

## CONFERENCE: THE FUTURE OF GLOBAL HEALTH GOVERNANCE

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### INTRODUCTION: THE FUTURE OF GLOBAL HEALTH GOVERNANCE

*Elizabeth Weeks & Anish Patel\**

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\*Elizabeth Weeks, JD, is Associate Provost for Faculty Affairs at the University of Georgia (Athens, Georgia) and Charles H. Kirbo Chair in Law at the University of Georgia School of Law (Athens, Georgia). She received her BA from Columbia University (New York, New York) and JD from the University of Georgia School of Law (Athens, Georgia). She previously served on the faculty of the University of Kansas School of Law (Lawrence, Kansas), where she was director of the medical-legal partnership clinic and has visited at University of the Pacific-McGeorge School of Law (Sacramento, California). Her research and teaching focus is in health care financing and regulation and public health law.

Anish Patel is a graduate from the University of Georgia School of Law (Athens, Georgia). He received his B.S. in Chemistry from the University of Georgia (Athens, Georgia). He previously worked as a Research Chemist at the U.S. Centers for Disease Control and Prevention (Atlanta, Georgia).

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## I. INTRODUCTION

When we began developing this topic last winter and early spring, the global pandemic in which we still find ourselves deeply entrenched, a year later, was just emerging. For many in the United States, including our former President, the threat seemed distant, even hypothetical.<sup>1</sup> Few imagined the devastating loss of life, health, economic security, home, family, companionship, and “normal” ways of life that we would come to experience over the next year.

As we near the one-year anniversary of the first lockdown orders in the United States, three broad themes emerge from the COVID-19 landscape that inform the topic of this symposium on The Future of Global Health Governance. First, comparison of the public health infrastructure in the United States to other developed countries. Second, comparison of the social safety nets and other measures that the United States took to alleviate the effects of the virus to the rest of the world. Finally, the impacts of partisan polarization and distrust of government and science on pandemic response and management.

## II. PUBLIC HEALTH INFRASTRUCTURE

As of this writing, the United States is ranked fourth in the world in rate of vaccinations per capita against the COVID-19 pandemic.<sup>2</sup> U.S. healthcare continues, rather stubbornly, to hew a private-market approach to health care delivery, albeit with a heavy hand of government regulation to attempt to correct market imperfections and address some of the most inhumane effects of allocating scarce health care resources based on ability to pay rather than greatest need. The lack of universal healthcare in the United States could be one of the contributing reasons why its vaccination rates is not among the upper echelons of countries like the United Kingdom, Israel, or the United Arab Emirates.<sup>3</sup>

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<sup>1</sup> See Thomas Franck, *Trump Says the Coronavirus is the Democrats' 'New Hoax'*, CNBC (Feb. 28, 2020), <https://www.cnn.com/2020/02/28/trump-says-the-coronavirus-is-the-democrats-new-hoax.html> (“‘The Democrats are politicizing the coronavirus,’ he said from a campaign rally in North Charleston, South Carolina . . . ‘This is their new hoax.’”).

<sup>2</sup> See *More than 199 Million Shots Given: Covid-19 Tracker*, BLOOMBERG (Feb. 19, 2021, 8:12 PM), <https://www.bloomberg.com/graphics/covid-vaccine-tracker-global-distribution/>.

<sup>3</sup> Annabelle Timsit, *Three Countries Have Pulled Far Ahead of the Rest of the World in Distributing Covid-19 Vaccines*, QUARTZ (Jan. 11, 2021), <https://qz.com/1953007/the-countries-with-the-most-effective-covid-19-vaccine-rollouts/>.

One of the advantages of a universal healthcare system is that centralization of information makes it easier to match supply and demand of the vaccine, remediating some of the initial logistical hurdles with vaccine distribution.<sup>4</sup> Additionally, countries with national health services already have public health infrastructures in place to vaccinate their populations because of pre-existing, robust, government-operated vaccination programs. By contrast, the United States has to start from the ground up in building its vaccination clinics and developing the legal infrastructure necessary for administering vaccinations.<sup>5</sup> This lack of coordinated government distribution led to testing “mills,” scams for money and personal information, and a Wild West of vaccine distribution as individuals deemed eligible for the vaccination (eligibility itself a moving target), chased rumors and social media postings from grocery store pharmacies, to local health departments, to newly designated distribution centers, like a treasure hunt for gold.<sup>6</sup>

Even if the United States’ vaccine rollout is comparable to or better than other advanced countries with a universal healthcare system, its lack of an equivalent system hindered response to COVID-19.<sup>7</sup> Effective COVID-19 responses include prompt diagnoses and quick quarantining of infected individuals to halt the spread of the virus, but both of these measures are hindered by the disincentives associated with visiting a physician.<sup>8</sup> For one, the potential for facing ruinous medical debt as a result of the United States’ lack of universal healthcare is inhibiting our most effective COVID-19 responses (besides getting the vaccine) as underinsured are less likely to seek out diagnoses.<sup>9</sup> This is further underscored by U.S. health insurance being bound up with employment—as unemployment rates steadily creep up as a result of the pandemic and the measures taken against

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<sup>4</sup> *Id.*

<sup>5</sup> Elizabeth Cohen, *US Lags Behind Some Other Countries in Covid-19 Vaccinations*, CNN HEALTH (Dec. 30, 2020), <https://www.cnn.com/2020/12/30/health/us-uk-israel-covid-vaccinations/index.html> (“Tuesday, [Dr. Celine Grounder] told CNN’s Jim Sciutto that health care in the US is ‘very decentralized, very fragmented,’ compared to the National Health Service in the UK, ‘where they have really one system that they can roll this out smoothly to. We have many, many different small systems in this country.’”).

<sup>6</sup> Joseph Goldstein, *Hospital Workers Start to ‘Turn Against Each Other’ to Get Vaccine*, N.Y. TIMES (Dec. 24, 2020), [https://www.nytimes.com/2020/12/24/nyregion/nyc-hospital-workers-covid-19-vaccine.html?fbclid=IwAR0N9ncqtK7SFKDfJ5VUTDs0tuxmU-jwiYNX\\_3PcLDjShNpWHRXKEftYfW3A](https://www.nytimes.com/2020/12/24/nyregion/nyc-hospital-workers-covid-19-vaccine.html?fbclid=IwAR0N9ncqtK7SFKDfJ5VUTDs0tuxmU-jwiYNX_3PcLDjShNpWHRXKEftYfW3A) (“Health care workers said rumors were proliferating in WhatsApp groups and amid the banter of the operating room. Stories have begun to circulate of a plastic surgeon who managed to get vaccinated early, of doses being thrown out at one Manhattan hospital because of poor planning. On group chats, doctors debate how—and whether—to try to get vaccinated ahead of schedule.”).

<sup>7</sup> Alison P. Galvani et al., *The Imperative for Universal Healthcare to Curtail the COVID-19 Outbreak in the USA*, 23 ECLINICALMEDICINE 1 (2020).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

it (such as lockdowns), the less likely an American is to seek help for COVID-related symptoms due to their loss of insurance.<sup>10</sup>

The lack of a national healthcare system also highlights the racial and economic disparities prevalent in the United States and may help explain why COVID-19 is disproportionately impacting African-American communities. Rates of adequate health insurance coverage are lower among people of color meaning they have less access to preventative healthcare.<sup>11</sup> Because of their lack of access to preventative care, people of color are more likely to suffer from comorbidities, thereby exacerbating the severity of clinical outcomes when they do contract COVID-19.<sup>12</sup>

### III. THE UNITED STATES SOCIAL SAFETY NETS AND COMPARATIVE RESPONSES GLOBALLY TO HEALTH AND WELFARE

Leading public health scholar, Lawrence Gostin has observed: “As a society, we forego the possibility of bold public health governance by any given branch in exchange for constitutional checks and balances that prevent overreaching and assure political accountability.”<sup>13</sup> Indeed, not only horizontal checks on power, across the three branches of government, but also vertical checks, as among federal, state, and local authorities, also challenge the United States’ response. These structural obstacles have been revealed sharply in the COVID-19 pandemic.

#### *A. How U.S. Federalism Impacts COVID-19 Response*

Characteristic of U.S. Health Care Law is a “turf war” between federal and state/local authority to regulate health care markets and provide public assistance for those deemed eligible. Much of the story of the Patient Protection and Affordable Care Act of 2010 has been a power struggle between “big” federal take-over of health care and assertions of states’ rights to do things differently within their borders. In public health, in particular, state and local governments hold broad and well-developed authority to compel vaccination, quarantine, isolation,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> LAWRENCE O. GOSTIN & LINDSAY F. WILEY, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 82 (3rd ed. 2016).

social distancing, masking, and other critical interventions to control the spread of infectious disease.<sup>14</sup> The federal government's authority is more limited.<sup>15</sup>

There are three reasons why this aspect of U.S. federalism makes responding to the COVID-19 pandemic and the related economic crisis challenging. First, the inability of states to engage in deficit spending forces them to rely on Congress to make up for any budget shortfalls as a result of reduced tax revenue.<sup>16</sup> Second, the federal government's heavy reliance on discretionary fiscal policy measures as opposed to automatic stabilizers makes it difficult to respond timely and proportionately to crises due to the decentralization of information inherent in our federalist structure of government.<sup>17</sup> Finally, the automatic stabilizers that do exist, such as unemployment insurance, are less efficient because the hybrid federal/state nature of the programs result in varying requirements and administrative obstacles to those searching for aid.<sup>18</sup>

In the United States, individual states generally are not capable of engaging in counter-cyclical spending because of constitutional, balanced budget requirements and statutory spending limits.<sup>19</sup> States' lack of ability to engage in deficit spending after the Great Recession hampered recovery because states began cutting spending in order to meet balanced budget requirements.<sup>20</sup> Since Congress does not face the same budget requirements or statutory spending limits, states

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<sup>14</sup> Mark A. Hall et al., *The Legal Authority for States' Stay-at-Home Orders*, *NEW ENGLAND J. MED.* (July 30, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2019662> ("States have always had broad emergency powers, and legislatures have carefully reevaluated these laws over the past 20 years after terrorist attacks, natural disasters, and epidemics, ensuring that civil liberties protections are included. Though these statutes are being tested in new ways, they have proved durable enough to protect against abuses of power . . .").

<sup>15</sup> The federal government can take additional actions to supplement state and local responses that are inadequate in order to prevent the spread of international and interstate diseases, but this power is not often exercised. See Lawrence O. Gostin et al., *Presidential Powers and Response to COVID-19*, *JAMA NETWORK* (Mar. 18, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2763423>.

<sup>16</sup> Phillip Rocco et al., *Stuck in Neutral? Federalism, Policy Instruments, and Counter-Cyclical Responses to COVID-19 in the United States*, 39 *POL'Y & SOC'Y* 458, 460 (2020).

<sup>17</sup> *Id.* at 461.

<sup>18</sup> *Id.* at 466 ("Yet while automatic stabilizers do exist in the United States, their effectiveness hinges on how fiscal and administrative responsibilities are divided between the federal and state governments, the capacity of state governments to administer these programs under crisis conditions, and the ability of both state and federal agencies to cooperate to offer relief from administrative burdens that depress the uptake of benefits.").

<sup>19</sup> Glenn Follette & Byron Lutz, *Fiscal Policy in the United States: Automatic Stabilizers, Discretionary Fiscal Policy Actions, and the Economy* 1–19 (Fed. Rsrv. Bd., Working Paper, Paper No. 2010-43, 2010) (asserting that federal policy actions in response to an economic crisis tend to be somewhat counter-cyclical; however, state responses appear to be somewhat pro-cyclical possibly because of the constitutional restrictions on budget balances).

<sup>20</sup> See Ben S. Bernanke, *Ben Bernanke: I Was Chairman of the Federal Reserve. Save the States.*, *N.Y. TIMES* (Jul. 15, 2020), <https://www.nytimes.com/2020/07/15/opinion/ben-bernanke-coronavirus-federal-aid.html>.

have to rely on the federal government to provide them with additional resources in order to fund policies designed to counter the effects of an economic crisis or, more pointedly to this symposium topic, a pandemic.<sup>21</sup> Therefore, Congress's failure to agree on passing fiscal measures responsive to the crisis can result in states being forced to cut spending, which response could not only hurt recovery but also lead to unintended consequences down the line.<sup>22</sup> To provide another example from the Great Recession, the failure to pass spending measures resulted in states cutting budgets of local and state public health departments, arguably leaving us in weaker positions to respond to the current pandemic than we would have been in before the recession.<sup>23</sup>

Moreover, Congress's overreliance on discretionary fiscal programs as opposed to automatic fiscal stabilizers accentuates the challenge of dealing with the COVID-19 economic crisis.<sup>24</sup> When a government actively makes a change to the level of taxing or spending in which it engages, it is enacting a discretionary fiscal policy.<sup>25</sup> On the other hand, automatic stabilizers are fiscal policies in which a change occurs without further legislative action when some threshold requirement is realized. An example of an automatic stabilizer is an increase in unemployment insurance payouts triggered by a certain percentage national unemployment rate.<sup>26</sup>

Another challenge is that discretionary policies require information in order to be effective, but there is a great amount of informational uncertainty due to the highly decentralized nature of our federalist government.<sup>27</sup> Furthermore, due to the lack of a formal venue for intergovernmental negotiation for state and local officials, governments and other private interest groups end up competing with

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<sup>21</sup> Rocco, *supra* note 16, at 458.

<sup>22</sup> William A. Galston, *Using Automatic Stabilization Programs to Fight Recessions and Speed Recoveries*, BROOKINGS (Dec. 16, 2020), <https://www.brookings.edu/research/using-automatic-stabilization-programs-to-fight-recessions-and-speed-recoveries/>.

<sup>23</sup> *Id.*

<sup>24</sup> Rocco, *supra* note 16, at 461.

<sup>25</sup> *Expansionary and Contractionary Fiscal Policy*, LUMEN, <https://courses.lumenlearning.com/wm-macroeconomics/chapter/expansionary-and-contractionary-fiscal-policy/> (last visited Jan. 28, 2020).

<sup>26</sup> *Id.*

<sup>27</sup> Rocco, *supra* note 16, at 461 ("Where discretionary programs are concerned, federalism accentuates the challenge of coherent, comprehensive decision-making in the midst of a crisis . . . the decentralized and uncertain character of fiscal information makes it difficult for Congress to match policy to the scale of the crisis."). For example, Congress had to pass the CARES Act without information from the Bureau of Economic Analysis who reported on the extent of employment loss in the last week of April. The CARES Act was passed nearly a whole month before the Bureau's report and the particulars of the relief bill were deliberated upon even before that. States had access to this information earlier but its decentralization from members of Congress made it difficult for them to get to the information quickly and pass policies that were proportionate to the extent of the economic harm being caused by the virus. *See id.*

one another for relief during economic crises.<sup>28</sup> In addition, failures by Congress to pass additional discretionary fiscal policies to help states fund counter-cyclical programs is certainly problematic.<sup>29</sup> It took Congress until the end of December of 2020 to agree to additional funding for states to assist with vaccination efforts.<sup>30</sup> State and local health departments, in the meantime, were not able to prepare for the vaccine rollout plans by hiring the necessary staff or setting up vaccination centers despite requesting more funding for months, thereby, contributing to delays in the vaccine rollout in the United States.<sup>31</sup>

Economists argue that U.S. economic recovery policies would benefit from increasing the amount of automatic stabilizers due to their quicker response times compared to discretionary policies.<sup>32</sup> Even the automatic stabilizer programs that do exist in the United States have some aspect that is discretionary.<sup>33</sup> Additional unemployment insurance benefits, for example, typically are not extended without some form of discretionary policy decision.<sup>34</sup> Furthermore, administrative hurdles due to federal and state eligibility rules screen out individuals who could be in dire need of assistance. Finally, significant variations in administrative infrastructure that support automatic stabilizers across states may result in significant wait times for relief.<sup>35</sup>

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<sup>28</sup> *Id.* at 472–73.

<sup>29</sup> William A. Galston, *Using Automatic Stabilization Programs to Fight Recessions and Speed Recoveries*, BROOKINGS (Dec. 16, 2020), <https://www.brookings.edu/research/using-automatic-stabilization-programs-to-fight-recessions-and-speed-recoveries/> (“Federal transfers to states and localities provide efficient and effective fiscal stimulus. But during the Great Recession, the national effort fell short. While states were still struggling, the 2009 stimulus bill expired in 2012 and nothing was done to replace it. Instead, concern about rising federal deficits and debt triggered restraints on discretionary spending that shifted federal policy toward austerity while unemployment remained elevated. This exacerbated the slowdown at the state and local level.”).

<sup>30</sup> Jake Horton, *Covid-19: Was U.S. Vaccine Rollout a ‘Dismal Failure’ Under Trump?*, BBC (Jan. 5, 2021), <https://www.bbc.com/news/world-us-canada-55721437> (last updated Jan. 26, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> Heather Boushey et al., *Recession Ready: Fiscal Policies to Stabilize the American Economy*, BROOKINGS (May 16, 2019), <https://www.brookings.edu/multi-chapter-report/recession-ready-fiscal-policies-to-stabilize-the-american-economy/> (“Using evidence-based automatic ‘triggers’ to alter the course of spending would be a more-effective way to deliver stimulus to the economy than waiting for policymakers to act.”).

<sup>33</sup> Rocco, *supra* note 16, at 461.

<sup>34</sup> *Id.* at 467 (“Finally, Tier 3 is constituted by emergency benefit extensions that Congress routinely passes during recessions.”).

<sup>35</sup> *Id.* at 473.

*B. What Has the United States Done Compared to Other Countries?*

Federally, the United States has offered support to those affected by the pandemic through two large pieces of legislation—namely, the Coronavirus Aid, Relief, and Economic Security (CARES Act) and the Consolidated Appropriations Act—as well as smaller pieces of legislation such as the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, and the Paycheck Protection Program (PPP) and Health Care Enhancement Act. The CARES Act provided two weeks of paid sick leave if an employee is sick with COVID-19 or is quarantining following orders from the authorities.<sup>36</sup> Furthermore, the Act provided support to parents with children under age eighteen whose school or childcare facilities are closed.<sup>37</sup> The government provided support up to a limit of \$200 per day, capped at a total of \$12,000.<sup>38</sup> Additionally, the federal government extended resources through SNAP to provide food to households with low income.<sup>39</sup> Unemployment insurance payments were increased by \$600 per week, as well as direct payments of \$1200 for each adult and \$500 for each child of all U.S. residents with gross incomes up to \$75,000.<sup>40</sup> \$500 billion in financial assistance in the form of loans were given to large companies and governments.<sup>41</sup> \$380 billion in economic support was given to small businesses as part of the PPP.<sup>42</sup> The Consolidated Appropriations Act of 2021 was signed into law on December 27, 2020.<sup>43</sup> Along with the omnibus spending bill for the 2021 federal fiscal year, a \$900 billion

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<sup>36</sup> *Families First Coronavirus Response Act: Employee Paid Leave Rights*, U.S. DEP'T LABOR, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> (last visited Oct. 19, 2020).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *USDA Increases Monthly SNAP Benefits by 40%*, U.S. DEP'T OF AGRIC. (Apr. 22, 2020), <https://www.usda.gov/media/press-releases/2020/04/22/usda-increases-monthly-snap-benefits-40>.

<sup>40</sup> Danielle Kurtzleben, *What's In It For You? \$1,200 Checks, 13 Weeks Of Unemployment Payments And More*, NPR (Mar. 25, 2020), <https://www.npr.org/2020/03/25/821514231/whats-in-it-for-you-1-200-checks-13-weeks-of-unemployment-payments-and-more>.

<sup>41</sup> *Here's Everything the Federal Government Has Done to Respond to the Coronavirus so Far*, PETER G. PETERSON FOUND., <https://www.pgpf.org/blog/2021/01/heres-everything-congress-has-done-to-respond-to-the-coronavirus-so-far> (last updated Jan. 25, 2021).

<sup>42</sup> John Fuller et al., *Senate Approves \$380 Billion Expansion of CARES Act Small Business Loan Programs*, JDSUPRA (Apr. 23, 2020), <https://www.jdsupra.com/legalnews/senate-approves-380-billion-expansion-16029/>.

<sup>43</sup> *Key Provisions of the Consolidated Appropriations Act, 2021 for Businesses and Individuals*, JDSUPRA (Jan. 26, 2021), <https://www.jdsupra.com/legalnews/key-provisions-of-the-consolidated-2031866/>.

stimulus package was included in the bill.<sup>44</sup> The package included \$302 billion in additional funding through the PPP for small businesses, \$164 billion in funding for direct \$600 payments to individuals, \$119 billion for increased unemployment benefits, \$82 billion in aid for schools, \$78 billion in health-specific measures, and \$123 billion for other measures like increased SNAP assistance, childcare assistance, and rental assistance.<sup>45</sup>

As part of the Trump administration's efforts to help Americans, the Substance Abuse and Mental Health Services Administration was given \$110 million in emergency grant funding to "strengthen access to treatments for substance use disorders and serious mental illnesses."<sup>46</sup> This funding is important given that the COVID-19 pandemic foreseeably might cause an increase in deaths of despair, such as deaths from alcohol, drug misuse, and suicides, as well as an increase in domestic abuse incidents.<sup>47</sup> For example, states reported increases in domestic abuse incidents ranging from 21% to 35% as a result of isolation caused by social distancing guidelines, economic stressors, and increases in negative coping mechanisms such as reliance on alcohol or other drugs.<sup>48</sup>

States around the country have been taking measures to halt evictions, freeze mortgage payments, freeze utility shut offs, and grant grace periods for rental payments.<sup>49</sup> Inconsistencies among states in passing policies such as mask mandates or halting evictions further reflect how federalism and the lack of a uniform federal policy or guidelines have hurt the U.S. response to the pandemic.<sup>50</sup> Paul Nolette, a chair of the political science department, argues that this "can

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<sup>44</sup> Ferran Arimon & Mark Heimendinger, *The Consolidated Appropriations Act, 2021: Round 2 of the Paycheck Protection Program*, JDSUPRA (Dec. 31, 2020), <https://www.jdsupra.com/legalnews/the-consolidated-appropriations-act-38378/>.

<sup>45</sup> *Here's Everything the Federal Government Has Done to Respond to the Coronavirus so Far*, *supra* note 41.

<sup>46</sup> *SAMHSA Moves Quickly to Begin Releasing \$110 Million in Emergency Grant Funding to Provide Americans with Substance Use Treatment and Mental Health Services During the COVID-19 Pandemic*, U.S. DEP'T HEALTH & HUM. SERVS. (Apr. 20, 2020), <https://www.hhs.gov/about/news/2020/04/20/samhsa-moves-quickly-begin-releasing-110-million-emergency-grant-funding-provide-americans.html>.

<sup>47</sup> *The COVID Pandemic Could Lead to 75,000 Additional Deaths from Alcohol and Drug Misuse and Suicide*, WELL BEING TRUST, <https://wellbeingtrust.org/areas-of-focus/policy-and-advocacy/reports/projected-deaths-of-despair-during-covid-19/> (last visited Feb. 24, 2021).

<sup>48</sup> Kim Usher et al., *Family Violence and COVID-19: Increased Vulnerability and Reduced Reduced Options for Support*, 29 INT'L J. MENTAL NURSING 549, 549–50 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7264607/pdf/INM-9999-na.pdf> (last visited Feb. 24, 2021).

<sup>49</sup> Raifman J., Nocka K., Jones D., Bor J., Lipson S., Jay J., and Chan P. (2020). "COVID-19 US state policy database." Available at: [www.tinyurl.com/statepolicies](http://www.tinyurl.com/statepolicies).

<sup>50</sup> Gretchen Morgenson et al., *The CDC Banned Evictions for Those Affected by Covid. Why are Tenants Being Thrown Out on the Street?*, NBC NEWS (Dec. 17, 2020, 5:00 AM), <https://www.nbcnews.com/news/us-news/cdc-banned-evictions-those-affected-covid-why-are-tenants-being-n1251439>.

introduce unfairness, for sure, because if you're a renter in New York versus a renter in Alabama, then shouldn't you have the same basic rights?"<sup>51</sup> Recently, the U.S. Centers for Disease Control and Prevention (CDC) passed a temporary halt in residential evictions to apply to any state that did not have the same or greater level of protection in the order.<sup>52</sup> Despite the order, tenants were still being evicted.<sup>53</sup> Courts have been inconsistent when enforcing the moratorium, amply revealing the patchwork of policies that result from the United States' federalist structure.<sup>54</sup> The moratorium was set to end on December 31, 2020, but was recently extended to January 31, 2021.<sup>55</sup>

The United States has been taking measures to help Americans being affected by the pandemic, but there are still other policy measures that could be learned from other countries. Other countries are giving cash transfers like the United States' one-time \$1,200 direct payment, but for longer duration. Canada, for example, had a cash transfer approach of \$2,000 per month for four months.<sup>56</sup> Spain developed a unique moratorium on rent payments for those in a vulnerable population for a period of time depending on the type of landlord.<sup>57</sup> For instance, "there is a compulsory automatic moratorium on rent payments for vulnerable households for four months, with rental payments due over a three-year period, or a reduction of rent by 50% for four months" for tenants with more sophisticated landlords such as companies or owners of ten or more properties.<sup>58</sup>

Many countries are offering more generous pandemic employment insurance than the United States.<sup>59</sup> Some governments are subsidizing or completely paying for employees that have to take leave for COVID-related reasons, including

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<sup>51</sup> *Id.*

<sup>52</sup> Dep't of Health and Human Services, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 FED. REG. 173 (2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf>.

<sup>53</sup> Morgenson, *supra* note 50.

<sup>54</sup> *Id.*

<sup>55</sup> Mary K. Cunningham & Abby Boshart, *Extending the CDC Eviction Moratorium Would Keep Families Housed and Prevent the Spread of COVID-19*, URBAN WIRE (Dec. 11, 2020), <https://www.urban.org/urban-wire/extending-cdc-eviction-moratorium-would-keep-families-housed-and-prevent-spread-covid-19>.

<sup>56</sup> Ugo Gentilini et al., *Social Protection and Jobs Responses to COVID-19: A Real-Time Review of Country Measures*, WORLD BANK 1, 108 (2020), <http://documents1.worldbank.org/curated/en/590531592231143435/pdf/Social-Protection-and-Jobs-Responses-to-COVID-19-A-Real-Time-Review-of-Country-Measures-June-12-2020.pdf>.

<sup>57</sup> *COVID-19-Employment-and-Social-Policy-Responses*, OFF. ECON. DEV. (July 24, 2020), <http://www.oecd.org/social/Covid-19-Employment-and-Social-Policy-Responses-by-Country.xlsx>.

<sup>58</sup> *Id.*; *Policy Responses to the COVID-19 Crisis*, OFF. ECON. DEV., <https://www.oecd.org/coronavirus/country-policy-tracker> (follow "Employment and Social" hyperlink) (last updated Jul. 24, 2020).

<sup>59</sup> *Id.*

having to take care of someone sick.<sup>60</sup> Another approach by some governments is giving stipends to those recovering from COVID-19. Sweden provides a temporary parental allowance compensating around 90% of a worker's salary to cover the cost of a school or child care facility closure.<sup>61</sup> Germany has modified the work week but allowed employees to retain 60% of their salary to reduce labor costs for companies and still maintain the labor force.<sup>62</sup> Many of these measures that are providing benefits to the unemployed are being subsidized by the government or are completely paid for by the government.<sup>63</sup> The Slovak Republic has prohibited employers from terminating employees who cannot work because of COVID-19 isolation or are tasked with caring for an individual with a COVID-19 diagnosis.<sup>64</sup>

Other measures taken by governments to address challenges caused by the pandemic include healthcare-related spending. Saudi Arabia has shouldered the burden of coronavirus treatment and testing services by making them free.<sup>65</sup> South Korea is planning on subsidizing health insurance premiums for low-income households.<sup>66</sup> France has helped the homeless avoid COVID-19 by requisitioning hotel rooms to provide them with temporary housing.<sup>67</sup> Countries like Russia, Peru, Paraguay, and Nepal are delivering food to their most vulnerable populations.<sup>68</sup> Grenada and Guatemala are providing food vouchers, medicine to fight COVID-19, and delivery of care packages of basic food items to affected vulnerable persons and households.<sup>69</sup>

The United States' fiscal policy response is as—or more—generous than the responses of other countries.<sup>70</sup> Even so, given the previously discussed overreliance on discretionary fiscal policy measures, the United States will struggle if it does not pass additional stimulus packages.<sup>71</sup> Most European and other developed countries have stronger automatic stabilizer programs than the United

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Kurzarbeit: Germany's Short-Time Work Benefit*, INT'L MONETARY FUND: IMF NEWS (June 15, 2020), <https://www.imf.org/en/News/Articles/2020/06/11/na061120-kurzarbeit-germanys-short-time-work-benefit>.

<sup>63</sup> COVID-19-Employment-and-Social-Policy-Responses, *supra* note 57.

<sup>64</sup> *Id.*

<sup>65</sup> Gentilini, *supra* note 56, at 387.

<sup>66</sup> *Id.* at 416.

<sup>67</sup> COVID-19-Employment-and-Social-Policy-Responses, *supra* note 57.

<sup>68</sup> Gentilini, *supra* note 56, at 317, 348, 351, 368.

<sup>69</sup> *Id.* at 200, 203.

<sup>70</sup> See Fred Imbert, *How the U.S. Economic Response to the Coronavirus Pandemic Stacks up to the Rest of the World*, CNBC (Sep. 28, 2020), <https://www.cnbc.com/2020/09/28/how-the-us-economic-response-to-the-coronavirus-pandemic-stacks-up-to-the-rest-of-the-world.html>.

<sup>71</sup> *Id.*; see also, Vivien Lee & Louise Sheiner, *What are Automatic Stabilizers?*, BROOKINGS (July 2, 2019), <https://www.brookings.edu/blog/up-front/2019/07/02/what-are-automatic-stabilizers/>.

States, which allows them to respond quickly without separately navigating the challenges of legislative consensus on relief packages.<sup>72</sup> In short, relief comes in the form of expanding already well-established systems rather than enacting novel responses to the pandemic.<sup>73</sup> In addition, measures that other countries are taking, although they may seem less generous when looking at the absolute value of total dollars spent, might be more effective because they are tailored towards more permanent solutions. For example, policies that maintain the employer-employee relationship may have longer-lasting impact than the United States' more impermanent approach of one-time stimulus payments or temporary increases to unemployment insurance.<sup>74</sup>

#### IV. VACCINATION POLICY, VACCINE REFUSAL, AND GENERAL COMPLIANCE WITH GOVERNMENT ORDERS

Secretary-General of the United Nations António Guterres passionately argued that “[t]he best response [to the pandemic] is one that responds proportionately to immediate threats while protecting human rights and the rule of law” when confronted with the possibility that governments may use the pandemic as a pretense to adopt unrelated measures to strip individual rights.<sup>75</sup> Countries must strike a careful balance between public health and individual rights to justify intrusions upon liberties that are inherently associated with measures designed to

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<sup>72</sup> Mathias Dolls et al., *Automatic Stabilizers and Economic Crisis: US vs. Europe*, 96 J. PUB. ECON. 279 (2012) (“We find that automatic stabilizers absorb 38% of a proportional income shock in the EU, compared to 32% in the US. In the case of an unemployment shock 47% of the shock is absorbed in the EU, compared to 34% in the US.”).

<sup>73</sup> Stephen Snyder, *How the US Coronavirus Stimulus Package Compares to Those of Europe*, WORLD (Apr. 03, 2020, 1:00PM), <https://www.pri.org/stories/2020-04-03/how-us-coronavirus-stimulus-package-compares-those-europe> (“Yeah. So a friend of mine in France has a nanny, and she can’t work now because of this. And she got a letter from the government saying if she can’t work, continue to pay her and we’ll reimburse you. *That is something that would have happened in normal circumstances if, say, the nanny, you know, got pregnant and had a child and got parental leave.* And that same system is just taken and seamlessly expanded to these circumstances in a way that’s completely different from what we have here.”) (emphasis added).

<sup>74</sup> Jeremie Cohen-Setton and Jean Pisani-Ferry, *When More Delivers Less: Comparing the US and French COVID-19 Crisis Responses*, PETERSON INST. FOR INT’L ECON. (June 2020), <https://www.piie.com/system/files/documents/pb20-9.pdf>.

<sup>75</sup> António Guterres, *We are all in this Together: Human Rights and COVID-19 Response and Recovery*, U.N. (Apr. 23, 2020), <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and>.

mitigate the pandemic.<sup>76</sup> Even still, deprivations of individual rights are not met without challenges.<sup>77</sup>

As we see in the United States, public perceptions of COVID-19 and general compliance with government mandates often align with partisan and political ideologies.<sup>78</sup> This leads to an individual obeying whatever rhetoric fits best with her own political leaning rather than listening to experts or science on the virus.<sup>79</sup> Studies suggest that Republicans are less likely to comply with social distancing guidelines than their Democratic counterparts, signifying the practical consequences of partisan polarization of virus response in the United States.<sup>80</sup> In addition to partisan polarization, another explanator of noncompliance with government measures is the lack of social policies that would help ensure compliance.<sup>81</sup> In other words, people would be more willing to comply with lockdown orders for longer durations if there were existing safety nets, such as additional unemployment insurance during this period, that would help them get through the order.<sup>82</sup>

As noted above, the United States has declined universal health care and continues to allow the private market to drive health care delivery for all but certain select segments of the population. Those deemed deserving of government assistance due to age, retirement, poverty, pregnancy, dependency, veteran status, or a few other conditions may receive assistance through government health care programs. But even within U.S. public programs it is not accurate to suggest that

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<sup>76</sup> Lawrence O. Gostin, et al., *Presidential Powers and Response to COVID-19*, 323 J. AM. MED. ASS'N 1, 2 (2020) (recommending that governments adhere to six key principles when responding to a public health crisis that implicates intrusion into individual rights: "(1) interventions should be evidence-based and grounded in scientific knowledge, not political considerations; (2) health officials should make individualized risk assessments demonstrating a significant risk to the public; (3) coercive measures should be proportionate to the threat faced; (4) there should be no less restrictive alternatives to accomplish public health objectives; (5) individuals subject to deprivation of liberty should be afforded due process, including impartial hearings; and (6) government should ensure fair and equal treatment, avoiding stigma or discrimination against individuals or groups.").

<sup>77</sup> See, e.g., 6th St. Bus. Partners LLC v. Abbott, No. 1:20-CV-706-RP, 2020 WL 4274589, at \*1 (W.D. Tex. Jul. 24, 2020) (alleging that the Texas Governor's executive order requiring bars to operate at 50% capacity was unconstitutional under procedural due process, substantive due process, and takings claims).

<sup>78</sup> See P. Sol Hart et al., *Politicization and Polarization in COVID-19 News Coverage*, 42 SCI. COMM. 679 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/1075547020950735> (showing how politicized news coverage affects public perception of both COVID-19 and governments' actions to counter it).

<sup>79</sup> Christina Pazzanese, *Why Isn't the Right More Afraid of COVID-19?*, HARV. GAZETTE (Oct. 30, 2020), <https://news.harvard.edu/gazette/story/2020/10/what-caused-the-u-s-anti-science-trend/>.

<sup>80</sup> Hart, *supra* note 78, at 3.

<sup>81</sup> Scott L. Greer et al., *The Comparative Politics of COVID-19: The Need to Understand Government Responses*, 15 GLOB. PUB. HEALTH 1413, 1414 (2020).

<sup>82</sup> *Id.* at 1415.

the government acts as a fiduciary, motivated solely by the best medical interest of its citizens. The U.S. modern administrative state was politicized in stark terms during the past year, with scientific evidence elided or ignored, agency leadership dismissed for exercising independent judgment rather than upholding the party line.<sup>83</sup> The lack of trust in the government risked the effectiveness of the COVID-19 vaccine rollout, with citizens questioning the validity of the scientific process by which these new products were brought to market.<sup>84</sup> The phrase “modern administrative state” is not a neutral one but rather is used often in conservative U.S. political circles to refer to “big government” and usurpation of power under the federal executive branch, away from more directly politically accountable legislative representatives and state authorities. At a time where the spread of misinformation is arguably at its greatest due to the internet, it becomes even more evident how the challenge of general government mistrust is affecting an individual’s confidence in complying with government orders, and most disturbingly, refusing to take the vaccine.<sup>85</sup>

## V. CONCLUSION

Each of these themes has become even more critically important to examine, drawing lessons from the past and prescriptions for the future. This time last year, the pandemic was ravaging other parts of the world but had made minimal impact on U.S. shores. Now, it has become abundantly clear, both here and abroad, that the proverbial light at the end of the tunnel lies in the hopes that enough of the population takes the vaccine to develop herd immunity to the virus. The United

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<sup>83</sup> See generally Giuliana Viglione, *Four Ways Trump has Meddled in Pandemic Science—and Why it Matters*, NATURE (Nov. 3, 2020), <https://www.nature.com/articles/d41586-020-03035-4> (“At a campaign rally this week, Trump suggested that if he were re-elected, he would fire much-revered and long-standing infectious-disease expert Anthony Fauci, who has led the National Institute of Allergy and Infectious Diseases, part of the National Institutes of Health (NIH), since 1984. Fauci has earned international acclaim as an adviser on HIV/AIDS to six US presidents, and is one of the most-cited researchers in the world.”).

<sup>84</sup> Zakiya Whatley & Titiyo Shodiya, *Why So Many Americans Are Skeptical of a Coronavirus Vaccine*, SCIENTIFIC AM. (Oct. 12, 2020), <https://www.scientificamerican.com/article/why-so-many-americans-are-skeptical-of-a-coronavirus-vaccine/> (suggesting several conspiracy theories that are being circulated about vaccines ranging from the vaccine containing surveillance microchips to questioning the motives of the pharmaceutical industries).

<sup>85</sup> Alexandre de Figueiredo et al., *Mapping Global Trends in Vaccine Confidence and Investigating Barriers to Vaccine Uptake: A Large-scale Retrospective Temporal Modelling Study*, 396 LANCET 898, 907 (2020) (“Sentiments seeding doubt and distrust and the viral spread of misinformation are contributing to a landscape of uncertainty. Some actors have purposefully polarised vaccine debates, exploiting the doubting public and system weaknesses for political purposes, while waning vaccine confidence in other settings might be influenced by a wider environment of distrust in government and scientific elites.”).

States can take notes from other countries on how a universal healthcare system can make the vaccine rollout more effective and ameliorate the suffering caused by the pandemic itself and the United States' halting responses to the pandemic. Overreliance on discretionary fiscal policy measures creates a challenging environment for states when mixed with a federalist structure of government. Moreover, public health interventions that call for collective action and compromise individual rights are challenging for a country like the United States, which constitutionally enshrines values of individual liberty, freedom, and autonomy. That effort becomes all the more challenging due to widespread distrust in government and the spread of false information associated with attempts to address a public health concern. The hope is that the COVID-19 challenges faced in the United States provide lessons for the future, including a more robust public health infrastructure; more sustained, widespread social safety nets; better coordination among various branches and levels of government; and appropriate reliance on scientific knowledge rather than purely partisan influences driving health policymaking.