available at* http://www.euro.who.int/document/e83126.pdf.

[34] ISSA database, *supra* note 5.

[35] SANDIER, *supra* note 33, at 8, 35; ISSA database, *supra* note 5.

[36] ISSA database, *supra* note 5.

income than the Swedish or German systems: only 50% of previous income, up to a maximum benefit of about $300 per week in the early 1990s. Benefits are generally payable for a maximum of 360 days in any three-year period (though benefits can extend up to three years for chronic or prolonged illness).[37]

Even for those entitled to health benefits, the French state health insurance system places a substantial burden on users, especially in light of "France's cultural obsession with pharmaceuticals."[38] Though expenses associated with many long-term illnesses, hospitalization for severe injury or illness (or pregnancy), and work accidents are 100% covered, the health insurance schemes reimburse only an average of about 75% of the state-prescribed maximum charges for non-critical medical and drug expenses. In the early 1990s the reimbursent rate was 70% for medical services, 60% for paramedical services, 80% for hospitalization, and 40% or 70% for prescription drugs. The remaining cost, including common private doctor's charges in excess of the statutory maximum reimbursable rate, is the patient's responsibility, equivalent to a statutory co-payment.[39]

Most but not all people in France cover this gap to a greater or lesser extent with voluntary health insurance. In 2000, even after the implementation of a state-funded supplemental insurance program for low-income people, only 86% of the total population enjoyed supplemental health insurance coverage.[40] Such voluntary health insurance is often (in about 57% of cases) paid for by employers per agreement, so it is not surprising that the extent of supplemental coverage varies widely, generally by job status. In 2000, coverage rates ranged from 72% of unskilled workers to 85% of office employees to 94% of teachers, administrators, and other intermediate and managerial "white collar" workers.[41] Not only the *fact* of coverage, but also the *quality* of coverage varies greatly with employment status and income. As one's income decreases, the chance of being at least underinsured by voluntary health insurance rises dramatically. In 2000, the rate of those either uninsured or underinsured ranged from just under 40% of those earning $1500 or more per month to over 70% of those earning less than $750 per month.[42] Voluntary heath insurance covered 12.4% of total expenditure on health care in France in 2000, while direct out-of-pocket payments by patients still accounted for at least 11.1% (not including drugs not covered at all by health insurance).[43] Low- to medium-income workers, as well as the unemployed, faced potentially substantial co-pays throughout the 1990's, even if they were covered by the basic state health insurance. Most of this excess was unlikely to be covered by supplemental private insurance.[44]

[37] *Id.*

[38] Paul Spicker, *France*, *in* THE STATE OF SOCIAL WELFARE: THE TWENTIETH CENTURY IN CROSS-NATIONAL REVIEW 109, 118 (John Dixon & Robert P. Scheurell eds. 2002).

[39] SANDIER, *supra* note 33, at 38, 40–41, 95; ISSA database, *supra* note 5.

[40] SANDIER, *supra* note 33, at 131.

[41] *Id.* at 45 tbl.5.

[42] *Id.* at 44–46, 95; *see also* Kesselman, *supra* note 10, at 188–90, 203.

[43] SANDIER, *supra* note 33, at 43.

[44] *Id.* at 41.

C. *Unemployment Insurance/Assistance*

Programs for insuring workers against a sudden loss of income in case of involuntary unemployment constitute a fundamental part of the social safety net, even in the United States. Benefit levels and durations vary within each system, but even in the most generous system, unemployment insurance was never designed to represent a palatable long-term substitute for paid work. The specific terms of such programs vary widely, but the general contours of the requirements and benefits of these programs are relatively consistent. Each requires some period of covered employment, often for an extended period, preceding the unemployment spell, and the rise of "non-traditional" employment (part-time and temporary work) has reduced benefits or even excluded substantial numbers of workers in recent years in some countries. Those excluded from unemployment *insurance* coverage might qualify for unemployment *assistance*, a subsistence-level and often means-tested program of last resort.

In the unique unemployment insurance program in Sweden, coverage is neither universal nor even compulsory. While the government mildly regulates the various voluntary unemployment insurance programs offered by labor unions, the state has left the provision and administration of such programs largely in the hands of the unions.[45] The system is funded by negotiated contributions collected by the unions from employers (60%) and employees (5%), as well as government subsidies (35%).[46] While a consistent 80-85% of Swedish workers were unionized throughout the 1980s and 1990s, and non-members could by law opt into the applicable union program, the percentage of workers actually eligible for benefits was substantially lower, closer to two-thirds.[47] This is due primarily to the work history requirements for coverage. Workers are eligible for unemployment insurance benefits only after 12 months of membership in a particular fund.[48] This requirement excludes many new workers, including many young people, recent immigrants, and the growing number of workers in temporary jobs,[49] especially a great many women entering the labor force after child bearing.[50]

For those who qualify, Swedish unemployment benefits are generally sufficient to support a modest lifestyle. On the one hand, benefits are calculated as an apparently substantial percentage of former earnings; on the other hand, the percentage is calculated based only on earnings up to a ceiling pegged at just below the average salary in the relevant industry.[51] Through the 1980s and 1990s, the replacement rate fluctuated between 75% and 90% of former earnings, but the

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[45] Hort, *supra* note 5, at 133.

[46] James R. Storey & Jennifer A. Neisner, *Unemployment Compensation in the Group of Seven Nations: An International Comparison*, 19 COMP. LAB. L. & POL'Y J. 585, 612 (1998).

[47] Ginsburg & Rosenthal, *supra* note 5, at 118; Anders Nordlund, *Social policy in harsh times. Social Security Development in Denmark, Finland, Norway and Sweden During the 1980s and 1990s*, 9 INT'L J. SOC. WELFARE 31, 36–37 & fig.1 (2000); ISSA database, *supra* note 5; Storey & Neisner, *supra* note 46, at 612.

[48] Storey & Neisner, *supra* note 46, at 612.

[49] *Id.* at 612; Åke Bergmark & Joakim Palme, *Welfare and the unemployment crisis: Sweden in the 1990s*, 12 INT'L J. SOC. WELFARE 108, 112 (2003).

[50] Ginsburg & Rosenthal, *supra* note 5, at 106; Bergmark & Palme, *supra* note 49, at 115.

[51] Storey & Neisner, *supra* note 46, at 613.

ceiling for unemployment benefits has traditionally been lower than for other benefits. Thus, a substantial and growing number of beneficiaries were limited to the maximum benefit, about 3000 Skr ($375) per week throughout the 1990s. Given the stagnant wage structure during the 1990s, the number of beneficiaries limited to the maximum benefit grew from 44.7% in 1992 to well above half toward the end of the 1990s. Unemployment benefits are payable for a theoretical maximum of 60 weeks (300 days at 5 days of benefits per week), though many long-term unemployed are able to reset the clock by requalifying for benefits after participating in a public labor-market training program.[52] For those not entitled to unemployment *insurance*, unemployment *assistance* offered only about 1000 Skr ($125) per week for a maximum of 30 weeks in the early- to mid-1990s.[53]

In Germany, a compulsory, state-administered unemployment insurance system is funded mainly by payroll taxes levied equally on employers and employees. German employees thus bear a larger proportion of the burden of funding the State unemployment insurance system than in most other countries.[54] Coverage extends to all wage- and salary-earning employees who have made at least one year of payroll contributions within the last three years.[55] As in Sweden, this method of vesting benefits excludes the self-employed, as well as significant numbers of workers who have not established a sufficient history of consistent payroll contributions.[56]

For workers eligible for unemployment benefits, the replacement rate was significantly lower in Germany than in Sweden as early as the early 1980s, replacing only 68% of previous net income.[57] The period over which these benefits were payable depended upon the recipient's age and duration of prior payroll contributions, ranging from 8 months (35 weeks) for younger workers with just over a year's contributions to nearly three years (139 weeks) for workers over 54 with over five years of contributions.[58] For those who fail to qualify for or have expended their unemployment *insurance* benefits, the state offered residual limited benefits in the form of means-tested unemployment *assistance*. These last-resort benefits were theoretically unlimited in time, replacing just over half of prior net income.[59] Just as in Sweden, given the strict contribution requirements and income limits, only about two-thirds of unemployed workers in Germany received either unemployment insurance or assistance in the 1980s and 1990s.[60]

The French unemployment insurance system combines elements of the Swedish and German systems. Though officially mandated by State ministerial decree, the unemployment insurance system in France, much like in Sweden, is jointly administered by trade union and employer representatives (the "*ASSEDICs*,"

[52] Hort, *supra* note 5, at 140–41; Bergmark & Palme, *supra* note 49, at 112.

[53] Storey & Neisner, *supra* note 46, at 613; ISSA database, *supra* note 5.

[54] Storey & Neisner, *supra* note 46, at 591 tbl.14.1.

[55] HELMAR BLEY, SOCIALRECHT 306 (4th ed. 1982); Bäcker & Klammer, *supra* note 6, at 217.

[56] *See* Bäcker & Klammer, *supra* note 6, at 234–35; BLEY, *supra* note 55, at 307.

[57] BLEY, *supra* note 55, at 307; Storey & Neisner, *supra* note 46, at 600 tbl.14.3.

[58] Storey & Neisner, *supra* note 46, at 620; Bäcker & Klammer, *supra* note 6, at 218.

[59] Storey & Neisner, *supra* note 46, at 620.

[60] Bäcker & Klammer, *supra* note 6, at 218; Storey & Neisner, *supra* note 46, at 598 (indicating that, in 1985, 39% received unemployment insurance benefits, while another 29% received unemployment assistance payments).

industrial and commercial employer associations, and "*UNEDIC*," the national union). The system is funded by employer and employee payroll contributions, with employees bearing a smaller portion of the burden than in Germany.[61] All wage- and salary-earning workers are covered, though again, benefit eligibility has long required at least 91 days of work within the last 12 months.[62] Unemployment insurance benefits in France have been consistently less generous than in either Sweden or Germany, until the mid-1980s replacing 60% of prior earnings for moderate- to high-wage workers, and up to a maximum of 90% for some lower-wage earners.[63] Until a shakeup of the unemployment system in the mid-1980s, benefits for all unemployed workers were payable for up to one year, with a possibility of up to four, three-month extensions.[64] Again, for workers with at least five years' work history, means-tested unemployment *assistance* was available to virtually all displaced workers who had exhausted their unemployment *insurance*, though this benefit was quite meager (only about $50 per week in the mid-1980s, and only $60 per week in the early 1990s).[65]

By way of comparison, in the United States, unemployment insurance programs are generally administered by the states and funded in most states from employer-only payroll contributions. The overwhelming majority of employed workers are covered, and benefit eligibility in most states requires that the worker have earned covered wages above a certain minimum level (the median in 1993 was $1390) at some point during the first four of the last five calendar quarters.[66] Benefits are usually limited to 26 weeks and pegged to 50% of prior wages, capped at a relatively low rate (the median in 1993 was $223 per week, ranging from $133 to $468 in various states).[67] Special supplemental federal unemployment benefits were available in the late 1980s and early 1990s during economic downturns or in specific industries impacted by trade policies. These federal programs extended the 26-week benefit period, in some cases up to a year, though these programs were available only to certain employees under specific circumstances.[68]

D. *Family and Child Allowances and Basic Income Support*

Transfer payment programs offering cash benefits to support families constitute "welfare" as most Americans use the term, though this is only one small but important part of the social welfare systems in Europe. In the United States, "aid to families with dependent children" (AFDC) extends modest support only to extremely low-income recipients, and since 1996, on a time-restricted basis as "temporary assistance to needy families" (TANF).[69] In Europe, in contrast,

[61] Spicker, *supra* note 38, at 113; Storey & Neisner, *supra* note 46, at 589, 591 tbl.14.1; Kesselman, *supra* note 10, at 188.

[62] Storey & Neisner, *supra* note 46, at 617; JEAN-JACQUES DUPEYROUX, DROIT DE LA SÉCURITÉ SOCIALE 978 (11th ed. 1988).

[63] JEAN-JACQUES DUPEYROUX, DROIT DE LA SÉCURITÉ SOCIALE 1152 (8th ed. 1980); DUPEYROUX, *supra* note 62, at 984–85.

[64] DUPEYROUX, *supra* note 63, at 1152 & n.1.

[65] YVES SAINT-JOURS, LE DROIT DE LA SÉCURITÉ SOCIALE 508 (2nd ed. 1984).

[66] Storey & Neisner, *supra* note 46, at 628–29.

[67] *Id.* at 600 tbl.14.3 & n.629.

[68] *Id.* at 629–30.

[69] Goldberg, *supra* note 12, at 38, 54–55.

universal or near-universal programs to defray some of the costs of providing for young children are common and generous. The diversity of such programs and the variety of benefits (both cash and services) make general discussion difficult, but this section will mention a few of the more prominent programs, particularly those that experienced changes in the early 1990s. In addition, basic income support programs in these countries stand as a last line of defense against social exclusion and poverty.

Child and family allowances in Sweden are numerous and generous. To ease the transition of adding new children to families, Swedish law mandates that employers allow for extended family leave to care for newborn and adopted children. To ease the financial burden of new family members, it offers state-funded parental insurance to replace lost wages while caring for newborn/adopted children (at the same rate as sick pay, ranging from 75% to 90% of prior earnings) for up to a year, plus 90 more days at a low flat rate, as well as 60 days to care for sick children under 12.[70] In addition to highly subsidized child care, Sweden offers a cash child allowance, paid monthly to all families with children under age 16 (20 if still a student). As of May 2006, the monthly child allowance was 1,050 ($170) Skr per child, with supplements available as follows: 100 Skr ($16) for the 2nd child; 354 Skr ($60) for the 3rd; 860 Skr ($140) for the 4th; and 1,050 Skr ($170) for the 5th and subsequent children.[71] In addition, for divorced parents entitled to delinquent child support, the state advances the delinquent payments up to certain limits.[72] Finally, low-income families can qualify for means-tested housing allowances and other subsistence-level basic income support.[73] In 1993, one-third of low-income families with children received a housing allowance, adding somewhat more than 10% to their meager annual income.[74]

Germany offers a similar range of family benefits, including quite generous per-child allowances. New parents are entitled to mandatory (unpaid) parental leave of up to 36 months after the birth of a child, with a return-to-work guarantee, along with paid leave for up to 10 days per year per child per parent to care for sick children.[75] The German child allowance is paid to all families with children under age 18 (21 if unemployed, 27 if still a student). In the late 1980s and early 1990s, the system combined income-tested cash allowances with large child tax credits, but these two forms of benefit delivery were reunited in 1996.[76] Reflecting the consistent impact of the former two systems, the unitary benefit amounts in 1996 were 200 DM ($135) per month for each of the first two children, 300 DM ($200) for a third child, and 350 DM ($235) for each additional child.[77] In addition, means-tested parental and housing allowances were available for low-income families.[78]

[70] Ginsburg & Rosenthal, *supra* note 5, at 128–29.

[71] SSA Report, *supra* note 5, at 315.

[72] Bergmark & Palme, *supra* note 49, at 113.

[73] Ginsburg & Rosenthal, *supra* note 5, at 129, 133.

[74] *Id.* at 129.

[75] Bäcker & Klammer, *supra* note 6, at 214; Audreas Aust & Frank Bönker, *New Social Risks in a Conservative Welfare State: The Case of Germany*, *in* NEW RISKS, NEW WELFARE: THE TRANSFORMATION OF THE EUROPEAN WELFARE STATE 29, 37 (Peter Taylor-Gooby ed. 2004).

[76] JOCHEN CLASEN, REFORMING EUROPEAN WELFARE STATES: GERMANY AND THE UNITED KINGDOM COMPARED 207–09 (2005).

[77] *Id.* at 209.

[78] ISSA database, *supra* note 5; *see also* SSA Report, *supra* note 5, at 125–26.

Public child care is also available, though marked by deficits and poor quality in the early 1990s. Finally, as a matter of last resort, the German social assistance program guarantees a subsistence-level minimum income to those who fall through the gaps in other welfare programs.[79]

In France, most family allowances are extended to families with multiple children, and primarily to low-income families. Otherwise, the allowances resemble those in Germany. In the early 1990s, universal child allowance benefits were extended only to wage earners with two or more children under age 18 (20 if a student), amounting to $135 per month for each of the first two children and $170 for each additional child. Parents were entitled to mandatory parental leave (unpaid for most parents) of up to three years, and mothers were entitled to 16 weeks maternity leave paid at 84% of prior earnings.[80] French parents also enjoyed well-supported and high-quality child care. One commentator notes that "French preschool facilities are justly famous" for their attractive settings and well-educated teachers.[81] Other means-tested benefits for low-income families included housing allowances, complementary family allowances for families with three or more children, and loans to young couples.[82] Finally, since 1988, France has had a "minimum income" program similar to the one in Germany to prevent the complete social exclusion of vulnerable groups like youth and the long-term unemployed.[83]

E. Education

Both the United States and Europe facilitate equal access to higher education by offering students a variety of forms of support for higher education expenses, including both education costs and living expenses. In Europe, these support systems are in most cases quite new, having developed mainly in the 1960s. This is the case in Sweden and Germany, though France had developed a broad-based student support system already in the late 1800s.[84] The complex system of educational support in France is based mainly on means-tested grants, with loans playing a relatively minor role in higher education finance.[85] In Germany and especially Sweden, in contrast, support has come historically in the form of loans, though with very favorable repayment terms.[86]

Of course, many U.S. students receive grants for higher education expenses, too, but these are fewer and most often administered by the educational institutions, with the government offering only subsidies to support lower-cost student loans. In Sweden, Germany, and France, in contrast, the central government in most cases extends both types of aid to a broad range of students, though aid packages and

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79 CLASEN, *supra* note 76, at 56.

80 Kesselman, *supra* note 10, at 191.

81 *Id.* at 191–92.

82 *Id.* at 192.

83 Spicker, *supra* note 38, at 116.

84 EUR. COMM. [EURYDICE], KEY TOPICS IN HIGHER EDUCATION: VOL. 1, FINANCIAL SUPPORT FOR HIGHER EDUCATION STUDENTS IN EUROPE: TRENDS AND DEBATES 127 & fig.II.1.2 (1999), *available at* http://www.eurydice.org/ressources/eurydice/pdf/0_integral/006EN.pdf.

85 *Id.* at 58, 130–31, 214–15.

86 *Id.* at 130–31, 208, 231.

repayment terms are still linked to student financial means.[87] Rapidly rising tuition costs are the biggest problem in the United States, while students in Sweden and Germany pay low or no tuition fees.[88] French students in publicly administered institutions make only a modest contribution toward tuition fees in all but a few specialty areas, increasing only slightly through the 1990s.[89] Support for living expenses is thus the focus of this section.

Tens of thousands of Swedish students have encountered trouble repaying their student debts in recent years.[90] Sweden (along with the other Nordic states) has historically included a heavy element of long-term loans in its support system for student living expenses.[91] The proportion of grant aid to loan aid was initially fixed at 25:75, falling to 6:94 before returning to 28:72 after 1989.[92] The burden of these loans grew somewhat in the early 1990s, though that burden was spread over longer and longer periods. State subsidies to reduce interest rates fell markedly in 1989, replaced by support measures to help (mainly low-income) students repay their growing student debts.[93] For example, the repayment period for lower-income graduates was raised from 30 years to 40 in 1982, and spousal income was excluded from consideration in calculating loan repayment terms in 1988.[94]

Germany likewise offers a combination of grants and loans, in addition to support for the parents of students (generous extended child allowances, as discussed above).[95] Some contribution from the student and/or family has always been expected of most students and deducted from the total aid package.[96] The nature and scope of state support has changed considerably over time in Germany.[97] Between 1983 and 1990, support was offered exclusively in the form of interest-free loans, and even after that, grants were offered primarily to supplement loan funds on a 50:50 basis.[98] After 1992, the income scales for qualification for assistance failed to keep pace with the rapidly rising cost of living, leading to a precipitous decline in the number of students receiving aid. Between 1991 and 1995, while total enrollments continued to rise steadily, the number of students receiving state financial support fell from 22% to 15% in the West and from 72% to 30% in the East.[99] For those students living away from home, living expenses steadily introduced more of them to the world of consumer debt in the mid- to late-1990s.

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[87] *Id.* at 58, 208, 214–15, 230–31.

[88] *Id.* at 13, 49, 144 fig.II.1.11, 185. In some areas in Germany, modest registration fees were re-introduced in the late 1990s for those who took longer than normal to complete their studies. *Id.* at 147. Students at privately administered institutions pay whatever tuition and fees are required by those institutions. *Id.* at 151 fig.I.1.9.

[89] *Id.* at 13, 50, 144.

[90] *See* Torbjörn Tenfält, *75.000 Jagas för Studieskuld*, DAGENS NYHETER, June 22, 2003, *available at* http://www.dn.se/DNet/jsp/polopoly.jsp?a=153898.

[91] EUR. COMM., *supra* note 84, at 128 fig.II.1.3, 131.

[92] *Id.* at 136.

[93] *Id.* at 137, 141.

[94] *Id.* at 137 fig.II.1.8.

[95] *Id.* at 75, 81, 130.

[96] *Id.* at 164.

[97] *See id.* at 134–36, 208–09.

[98] *Id.* at 134, 139.

[99] *Id.* at 139.

Like other social support systems, higher education aid programs in Sweden, Germany, and France came under increasing pressure and underwent a series of reforms in the 1980s.[100] Their fundamental financial character has changed relatively little, but the total spending on student aid has risen dramatically since 1987 in Sweden and France.[101] Support for student living costs has declined somewhat in Germany after 1993, however, as a result of the cost of living outpacing available student aid.[102] In Sweden and Germany, study debts clearly have contributed to the consumer insolvency problem, increasing just as or after legislators adopted the new consumer insolvency laws in the early 1990s.

II. TRACKING CHANGES OVER TIME: WELFARE REFORM V. CONSUMER BANKRUPTCY, C. 1984-1994

With this baseline overview in mind, this section gets more specific. For each of the three countries at issue, it briefly orients further discussion by tracing the process of consideration and adoption of the new consumer insolvency laws, beginning in the 1980s and culminating in the 1990s. Then, on this timeline, it charts notable reforms in the social welfare programs of each country. This process reveals at least two interesting things: First, the social welfare reforms undertaken during this period were few and mostly modest. Second, the programs targeted for the most significant reforms were already inadequate to deal with the widespread financial pain that wracked European consumers in the recession of the early 1990s.

A. Sweden

The Swedish parliament adopted its first consumer insolvency law on May 5, 1994, and the law went into effect on July 1, 1994.[103] Aid to consumers overwhelmed by debt had been on the minds of legislators long before that, however. As early as 1986, concerns began to arise within the Swedish government and parliament regarding the burgeoning level of consumer debt and a rising consumer financial crisis. In October 1990, an official investigative commission submitted a report proposing the institution of a new legal scheme of debt adjustment for individuals, similar to the one adopted in Denmark in 1984. After a transfer of political power from the traditionally dominant Social Democrats to a more conservative four-party coalition in 1991, the idea of consumer debt relief was put off temporarily. The idea never went away. It pushed its way back to the fore in June 1993, when the parliament ordered the government to draft a consumer debt adjustment law, originally to be effective January 1, 1994. Given the government's delay until February 1994 in submitting a draft law, debate on the bill and the effective date of the law were delayed slightly, but parliament's brief debate on the draft in May and its immediate implementation of the new law in July reflected the

[100] *Id.* at 129–30, 129 fig.II.1.4, 130 fig.II.1.5.

[101] *Id.* at 141.

[102] *Id.* at 142, 143 fig.II.1.10.

[103] The discussion in this and the following paragraph is drawn from and supported by sources in Jason Kilborn, *Out with the New, In with the Old: As Sweden Aggressively Streamlines Its Consumer Bankruptcy System, Have U.S. Reformers Fallen Off the Learning Curve?*, 80 AM. BANKR. L.J. 435 (2007).

years of consideration and planning that had already been invested in the idea of consumer debt relief.

The effects of scaled back social welfare programs do not appear in the legislative record as even a partial explanation for the impetus behind the new Swedish consumer insolvency law. The most that is said of a connection was an observation that offering debt relief might reduce the burden on the various social welfare systems by reinvigorating debtor's incentives to work and produce income to support their families. Even if policymakers failed to mention a connection, welfare cuts might have contributed to the consumer debt problem by forcing those in need to use private borrowing rather than public benefits to cover financial shortfalls. But the process of scaling back social programs had not even begun in earnest until after the notion of a consumer insolvency law already had long established legislative support.

Until 1990, Sweden's welfare state was stable and secure.[104] A deep recession beginning in 1990 began to challenge Social Democrats' dedication to increasingly expensive social benefit programs, but real retrenchment would not begin until well after the conservative political takeover of parliament in the September 1991 election.[105] The new conservative government concerned itself initially with macro-economic measures designed to fight runaway inflation.[106] Only later would it take the first hesitant steps toward welfare reform. One source reports that "[w]elfare state retrenchment had finally arrived" only in late September 1992, with two crisis agreements to cut an unprecedented budget deficit.[107] With respect to social programs, these agreements made two changes: employers—rather than the state—became responsible for the first 14 days of cash benefits for missed work due to illness,[108] and a former plan to increase family allowances was abandoned. In addition, perhaps as a compromise for the new burden on employers, the agreements took away two vacation days from employees.[109] These sudden changes provoked some 200,000 people to demonstrate throughout Sweden in October 1992, but these focused and relatively minor alterations of the welfare state could hardly have had an impact on ongoing consideration of consumer insolvency law. The new conservative governing coalition would increase its efforts to fight budget deficits in anticipation of planned (and later abandoned) entry into the European Monetary Union, but its major spending cuts and tax increases occurred in late 1994 and early 1995, which was too late to have any affect on the process leading to adoption of the consumer insolvency law.[110]

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[104] Ginsburg & Rosenthal, *supra* note 5, at 103–04.

[105] *Id.* at 113, 121–22.

[106] *Id.* at 112.

[107] *Id.* at 113. Contributing to—or at least exacerbating—this deficit was a tax cut ushered in at the behest of conservative leaders in 1991, pursuant to which the top marginal bracket was reduced from 73% to 51%. *See* Nimmi Kurian, *The Swedish Welfare State and New Challenges*, *in* WELFARE STATES AND THE FUTURE 151, 156 (B. Vivekanandan & Nimmi Kurian eds. 2005) (arguing that this tax cut was the primary cause of the crisis).

[108] Ginsburg & Rosenthal, *supra* note 5, at 127.

[109] *Id.* at 113.

[110] *Id.* at 115.

Before the May 1994 adoption of the consumer insolvency law, the only significant social welfare reforms occurred in July 1993, and even those made little more than small surgical cuts in focused areas. The three insurance programs offering cash benefits for missed work (unemployment, sickness, and parental leave) were all modified slightly to reduce benefits and in some cases tighten eligibility. In the unemployment insurance program, a five-day waiting period for benefits was reintroduced (it had been removed in 1988), and the work history requirement was enhanced to require not only 12 months of membership in a fund, but specifically, covered work for at least 4 of last 12 months preceding the unemployment spell.[111] The theoretical replacement rate was reduced from 90% to 80%[112], though this was also a reversion to the replacement rate in the early 1980s.[113] As discussed above, the comparatively low ceiling on maximum unemployment benefits (based on average wages in each industry) had reduced the effective replacement rate for many workers long before 1993. Due to stagnant growth of average wages—not welfare reform—the average effective replacement rate for all wage levels in 1992 had already fallen to just above 80% (plummeting to 70.5% by the end of the decade). Parallel changes were made to the programs providing cash benefits for missed work due to injury or illness. The definition of "disability" was tightened for work injury insurance, a one-day uncompensated waiting day was reintroduced in the sick pay program (it had been imposed for the first time in 1980 and then eliminated in 1987), and the income replacement level for sickness benefits was technically reduced from 90% to 80%, though again subject to a benefit ceiling that had already reduced the benefits of workers with above-median income before 1993.[114] The replacement rate for parental leave insurance was also reduced from 90% to 80%.[115]

Other aspects of the generous Swedish health care program experienced no major changes during the 1990s.[116] The most notable health care reform of the early 1990s was the 1992 "ÄDEL" reform, which transferred responsibility for long-term care for the elderly and disabled from the county to the municipality level.[117] Local expenditures on hospitals and health clinics (including numbers of beds, nursing and other staffs, and lengths of stays) fell in the 1990s, perhaps leading to quality of care concerns, but the impact on consumer finances remained stable for all but dental care, which was not well covered to begin with by the state health insurance scheme.

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[111] Storey & Neisner, *supra* note 46, at 612; Bergmark & Palme, *supra* note 49, at 112–13. The required period of covered work was raised to five months in 1995 (the cited authority does not support any part of this statement). *See generally* Jon Kvist, *Welfare Reform in the Nordic Countries in the 1990s: Using Fuzzy-set Theory to Assess Conformity to Ideal Types*, 9 J. EUR. SOC. POL'Y 231, 244 (1999) (noting that "work" includes participation in labor market programs and leave schemes). By 1997, six months of covered work were required for at least 70 hours per month. Bergmark & Palme, *supra* note 49, at 112.

[112] Falling back to 75% in 1996, and back to 80% in 1997. Hort, *supra* note 5, at 140; Ginsburg & Rosenthal, *supra* note 5, at 128; Bergmark & Palme, *supra* note 49, at 112; Nordlund, *supra* note 47, at 38.

[113] Nordlund, *supra* note 47, at 38 fig.3.

[114] Ginsburg & Rosenthal, *supra* note 5, at 127–28.

[115] Hort, *supra* note 5, at 145–46; Ginsburg & Rosenthal, *supra* note 5, at 128; EVELYNE HUBER & JOHN D. STEPHENS, DEVELOPMENT AND CRISIS OF THE WELFARE STATE: PARTIES AND POLICIES IN GLOBAL MARKETS 249 (2001).

[116] GLENNGÅRD, *supra* note 18, at 28.

[117] *Id.* at xiv, 97–98.

Later in the decade, heavy users of pharmaceuticals would experience quite a shock in 1998, when the 1997 National Drug Benefit Scheme assigned drug costs to a separate (and less generous) out-of-pocket limit that potentially tripled health care costs for some.[118] Even here, though, change is relative. Tripling a small number still leaves a rather small number. Beginning in 1998, in addition to the 12-month out-of-pocket maximum of 900 Skr ($112) for general health care, a separate out-of-pocket maximum for drugs was set at 1300 Skr ($160), rising to 1800 Skr ($225) in the early 2000s. While $200 might be a significant extra burden for those on fixed or low incomes, this much added debt per year, even for many people, would not likely have spurred a radical new consumer debt law. In any event, this change occurred long after the adoption of the Swedish consumer insolvency law.

Family allowances would change in the mid-1990s, but again not until after adoption of the consumer insolvency law. The child allowance continued to grow until it was cut 15% in 1996, along with an additional benefit for larger families, though these cuts were replaced or back in growth mode by 1998.[119] Also in 1996, a benefit for households without children where at least one person is 29 years old was eliminated, and a new income-testing system was established, contributing to a 33% reduction in housing allowance expenditures in 1997 over the pre-reform level in 1995.[120] Though these cuts certainly must have caused great anxiety for the families affected, even if they had occurred earlier, they do not seem to have had the potential to contribute substantially to a national consumer debt crisis. Reduced tax revenues required budget cuts and expenditure freezes that impacted child care and other family services, though the number of children in care nonetheless rose 60% from the mid-1980s to the mid-1990s (86% of preschool children with two working or studying parents and 91% of children in working or studying single-parent homes).[121] The system simply did more with less, achieving greater efficiency by devolving more responsibility to private, parent-operated child care centers.[122] Child-to-caregiver ratios grew, and user fees for such services rose modestly for some (varying widely across municipalities), but the level and cost of care seem to have held largely firm.[123]

The most dramatic social insurance reforms in Sweden (and perhaps in all of Europe) occurred in 1998, totally re-engineering the pension system. Planning for these changes began after a currency crisis in late 1992, and political leaders reached an agreement in principal in May 1994—the very same month when the consumer insolvency law was adopted.[124] The former two-tier system is gradually being replaced with a three-tier system comprising (1) a means-tested, guaranteed minimum pension, (2) a universal, state-managed, defined-contribution system based on lifetime earnings funded by equal employer and employee payroll taxes, and (3) a

[118] GLENNGÅRD, *supra* note 18, at 18, 28, 46, 82–83, 101–02; Ginsburg & Rosenthal, *supra* note 5, at 133.

[119] Ginsburg & Rosenthal, *supra* note 5, at 128; Bergmark & Palme, *supra* note 49, at 113, 114 fig.5.

[120] Ginsburg & Rosenthal, *supra* note 5, at 129; Hort, *supra* note 5, at 149.

[121] Ginsburg & Rosenthal, *supra* note 5, at 130.

[122] *Id.* at 130–31.

[123] *Id.* at 130.

[124] Hort, *supra* note 5, at 143.

system of private individual retirement accounts funded by a 2.5% payroll tax.[125] This revolutionary reform includes elements that conservative politicians in the United States have advocated for years, and it will subject employees to both a greater burden (with the payroll tax) and greater risk (with the individual investment accounts) in the future. Once again, though, this reform had all but no effect on the adoption and implementation of the consumer insolvency system. Indeed, it does not seem to have had an obvious effect on consumer debt levels in the early 2000s, either, though its effects may be reflected soon, as more and more seniors seek relief from excessive debt in both the United States and Europe.[126]

In Sweden, then, social welfare program reforms were quite modest before the adoption of the consumer insolvency law in May 1994, and even after that, the system has changed relatively little. Various sources characterize all of the recent reforms as "relatively minor" "marginal adjustments."[127] The changes in Sweden have involved "relatively small reductions in benefit levels, the reintroduction of [1980s-era] waiting days and a tightening of existing rules for eligibility."[128] The more significant changes have led to decentralization of control over some program administration (particularly in the health care sector) and privatization of some services (especially child care). While these changes might well signal meaningful trends in broader welfare reform analysis, perhaps raising quality of care concerns, they are not particularly relevant to consumer debt or relief from insolvency.

B. *Germany*

A new German Insolvency Law, containing the first provisions for consumer debt relief, was adopted on October 5, 1994, though its effective date was put off five years to January 1, 1999, to allow the justice system to prepare for the expected onslaught of new cases.[129] When lawmakers set out to revise the German business bankruptcy law in the late 1970s, consumer debt issues fell largely outside their agenda. In December 1988, however, the Ministries of Justice and Youth, Family, Women and Health commissioned an investigation of the growing problem of consumer overindebtedness. In 1989, the commission reported on an explosion of consumer debt and associated problems for German citizens. This report prompted the Justice Ministry to include provisions for consumer debt relief into the bill for a new insolvency law, submitted to Parliament on January 3, 1992. Because the bill fundamentally restructured both business and consumer insolvency law, especially the local financial burden of administering the national system, discussion of the new law extended over two-and-a-half years until a conference committee submitted what would become the final version in the summer of 1994.

Here again, legislative concern about runaway consumer debt seems to have held steady through the late 1980s and early 1990s, and no mention of any negative

[125] Ginsburg & Rosenthal, *supra* note 5, at 122, 124–27; Hort, *supra* note 5, at 144.

[126] *See supra* note 15.

[127] Nordlund, *supra* note 47, at 31 ("relatively minor"); Kurian, *supra* note 107, at 156 ("marginal adjustments").

[128] Nordlund, *supra* note 47, at 40.

[129] The discussion in this and the following paragraph is drawn from and supported by sources in Jason Kilborn, *The Innovative German Approach to Consumer Debt Relief: Revolutionary Changes in German Law, and Surprising Lessons for the United States,* 24 NW. J. INT'L L. & BUS. 257 (2004).

impact from social benefit cutbacks appears in the legislative record. Like in the Swedish record, the only explicit connection is a comment by one representative that one benefit of a consumer debt relief law would be reduced dependence on social assistance programs.[130] This is not surprising, as in Germany just as in Sweden, real welfare reform began after the adoption of the consumer insolvency law—and well after the government had announced its concern for addressing the rising problem of consumer debt. Indeed, in Germany in particular, the welfare state has changed in a gradual and evolutionary way, rather than through substantial, radical cutbacks.[131] Most of the notable cutbacks occurred in the unemployment insurance system, a casualty of the primary driver of both welfare reform and consumer insolvency law in Europe in the 1980s and 1990s.

In the late 1980s and early 1990s, traditional programs remained largely intact, subject to only minor and focused cost-containment measures and benefit adjustments.[132] As discussed below, the problem was not in the reduction of benefits, but the inadequacy of the programs as initially structured to deal with the new problems of unprecedented levels of extended unemployment and intense advertising of easy-access consumer debt.[133] Social spending had increased dramatically after the unemployment crisis deepened in the early 1980s and reunification of East and West Germany in 1990 led to the full-scale absorption of the impoverished East into the Western welfare system.[134] The government grew increasingly eager to find ways to contain costs.[135] At first, cost-containment measures were concentrated and modest. For example, as growing unemployment rolls weighed increasingly on benefit funds, unemployment insurance was modified around the edges. In 1982, the minimum period of work (and payroll contributions) required for benefit eligibility rose from 6 months to 12, and two years later, the income replacement rate for workers without children fell from 68% to 63%.[136] The replacement rate fell slightly again a decade later, in 1994, from 68% to 67% for workers with children, and from 63% to 60% for workers without children.[137] In addition, employees gradually bore more of the burden of financing the entire social insurance system, as their total payroll tax contributions grew from 17% in 1982 to 17.8% in 1987 and 18.25% in 1992.[138]

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[130] Remarks of Rainer Funke, BTDrucks 12/222, at 19120(B).

[131] Leisering, *supra* note 24, at 128.

[132] Bäcker & Klammer, *supra* note 6, at 213.

[133] *See id.* at 233–34.

[134] Leisering, *supra* note 24, at 116.

[135] *See id.* at 115–16; Bäcker & Klammer, *supra* note 6, at 212–13, 225.

[136] CLASEN, *supra* note 76, at 195. The replacement rate began in the early 1970s at 90% before the 1973 Oil Crisis led to a first round of cost-cutting measures and a drop in the replacement rate to 80% in 1975 and 68% in 1981. HUBER & STEPHENS, *supra* note 108, at 267.

[137] CLASEN, *supra* note 76, at 196; Storey & Neisner, *supra* note 46, at 600 tbl.14.3; Jochen Clasen et al., *Non-Employment and the Welfare State: The United Kingdom and Germany Compared,* 16 J. EUR. SOC. POL'Y 134, 142 (2006).

[138] Bäcker & Klammer, *supra* note 6, at 228 tbl.7.1. After the introduction of the long-term care program in 1995, employee payroll taxes jumped to 19.6% in 1996 and to just over 21% in 1999. *Id.* at 228 tbl.7.1; BUSSE & RIESBERG, *supra* note 23, at 61 tbl.10. On the long-term care benefit, see generally Bäcker & Klammer, *supra* note 6, at 218–19; Melanie Arntz et al., *The German Social Long-Term Care Insurance—Structure and Reform Options,* ZEW discussion paper no. 06–074, *available at* ftp://ftp.zew.de/pub/zew-docs/dp/dp06074.pdf.

The only notable reforms to general programs occurring before October 1994 involved the health care system,[139] and their effects were fairly modest. Indeed, like in Sweden, the primary reform occurred in 1993, too late to have a serious impact on the legislative process leading to the 1994 consumer insolvency provisions. As discussed above, the 1989 Health Reform Law restructured the reimbursement—and ultimately pricing—of pharmaceuticals to require patients to pay the cost of prescription drugs in excess of an officially designated "reference price." This reform was designed to encourage users to seek out less expensive drugs and, indirectly, to encourage pharmacies to charge less for reimbursable drugs. Until 1993, the differential between the reference price and the actual charge constituted the only co-payment demanded of patients. In the period immediately following the 1989 reform, some patients must have experienced a temporary shock when many virtually cost-free drugs required payment of a relatively large differential between the reference price and the pharmacy charge. Eventually, though, given competition within the national market for reference-price drugs and patients' desire to avoid large co-payments, the market stabilized at the point at which very few drugs exceeded the reference price. Then, the 1992 Health Structure Law, effective January 1, 1993, reintroduced nominal co-payments on reference-priced drugs.[140] The new co-payment was first based on drug price, but from 1994 to 2003, standard co-payments were imposed based on package size.[141] These co-payments were quite modest, in the range of $2 to $4 per prescription in 1994-96.[142]

After the consumer insolvency law was already a done deal, a third round of health care reforms in 1997 would double or triple co-payments for drugs and reduce from 80% to 70% the replacement rate of sick pay benefits, among other reforms.[143] Rising drug prices might be contributing to the spiraling levels of consumer insolvency filings in Germany in recent years, but these changes arrived after the adoption of the new consumer insolvency law, and the Draconian measures of this third round of health care reform were themselves scaled back from 1998 to 2000.[144]

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[139] The pension system underwent a first stage of reform with the 1989 Pension Reform Act, effective 1992, though this seems to have had little if any effect on the rising consumer debt problem. It made minor changes to indexation of benefits (based on changes in net rather than gross incomes), retirement age, and credit for education periods. In 1996 further pension cuts were implemented, reducing retirement credit for periods of education and training (rather than work) and further increasing the retirement age (in almost exactly the same way as in the United States). Replacement rates were reduced from 70% to 64% in a late 1997 act, effective 1998, far too late to have any impact on considerations of consumer debt relief. Bäcker & Klammer, *supra* note 6, at 233. These modifications seem unlikely to have had any substantial impact on general consumer debt levels, and most occurred too late to affect the consumer insolvency law reform process.

[140] Bäcker & Klammer, *supra* note 6, at 232; BUSSE & RIESBERG, *supra* note 23, at 145.

[141] BUSSE & RIESBERG, *supra* note 23, at 74.

[142] *Id.* at 76 tbl.12.

[143] Bäcker & Klammer, *supra* note 6, at 232; BUSSE & RIESBERG, *supra* note 23, at 138 tbl.24 (showing expenditures by private households for pharmaceuticals increased from €4.7 billion in 1992 to €5.7 billion in 1993, up to €6.1 billion in 1995, and €7.3 billion in 1997, falling back to the high €6–billion range thereafter, also indicating that private household expenditures on pharmaceuticals from pharmacies grew from €3.9 billion in 1992 to €4.8 billion in 1993, with co-pays almost doubling from €0.7 billion to €1.2 billion from 1992 to 1993, tripling by 1997 to €2.3 billion before falling back to €1.8 billion in 2000–02).

[144] BUSSE & RIESBERG, *supra* note 23, at 26.

Here again, the timeline of reform does not seem to support a causal link between social welfare cutbacks, the rise of consumer debt, and the adoption of consumer debt relief law. Unemployment benefits had grown gradually less generous since the mid-1970s, but as discussed below, this seems to have been a side effect of the same underlying problem that drove consumers into debt. Without these cuts, the real problem still would have caused widespread pain, even as other areas of social support remained largely as they always had been.

C. France

Adopted on the very last day of 1989, the *Loi Neiertz* introduced the first French consumer credit reporting and overindebtedness systems, effective March 1, 1990.[145] It made very modest inroads into creditor rights, relying primarily on the persuasive power of administrative bodies and the Banque de France to convince creditors to offer concessions to overstretched borrowers. Not until nearly a decade later could French consumers receive the kind of relief offered by the Swedish and German consumer insolvency laws. Already in the 1980s, a concern with the negative effects of "social exclusion" expanded from specific disadvantaged groups to all at-risk consumers. In the 1990s, policy analysts identified overindebted consumers among other particularly sensitive groups at risk of being socially marginalized by, among other things, economic and financial problems.[146] Part of the massive reform law no. 98-657 of 29 July 1998 "on the fight against exclusion" strengthened the relief available to consumer debtors to facilitate their "reinsertion" back into active society. Whether one marks the beginning of French consumer insolvency law as early as March 1990 or as late as February 1999 (the effective date of the social exclusion law), changes in the welfare state appear to have little to do with calls for legislative relief.

From the beneficiaries' perspective, the French welfare state passed through the 1980s and 1990s virtually unchanged.[147] Indeed, France "bucked the dominant trend . . . and substantially expanded social spending in the 1980s and 1990s".[148] Even fewer and less significant changes were made in most programs in France than in Sweden and Germany during the 1980s and 1990s. A few regulatory modifications were introduced in the mid-1990s, especially in the health care field, but these had

[145] The discussion in this paragraph is drawn from and supported by sources in Jason Kilborn, *La Responsabilisation de l'Economie: What the United States Can Learn From the New French Law on Consumer Overindebtedness*, 26 MICH. J. INT'L L. 619 (2005).

[146] Kesselman, *supra* note 10, at 199–200, 206; Spicker, *supra* note 38, at 116; Nadal, *supra* note 8, at 107.

[147] The biggest changes in French welfare have involved not retrenchment and benefit cutbacks, but shifts in financing away from employee payroll contributions and toward general income tax. Bruno Palier & Christelle Mandin, *France: A New World of Welfare for New Social Risks?*, *in* NEW RISKS, NEW WELFARE: THE TRANSFORMATION OF THE EUROPEAN WELFARE STATE 111, 112 (Peter Taylor-Gooby ed. 2004). When it was introduced in 1991, the new "general social contribution" levied a 1.1% tax on most taxable income. A decade later, it had risen to 7.5%. Spicker, *supra* note 38, at 118. Unlike in Germany, however, the employee share of French *payroll* tax contributions for health care experienced a corresponding decline. The employee share of payroll taxes for health care held steady at 6.8% from 1992 to 1997, plunging to 0.75% since 1998. SANDIER, *supra* note 33, at 37. The net effect of this burden shift seems to be a wash, leaving even the financing burden on consumers more or less where it had been all along.

[148] Kesselman, *supra* note 10, at 185.

little if any impact on the finances of ordinary consumers.[149] The French social safety net is somewhat less supportive in many respects than those in Sweden or Germany, but it has resisted erosion. One commentator has noted that "[t]here is little impetus for reform within the French system."[150] Another agrees, adding "governments from 1983 to 1995, conservative and socialist alike, retained a fundamental commitment to preserving—and even expanding—welfare state programs."[151]

In the only notable reform to state-administered benefits, in 1993, the reimbursement level for medical services and drugs that were not fully reimbursable fell 5% (from 75% to 70% for medical services, 70% to 65% for major prescription drugs, and 40% to 35% for drugs for non-serious conditions).[152] For those with supplemental voluntary health insurance, this added burden bypassed end users entirely, and for those without supplemental insurance (about 12% of the population, particularly the poor and long-term unemployed), the change simply deepened an existing problem.[153] Indeed, the government soon addressed the plight of low-income people with a major expansion of health care coverage at the end of the decade. An attempted overhaul of welfare by Alain Juppé in 1995 prompted mass demonstrations and the election of Lionel Jospin in 1997, who presided over the introduction of the first truly universal health care coverage system in France in law no. 99-64 of 27 July 1999 (effective January 1, 2000).[154] Now, the universal health coverage scheme is available for a fixed premium to all who are not covered by the variety of other schemes, and for those with very low incomes (as of 2004, €6600 ($8250) per year), it provides free basic coverage, as well as free supplemental health insurance for amounts not reimbursed by the basic coverage.[155] Those with modest incomes just above the limit still face potentially serious health care finance problems, but this is not a new problem in France.

The most significant changes occurred in the privately administered unemployment insurance system. Some workers saw their benefits slashed considerably, though for the most part, even these reforms were relatively modest. When unemployment levels began to rise steeply in 1981 and 1982, the unemployment insurance system was pushed to the edge of collapse as it bore the weight of more and more benefit claims.[156] Industry and government negotiations produced a series of reforms that saved the system, largely at the expense of those

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[149] *Id.* at 203–04 (noting the 1996 constitutional amendment, the "Juppé reform," to allow more state control of cost-cutting within the provision of medical services); Spicker, *supra* note 38, at 118 (noting that, of the sixteen reform plans between 1975 and 1993 designed to increase patient contributions and decrease health care expenses, "all were ineffective or inadequate").

[150] Spicker, *supra* note 38, at 121.

[151] Kesselman, *supra* note 10, at 199.

[152] SANDIER, *supra* note 33, at 95; Kesselman, *supra* note 10, at 201, 203. Mild pension reform occurred in this year, as well, raising the required number of working years for full benefit eligibility from 37.5 to 40 years and calculating the benefit on an average of the worker's best 25 paid years, rather than ten. *Id.* at 202. As discussed above, these changes had no perceptible effect on consumer debt levels or calls for legislative relief.

[153] Kesselman, *supra* note 10, at 188–90, 201, 203.

[154] *Id.* at 188–89; Nadal, *supra* note 8, at 99; Spicker, *supra* note 38, at 118.

[155] SANDIER, *supra* note 33, at 8, 35, 41, 117, 123.

[156] DUPEYROUX, *supra* note 63, at 970, 977.

with less-established work histories. First, in April 1983, the length of time over which unemployment benefits could be paid fell for younger workers with shorter work histories. Instead of paying benefits to all workers for up to one year, with up to another year of extensions, workers under 50 years old with fewer than 12 months of work could receive full benefits for only 9 months (rising to 10 months in 1986), with extensions and mildly reduced benefits available for a maximum of 15 months. Workers with at least the minimum of three months of work but less than 6 months could receive benefits for only 91 days.[157] Second, at the same time, the *maximum* replacement rate (for lower-income workers) dropped from 90% to 80%, falling to 75% in April 1984.[158] Finally, in 1986, the *minimum* replacement rate fell three percent from 60% to 57%.[159] The earlier reforms affected a relatively narrow category of workers, and the later reform changed benefit levels only slightly, though these modifications aggravated the ill effects of an acute and widespread unemployment crisis.

As discussed below, the unprecedented scope and extent of unemployment in France would have strained the social safety net even without these changes to the unemployment insurance scheme. Lawmakers concerned about rising consumer debt properly focused on unemployment itself as the prime culprit. Other social welfare programs remained all but unchanged, and reduced levels of unemployment insurance benefits represented only one relatively small aspect of the dire consequences of job loss in France (and in Sweden and Germany) in the 1980s and 1990s. At roughly the same time, the unemployment crisis spurred *both* reforms to unemployment insurance and other social programs *and* a consumer debt crisis that led to legislative initiatives for relief. The former does not appear to have contributed significantly to the latter; rather, they shared a contemporaneous causal link, as discussed immediately below.

III. THE THIRD VARIABLE(S): UNEMPLOYMENT AND OPEN CREDIT

If significant welfare reforms did not precede the consumer insolvency law movement, what did? Backing up again to take in a wider perspective, this section attempts to identify the real drivers of change in consumer finance and debt distress in the 1980s and 1990s. The world of consumer finance, especially the labor market, changed fundamentally in the late 20th century. Existing social insurance programs proved unable to respond to the new levels and types of risks that emerged during this period. Something more was needed to fill a newly apparent gap in the social safety net. Consumer insolvency laws have arisen in Europe to fill at least one important aspect of that gap, just as consumer bankruptcy law has filled the gaping hole in the social safety net in the United States for over a century.

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[157] JEAN-JACQUES DUPEYROUX, DROIT DE LA SÉCURITÉ SOCIALE 1057 (9th ed. 1984); DUPEYROUX, *supra* note 62, at 978, 985, 1005; SAINT-JOURS, *supra* note 65, at 505.

[158] DUPEYROUX, *supra* note 157, at 1056 & n.3; JEAN-JACQUES DUPEYROUX, DROIT DE LA SÉCURITÉ SOCIALE 1058, 1073 (10th ed. 1986); SAINT-JOURS, *supra* note 65, at 505.

[159] DUPEYROUX, *supra* note 62, at 984–85.

A. Public Enemy No. 1: Unemployment

Sweden enjoyed broad employment stability, with unemployment around 2 percent, until 1990. That fateful year marked the beginning of a massive recession that turned into a depression, the likes of which had not been seen since the Great Depression of the 1930s.[160] The Oil Crisis of the early 1970s had not caused mass unemployment in Sweden, so the welfare state and consumer finances generally weathered that storm. [161] In contrast, the recession of the early 1990s hit the labor sector hard. Open unemployment (among those actively seeking jobs) quintupled to 8.2% between 1990 and 1993.[162] Unemployment remained high through 1998, finally falling back to the still elevated levels of 5.6% in 1999 and 4.7% in 2000.[163] A lack of employment security and long-term unemployment emerged as the most important new risks for Sweden in the 1990s.[164]

The same story played out in much the same way, though several years earlier, in Germany and France. In the former West Germany, unemployment began to rise sharply in the early 1980s, from 3.8% in 1980 to a peak of 9.3% in 1985, falling back to just above 7% in 1990. Reunification with the economically troubled East Germany drove the jobless rate up at least another 1% per year from 1992 to 1994, shooting to a peak of nearly 13% in 1997.[165] The situation worsened even more quickly in France, where unemployment rose to 10.5% by 1987, continuing to rise during the next decade to a peak of 12.5% in 1997. Even more troubling, French and German workers had to endure significantly longer periods of joblessness in the 1980s and 1990s. The average unemployment spell in France doubled between 1974 and 1985, from 7.6 months to 15 months, extending even further to 16 months by 1998.[166] Similarly in Germany, by January 1998, about one-third of all unemployed workers had been jobless for more than one year.[167]

Employment problems were particularly intense for the rising numbers of low-skill and part-time workers. Compounding the lack of jobs for existing members of the Swedish labor market, the largest spike in immigration in recent history occurred in the early 1990s, peaking between 1992 and 1994.[168] The unemployment rate of

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[160] Ginsburg & Rosenthal, *supra* note 5, at 103–04, 113; Hort, *supra* note 5, at 139; Kurian, *supra* note 107, at 155; Bergmark & Palme, *supra* note 49, at 108 (all making this comparison with the 1930s).

[161] Ginsburg & Rosenthal, *supra* note 5, at 109.

[162] *Id.* at 113; Bergmark & Palme, supra note 49, at 109.

[163] *Id.* at 116.

[164] Virpi Timonen, *New Risks—Are They Still New for the Nordic Welfare States?*, *in* NEW RISKS, NEW WELFARE: THE TRANSFORMATION OF THE EUROPEAN WELFARE STATE 83, 93 (Peter Taylor-Gooby ed. 2004); Peter Taylor-Gooby, *New Risks and Social Change*, *in* NEW RISKS, NEW WELFARE: THE TRANSFORMATION OF THE EUROPEAN WELFARE STATE 1, 19 (Peter Taylor-Gooby ed. 2004) ("The chief new social risks emerging in the sphere of paid work are three: problems in entering the labour market, problems in maintaining stable, secure, and reasonably well-paid employment and associated social security entitlements and problems in gaining adequate training in a more flexible labour market.").

[165] Bäcker & Klammer, *supra* note 6, at 223 fig. 7.1. The precise figures are drawn from http://de.wikipedia.org/wiki/Arbeitslosigkeit (based on official German Statistical Office data).

[166] Palier & Mandin, *supra* note 147, at 113.

[167] Brigitte H. Schulz, *Globalisation, Unification, and the German Welfare State*, *in* 3 WELFARE AND THE STATE: CRITICAL CONCEPTS IN POLITICAL SCIENCE 390, 398 (Nicholas Deakin et al. eds., 2004).

[168] Bergmark & Palme, *supra* note 49, at 109–110, 120.

recent immigrants in Sweden rocketed from 4.5% to 33% between 1989 and 1993.[169] In Germany, unemployment among low-skill workers exceeded "average" unemployment by 80% in the early 1980s, rising to 2.5 times the general unemployment rate by 2000.[170] Part-time workers as a percentage of the German labor force rose from about 10% in 1989 to 16% a decade later.[171] For those scraping by on part-time work, even the pre-reform 68% income replacement rate of German unemployment insurance would hardly smooth over a short period of lost work, much less an extended period. Indeed, the German unemployment insurance system in place until 1999 entirely excluded part-time workers who logged fewer than 15 hours per week, as such workers were exempted from social insurance contributions.[172] These so-called "mini-jobs" (*geringfügige Beschäftigung*) constituted more than half of the rising number of part-time jobs. This was "the most dynamic segment of the German labor market in the 1990s," as the number of workers in such jobs increased from 4 million to 5-6 million during the decade.[173] Increases in low-skill and part-time work had made both income *volume* and income *volatility* bigger problems, despite a relatively stable social welfare system.

The basic structure of the Swedish, German, and French social welfare systems had always offered rather weak protection to those with low wages and short work histories (especially recent entrants such as young people, women, and immigrants).[174] Unemployment insurance programs left many new entrants vulnerable, and the relief they offered had clear limits even for well-established workers. A changing labor world would have placed substantial burdens on consumer finance in Europe even without changes in unemployment insurance and other social benefit programs.

On a macro level, the new employment crisis exposed latent vulnerabilities in the structure of European social welfare systems. Neither the unemployment insurance programs in particular, nor the welfare states in general, were designed to deal with widespread and long-term unemployment and a shift to more part-time and low-wage work. Unemployment insurance programs had to fall back, as they almost collapsed under the weight of masses of long-term claims for benefits. More generally, even in Sweden, with its generous social benefit programs, "employment is the *sine qua non* of an individual's welfare."[175] Emphasis on a policy of full employment had been the hallmark of the post-War Swedish welfare state. Sustained high unemployment posed a particular challenge for Sweden's employment security policy, as active labor market programs (e.g., training) had been favored over unemployment benefits.[176] The former were simply not designed to deal with the problem of mass and long-term unemployment, and the latter were insufficient to provide for basic needs over long dry periods, even without the new

[169] Ginsburg & Rosenthal, *supra* note 5, at 116; Timonen, *supra* note 164, at 100.
[170] Aust & Bönker, *supra* note 75, at 34.
[171] BUSSE & RIESBERG, *supra* note 23, at 5 tbl.1.
[172] Storey & Neisner, *supra* note 46, at 619.
[173] Aust & Bönker, *supra* note 75, at 33.
[174] Nordlund, *supra* note 47, at 35–36.
[175] Kurian, *supra* note 107, at 152.
[176] Ginsburg & Rosenthal, *supra* note 5, at 105; Bergmark & Palme, *supra* note 49, at 116.

burdens of servicing considerable consumer debt loads.[177] Likewise in Germany, sustained high unemployment became "the Achilles heel of the German social security system," as "[t]he entire conceptualization of Germany's *Sozialstaat* [social welfare state] is predicated upon the assumption of full employment, with benefits tied to one's occupational status."[178] Formally or informally, the same was true in France. In each of these areas, high unemployment undermined the income and payroll tax revenues necessary to finance all social programs and to provide the supplemental income or insurance coverage needed to deal with individual health and debt problems.[179]

On a micro level, rampant financial distress was all but inevitable when the labor market crashed. As discussed above, a significant percentage of Swedish, German, and French workers were simply not eligible for unemployment benefits, particularly those facing jobless spells that extended beyond one year. Even for benefit-eligible workers displaced from full-time jobs, unemployment benefits had offered only temporary replacement of a portion of former income. The low ceiling on unemployment benefits in Sweden pulled the effective income replacement rate below the official level of 90% for almost half of all beneficiaries, even before legislative reform reduced the official replacement rate for all. Like in Germany, a proliferation of low-wage and part-time jobs in Sweden exacerbated this trend toward lower unemployment benefits, such that the average real benefit for displaced Swedish workers fell between 1992 and 1999 from 81.3% to 70.5% of actual former income (about 10% below the official replacement rate in both years).[180] Benefits in Germany replaced only 68% of income at best, and they lasted only one year or less for all but the most well-established workers. Between 1970 and 1986, long-term unemployed people who had exhausted their unemployment benefits grew from 1% to 33% of those receiving last-resort social assistance from the state.[181] For most unemployed workers in France, pre-reform unemployment benefits replaced only 60% of former income, 90% for even the most protected lower-income workers. Losing 10%, 30%, or even more of one's income for a short period is difficult, but losing it for periods extending beyond a year, as happened in the 1980s and early 1990s for more and more workers, is disastrous under virtually any circumstance.

B. *The New Risk of Leverage Amplifies Unemployment Insurance Shortfalls*

But changes in labor arrangements and rising unemployment were only part of the problem. Without open access to credit and widespread consumer debt, income shocks would have produced temporary pain, but not a sustained epidemic of

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[177] Ginsburg & Rosenthal, *supra* note 5, at 117; Kurian, *supra* note 107, at 156; Gertrude Schaffner Goldberg, *Diminishing Welfare: Convergence toward a Liberal Model?*, *in* DIMINISHING WELFARE: A CROSS-NATIONAL STUDY OF SOCIAL PROVISION 325 tbl.11.3, 345 (Gertrude Schaffner Goldberg & Marguerite G. Rosenthal eds. 2002).

[178] Schulz, *supra* note 167, at 397.

[179] Ginsburg & Rosenthal, *supra* note 5, at 113, 122; *see also* Anders Lindbom & Bo Rothstein, *The Mysterious Survival of the Swedish Welfare State* 6–7 (unpublished paper presented to American Political Science Association, Sept. 2004), http://www.pol.gu.se/file/Person/Rothstein/LindbomRothstein.pdf.

[180] Hort, *supra* note 5, at 140; Ginsburg & Rosenthal, *supra* note 5, at 128; Bergmark & Palme, *supra* note 49, at 112; Nordlund, *supra* note 47, at 38.

[181] HUBER & STEPHENS, *supra* note 115, at 265.

consumer financial distress. Consumer credit market deregulation in the early- to mid-1980s (and a wave of real estate acquisition followed by a crash in Sweden and France) had led many consumers to take on substantial debts already in the 1980s. Many consumers had already squeezed their margins to the point where loss of even a small portion of their income would precipitate serious financial difficulties or even collapse. In the new world of open access to credit, old problems entailed new risks that caught the social welfare state completely off guard.

Already by 1990, the average Swedish household dedicated 100% of its disposable income to current debt service, leaving no margin to cushion unexpected income shocks.[182] When the most severe income shock since the Great Depression rocked consumers in 1990, the personal financial crisis was inevitable. As a result of these structural changes in the economy and labor market , the real disposable income of the poorest 10% of Swedish families fell 29%, the median for single-parent families fell by nearly 11%, and the median for all Swedish families fell by nearly 4% between 1989 and 1997.[183] Declining income led to greater demand for borrowing, and those who had already borrowed to the hilt were threatened with inevitable insolvency and default.

In Germany, the age of consumer credit had begun even earlier, and credit deregulation in the mid-1980s fueled another rapid acceleration of consumer debt. While mean income grew only 12-fold between 1950 and 1985, per-capita indebtedness increased more than 800-fold during the same period.[184] Total consumer debt in Germany more than doubled again between 1984 and 1994, from just under 160 billion DM ($107 billion) in 1984 to almost 364 billion DM ($243 billion) in 1994.[185] The study group that had been commissioned to investigate the growing problem of excessive debt in Germany estimated that, already in 1989, 1.2 million households suffered from excessive debt.[186] Even more troubling, a very large portion of consumer debt was incurred to pay off previous installment debt, leading many consumers into a vicious cycle of "chain indebtedness." The explosion of job loss beginning in the early 1980s would throw the already sensitive economics of heavily indebted consumers into a tailspin.

As the last of the regulatory controls on consumer credit were lifted in France in the mid-1980s, the rate of annual growth in lending to consumers had already risen from 6% in 1980 to 21% in 1985, increasing to 39% in 1986.[187] Between 1984 and 1988, consumer recourse to institutional lending rose 158%.[188] In 1980, the average

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[182] *See* Proposition [Prop.] 1993/94:123 Skuldsaneringslag [government bill] (Swed.), § 2.1.

[183] Ginsburg & Rosenthal, *supra* note 5, at 122–23 (noting that these losses were offset by a gain of nearly 15% for the wealthiest 10%).

[184] DETLEV BONNEMANN & THOMAS RICKAL, EINFÜHRUNG IN DEN PROBLEMKREIS VER-/ÜBERSCHULDUNG 1 (1997), *available at* http://www.uni-essen.de/tts/lehrangebot/verschuldung/schulden.pdf.

[185] LARS RATH, ÜBERSCHULDUNG UND SCHULDNERBERATUNG IN DEUTSCHLAND UNTER BESONDERER BERÜCKSICHTIGUNG DER NEUEN INSOLVENZORDNUNG (INSO) § 2.2 (1996), *available at* http://www.fh-fulda.de/fb/sw/diplarb/rath/dipl_inso.html.

[186] BONNEMANN & RICKAL, *supra* note 184, at 1.

[187] JEAN-JACQUES HYEST & PAUL LORIDANT, SÉNAT FRANÇAIS, RAPPORT D'INFORMATION NO. 60, SURENDETTEMENT: PRÉVENIR ET GUÉRIR § I.B.2(b) tbl. "Taux de croissance annuel de distribution des crédits aux ménages" (1997), *available at* http://www.senat.fr/rap/r97-060/r97-060_toc.html.

[188] DANIELLE KHAYAT, LE SURENDETTEMENT DES MÉNAGES 7 (1999).

debt-carrying French consumer held total debt equal to three months' income, but by 1985, that number had grown to five months, and six months by 1988.[189] As a percentage of disposable income, non-housing consumer credit alone grew from 3.0% to 8.3% during the 1980s.[190] In addition, like in Sweden, many French consumers had taken on new and often risky home loans in the early 1980s, with interest rates that adjusted upward by as much as 50% just as the value of the homes adjusted downward, in some cases by as much as 33%.[191] Thanks in large part to this increase in accession to housing, total outstanding consumer debt rose from 12 billion francs in 1970 to 409 billion francs by 1995.[192] By 1989, when the *Loi Neiertz* was adopted, an estimated 200,000 French households carried a debt burden with monthly payments exceeding 60% of their monthly income.[193] Factoring in the ongoing costs of everyday life, these new debt burdens left little room to maneuver when unemployment reduced incomes sharply, even for those eligible for unemployment benefits.

When financial margins for many were already razor thin as a result of rising consumer debt levels and inflation, a consumer financial meltdown was inescapable as more consumers lost their primary source of income to service their new debt burdens. Traditional social welfare programs could not (because they were not designed to) assuage the casualties of the combined new risks of rampant unemployment and overwhelming consumer debt.[194] Rising instability in the job market in the 1980s and 1990s revealed cracks in the very foundation of the social welfare system, at the same time accentuating the new risk of soaring consumer debt, which threatened to bring the house down. Quite apart from welfare reform issues, lawmakers implemented a new solution for the new consumer debt problem, in some cases contemporaneously, but largely before they began a moderate scaling back of welfare.[195] Consumer insolvency law was not a product of welfare reform in Europe, but a reaction to a set of problems which the social welfare system was either not prepared or not designed to resolve. Indeed, the new solution of consumer bankruptcy killed two birds with one stone, shifting the costs of both unemployment and excessive debt away from the state and onto private lenders and other creditors, who had proven themselves deserving, if not desirous, of such responsibility.

[189] Gilles Paisant, *La loi du 31 décembre 1989 relative au surendettement des ménages*, JCP 1990 I 3457, ¶ 2.

[190] NURIA DIEZ GUARDIA, EUROPEAN CREDIT RESEARCH INSTITUTE, RESEARCH REPORT NO. 1, CONSUMER CREDIT IN THE EUROPEAN UNION at 53 tbl.A18 (2000), *available at* http://www.ecri.be/ecri/public/ECRI_RR_No.1.pdf.

[191] HYEST & LORIDANT, *supra* note 187, §§ I.B.2(b).

[192] Id. § I.C.2.

[193] Paisant, *supra* note 189, ¶ 3.

[194] HUBER & STEPHENS, *supra* note 115, at 225–26; Schulz, *supra* note 167, at 397–98 (explaining that the German system was wholly unprepared to deal with the "structural" unemployment that plagued Germany since the early 1980s).

[195] HUBER & STEPHENS, *supra* note 115, at 225–26 (arguing that welfare cuts were generally driven by the appearance of *sustained, permanent* unemployment, beginning when politicians realized that high unemployment was here to stay).

C. *The Dangerous Dependency of Health Care on Employment*

Exacerbating the dangers of unemployment and shrinking margins in the 1980s and 1990s, the close connection between job status and health care coverage continues to expose many workers in France (and to a lesser extent, Germany) to a potential health care finance crisis. Even after the implementation of a universal health care scheme and complementary supplemental insurance for the poor, many French workers face substantial uncovered medical expenses. As discussed above, the French health care scheme reimburses only an average of about 75% of drug expenses, leaving the rest to be covered by supplemental private insurance. In 2000, 28% of unskilled workers—substantially represented in insolvency cases—had no supplemental insurance. Even for those whose employers provide extra coverage, 40% of well-paid workers—and over 70% of low-wage workers—are underinsured against potential medical expenses. These sorts of disparities are not surprising in the United States. Most Americans would be quite surprised to learn about this unfortunate aspect of solidarity with French workers. The close dependency of welfare coverage on the quality and duration of employment is a classic aspect of "Bismarckian" or "corporatist" welfare systems, including an important part of the French health care system.[196]

In the pre-Oil Crisis days of full employment and moderate health care costs in Europe, this system might have worked well. Not *because* of reform, but due to the *inadequacy* of reform, the new world of soaring health care costs and growing wage and employment disparities has left the traditional system behind.[197]

IV. CONCLUSION

Though the timing differed, a very similar story played out in each of these three countries: Social welfare systems have been subject to reevaluation and mild tinkering for decades, but consumer debt had been identified as a clear target for legislative relief long before substantial reforms began to affect social insurance and transfer payment programs. Indeed, the new consumer insolvency laws in Sweden, Germany, and France were adopted just before or along with the first targeted reforms of social welfare programs. Both of these changed directions in lawmaking arose in response to changing circumstances of life in Europe in the 1980s. The old risks addressed by social welfare systems changed fundamentally, aggravating existing weaknesses in these systems and undermining the support system for rising numbers of people. When the lynchpin of these social welfare systems—full employment—slipped out, a substantial number of Europeans began to fall through the employment-related holes in the traditional safety net. Particularly after adding a

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[196] Goldberg, *supra* note 1, at 5 (describing the Bismarckian structure and categorizing Germany and France within that group).

[197] Palier & Mandin, *supra* note 147, at 111–12, 114 ("[d]uring the 1980s, [the traditional, labor-market-participation, earnings-based Bismarckian approach to organizing welfare] appeared more and more unable to deal with new social problems . . . The social protection system, designed for circumstances of full employment, requires a period of work before one is entitled to social benefits. In a period of economic crisis, it cannot protect those who are without work or who lack a work record that gives access to adequate social security, who are the very groups who are increasing in number and who need help the most.").

thick layer of personal debt, large groups of European consumers faced the same sorts of risks that their U.S. counterparts had faced for decades. Not surprisingly, European legislators turned to a U.S.-style remedy, at least in its broad contours.

Legislators soon realized that they could not ignore the collateral damage caused by spiraling consumer debt. Sustained new risks confronted more and more people, too many for legislators to cast off as isolated instances of profligate spending and weak moral control. Whatever consumers were borrowing for, they had clearly embraced the new world of open credit. At about the same time, when legislators realized that cyclical, short-term unemployment had become structural, long-term unemployment and that the entire labor market had changed to put significant groups of people at constant risk, the foundation of the social welfare state had to be reconsidered. These new risks were not going away, and they called for new—or at least modified—solutions.[198] The glory days of high-pay, stable, full employment in Europe fell away into the past, as the competition for global capital investment heated up, putting serious downward pressure on the costs of labor and the costs of caring for those with reduced utility to the global economic system. The connection between consumer insolvency and welfare reform is at the very most a sibling relationship with at least one shared parent—structural unemployment caused in part by global economic pressure. Rather than a child of social welfare reform, consumer insolvency law represents a new member of the family of programs designed to deal with the financial dangers of a changing world.

Whether or not insolvency law can technically be categorized as "insurance," it certainly fills the same sorts of functions in a similar way, though perhaps not as directly or effectively.[199] European legislators adopted consumer insolvency laws to insure individuals and society against the new and significant risks of the democratization of consumer credit in the context of an increasingly volatile and dynamic global economy. As with other insured risks, relatively small percentages of people will actually suffer harm. But it is no answer to sustained levels of distress among a few to observe that the world is actually better for the many for whom existing support programs are adequate or even unnecessary. Consumer insolvency law faces the same challenges of public perception and moral legitimacy as do other compulsory social insurance programs. Policymakers worldwide seem to be responding to this challenge in both areas in a similar way, by emphasizing (indeed, demanding) that people should to the extent possible help themselves through paid work, but nonetheless offering aid to those in inescapable need.[200]

From a policy perspective, it is important to avoid associating consumer insolvency law with social welfare cutbacks. This is not necessarily an instance of European governments abandoning their traditional dedication to social solidarity and shifting to a leaner, meaner American approach. Consumer insolvency law

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[198] HUBER & STEPHENS, *supra* note 115, make a similar point at 225–26. For a nice discussion of the challenges facing European social welfare programs at the dawn of the 21st century, see Joel F. Handler, *Questions About Social Europe by an American Observer*, 18 WIS. INT'L L.J. 437 (2000).

[199] *See* Adam Feibelman, *Defining the Social Insurance Function of Consumer Bankruptcy*, 13 AM. BANKR. INST. L. REV. 129 (2005).

[200] *See* Taylor-Gooby, *supra* note 164; Goldberg, *supra* note 1, at 8–9 (explaining that, in Sweden in particular, full employment was not just a way to ensure the financing for social security programs, but to fuel normalization, to make people feel as though they were rendering useful service).

arose either to fill a void that had always existed in European social welfare systems or to address new problems that governments had not previously addressed with social programs. While it may be that dedication to universal and generous social welfare systems is waning, consumer insolvency law is a largely independent response to new problems confronting countries at all points of the spectrum from "neo-liberal" to "social democratic." Consumer insolvency is a virtually preordained problem of the rapid spread of neoliberal economic policy across the globe. Whatever benefits this sort of economic globalization will bring, it will also produce similar problems in countries with and without strong social safety nets.

Linking consumer insolvency to welfare state policy is a misleading causal link that distracts attention from an increasingly universal problem. Global policy with respect to consumer insolvency can and perhaps should be more uniform, a reasonable reaction to the winners not paying off the losers in the struggle between parochial protectionism and the free flow of global capital. If private actors wish to enjoy the benefits of unfettered risk taking in extending credit to consumers, it is only reasonable that governments worldwide do as first U.S. and then European governments have: adopt compulsory insurance-like systems to focus the losses for the few bad risks on the private creditors who otherwise would enjoy the gains from the many good risks. Surely, this has to be more efficient that redistributing the losses through rapacious taxation of business to fund government social policy. Lenders: be careful what you ask for, you just might get it.