



Constitutional Social Justice

Developing theory for welfare reform

Working Paper Version 3.0

by Simon Duffy

This is a working paper - all comments welcome

Summary

This paper sets out a critique of the flaws underlying the current design of the welfare state and theory of social justice which could be used to develop a better designed system. In summary the argument of the paper is that:

- The current conflict between Left and Right has led to an inadequate understanding of the problems inherent in the current design of the welfare state - the central problem is that we need to create community solutions that provide both reasonable security and support and encouragement to personal growth.
- The current system provides benefits and welfare, but often asks people to pay a significant price for these benefits by locking people in to numerous poverty traps: disincentives to earn, save, love, create and a framework which erodes personal self-respect and citizenship.
- The principles of social justice demand that we are much clearer in creating a framework of universal entitlement and a system of fair contribution to support those rights. At its simplest we might see the goal as universal entitlements and flat taxes.
- These rights and duties would benefit from being confirmed in constitutional commitments, safe from day-to-day policy-making and legislation, capable of being interpreted differently in different communities and ultimately safeguarded through the courts.
- Although these ideas are difficult to bring to reality because of the warping effect of contemporary politics and the need to focus on the median voter there is no economic, ethical or legal obstacle to bringing about radical reform.

There are eight degrees of charity, one higher than the other. The highest degree, exceeded by none, is that of the person who assists a poor Jew by providing him with a gift or loan or by accepting him into a business partnership or by helping him find employment - in a word, by putting him where he can dispense with other people's aid.

Maimonides, Mishneh Torah: Seeds.

Christ does not call his benefactors loving or charitable. He calls them just. The Gospel makes no distinction between the love of our neighbour and justice. In the eyes of the Greeks also a respect for Zeus the suppliant was the first duty of justice. We have invented the distinction between justice and charity. It is easy to understand why. Our notion of justice dispenses him who possesses from the obligation of giving. If he gives, all the same, he thinks he has a right to be pleased with himself. He thinks he has done good work. As for him who receives, it depends on the way he interprets this notion whether he is dispensed from all gratitude, or whether it obliges him to offer servile thanks.

Only the absolute identification of justice and love makes the co-existence possible of compassion and gratitude on the one hand, and on the other, of respect for the dignity of affliction in the afflicted - a respect felt by the sufferer himself and the others.

It has to be recognised that no kindness can go further than justice without constituting a fault under a false appearance of kindness. But the just must be thanked for being just, because justice is so beautiful a thing, in the same way we thank God because of his great glory. Any other gratitude is servile and even animal.

Simone Weil, Waiting On God, p. 97

Above all, I think the idea of citizenship should remain at the centre of modern political debates about social and economic arrangements. The concept of a citizen is that of a person who can hold [their] head high and participate fully and with dignity in the life of [their] society.

Jeremy Waldron, Liberal Rights

Preface

This paper is a working document, which aims to out-line a better alternative to our existing welfare services and offer a comprehensive approach to welfare reform. It has been written out of a growing sense of frustration with the debate about welfare reform which, to my mind, rarely seems to look at the issues in the right way. This paper tries to address the issue of welfare reform in a way that will stimulate debate and raise our expectations of what can be achieved.

The first version of this paper formed the second part of my report to the Commonwealth Fund of New York: *Human Being and Crazy Systems*, which I completed as a Harkness Fellow in 1995. It was produced while I was based at the Colorado University Affiliated Program at the J. F. K. Center, Denver. To a large extent the paper has been written with the particular needs of people with disabilities in mind.

The paper is still being revised and any criticisms or further ideas would be welcome. A number of people have already provided helpful criticisms including: Virginia Moffatt, Steve Rosenberg, Simon Stevens, Patricia Herbert and Petros Protopapadakis. Please contact me with any comments, criticisms or suggestions for improvement. A second version was produced in 2004 and this third version has been produced in 2010.

As it stands there are proposals within this paper that I could currently question. However I have currently left the paper largely unchanged in order not to undermine its central thrust. Time and experience have offered me some additional insight into how to create feasible, radical reforms - without necessarily going to the extremes set out within this essay. This essay reflects a younger man's perspective. However I still think the central insight is correct and that, even if there are some more modest versions of these reforms which would be more feasible, the version set out here offers a useful starting point for debate.

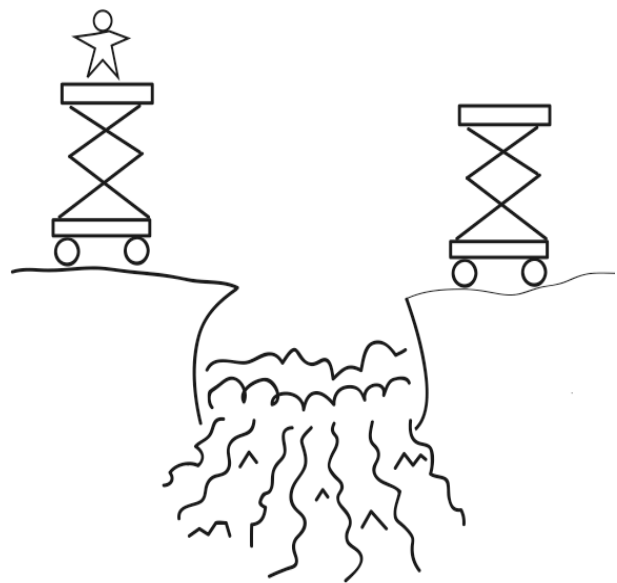
1. The problem with welfare

Given that there is so much agreement that there is *something* wrong with the welfare system it is a little surprising to find that there is very little shared sense of what that something *is*.¹ And part of the reason for this is that the issue has got caught in the teeth of bipartisan politics in such a way that it never gets properly digested, never gets honestly analysed.²

The strength of the Right is that they have a very clear picture of the ills of the present system: the way it weakens individual autonomy, family and the strength of communities. Their weakness is that they cannot bring themselves to admit that it is neither acceptable nor workable to let people starve or be homeless, go without health care, an education or the practical supports they need if they have a disability. Of course, in their hearts, most of them know this and so their proposed solutions are rarely as radical as their talk and, ironically, at their heart those solutions are almost always *socialist* ones: forcing people to work in state sponsored jobs.

The Left's strength is that they know that some system of community support is necessary. Unfortunately their weakness is that they have not found away of articulating such a system without relying on a bankrupt conception of social justice and fatally optimistic faith in the state. In their hearts, many on the Left know that they must move on, but in their mind's eye they can see nothing other than the ruins of once glorious ideas and the attack on these same ruins by the Right; and so many on the Left choose to fight over those ruins rather than move the battlefield to some more advantageous site.

There are many specific Left-Right conflicts but perhaps the most characteristic and, in a way, the most comic is the fight over the level of the minimum welfare income and the fight over the level of the minimum wage. The Left wishes to raise welfare incomes and raise the minimum wage. The Right wishes to lower welfare incomes and lower or abandon the minimum wage. But from the perspective of the person "on welfare" neither policy addresses the real problem - the risks and hazards of making the jump from work to welfare. It is as if a man needed to get to the other side of a fast flowing river but his only two strategies for crossing from one side to another safely was either to both raise his side



¹ The term "welfare" has both come to have a pejorative flavor and, in particular, it is taken to refer to only those supports we associate with the poor, or those needing special help; these two facts are of course connected. However by "welfare" I will be referring to *all* those structures of community support we utilize - including education and health care.

² It is not exactly the *bi*-partisan character of politics in the UK and the USA that is at fault here. The political scene has merely crystallized around two mutually exclusive and failed solutions to the problem, and as solving the matter means, in some way, stepping out of a faulty paradigmatic view of things and, in some way, stepping towards the faulty view of the other side, then the political party structures helps to insulate both sides from a realistic view of the matter. The situation is akin to two different groups looking at the famous old woman / young woman visual effect [see Covey Stephen R. The Seven Habits of Highly Effective People p. 27] and both groups not only really seeing the picture quite differently from the other, but both group being *paid* to see the picture quite differently: that is the additional effect of having a party structure where a party's very sense of identity is furnished by its attitude to this problem.

of the bank *and* the other side, or to lower his side *and* the other side. The fact is that both strategies are not only internally incoherent from the point of view of providing the incentive to jump, but both do not face the real issue - “why is the fast flowing river there, and why is it so dangerous?”

I will argue in this paper that this kind of Left-Right debate is radically misconceived, and does not get to the bottom of the real moral challenge we face. The whole concept of welfare as a state-run charity must be overturned. The following fable is told in order to help us to gain a fresh perspective on the problem of “welfare.”

2. A Fable - The beggar and the modern village

Once upon a time a man arrived at a village. He was poor, he had only the clothes he stood up in and he felt very hungry. So he decided that he must ask for help. But when he went to the first house the people there told him he could not beg in this village, this was a modern village, and that he would have to go the mayor. The mayor could tell him what to do. So the man walked through the streets until he found the Town Hall. When he reached the town hall he asked for the Mayor and the Mayor came down to see him.

“What do you want?” asked the mayor.

“I need something to eat and a place to sleep and I was told that I should come to you, for one cannot beg in this modern village.”

“That is correct, this is a modern village. We have everything organised here, and do not worry, as long as you obey our rules we will make sure that you have everything you need. Just come with me.”

And so the poor man and the mayor went off together. It was not long before they stopped at what looked like a fat chimney, rising out of the ground about 12 feet high. Next to the chimney was a crane with a large basket hung from its arm.

“Okay, in you jump!” said the Mayor

“What?” asked the poor man, for these modern ways were unfamiliar to him and he was scared of the chimney and the basket.

“All you need to do is jump in the basket and we will lower you into your home. That’s one of the rules here. If you obey the rules you will get three good meals a day and inside you will find new clothes and a shelter. These things are modest but quite adequate and they have all been generously provided by the local tax payers.

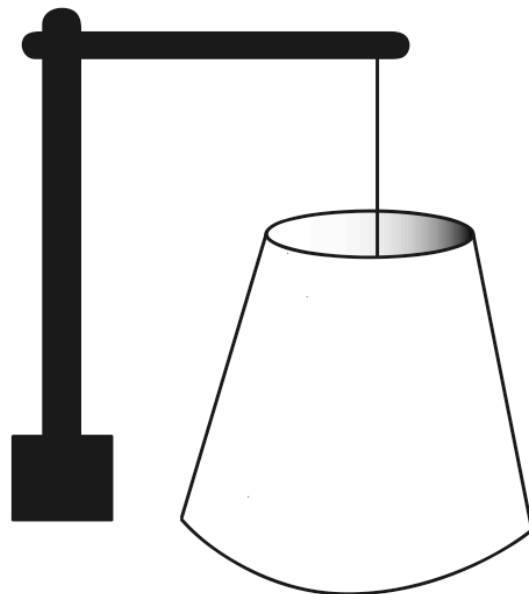
“But why the basket? Why not just build a door? It looks like a prison.”

“Well we have to be careful with taxpayers money. With no door nobody can sneak in and steal what they are not entitled to, nor can you get out and get extra help that you don’t need. You can have all you need, but no more. That’s fair isn’t it?”

“But am I not free to leave?”

“Free to leave? Of course you are free to leave. We positively want you to leave. No insult intended but we don’t really like giving our money away, but we know it is our duty. Anyway, don’t worry about that now. Inside your home you will find books which explain how you can get out.”

So the poor man climbed in the basket and the mayor swung the crane up and over the edge of the chimney and lowered the poor man into his new home. And the mayor was right. Inside the



building were some better clothes, a bed with a roof to keep off the rain; and a collection of manuals, mostly self-help books, but also a large handbook describing the modern village's welfare system.

Each day, three times a day, down would come the poor man's meal, and the food was not bad, (though it did become a little repetitive after a while). And so, after a few days the poor man began to regain his strength and started to think about what to do next. And, of course, he wondered whether he could get a job so that he could take care of himself. And so, he shouted over the wall:

"Hello! Can anyone hear me? I was wondering whether I could come out today and start to look for a job. Can you hear me?"

No one replied. And so, when dinner arrived he attached a note to the basket asking whether he could leave the chimney for a while. With his next meal the answer arrived, it read:

"Read the book! What do you think we put it there for? Yours, the Mayor of the modern village"

And so the poor man read the book. It had many pages, and many appendices. It described all the details of the welfare system in the modern village and it took a long time to read. Eventually on page 239 he found the following summary:

"It is important to remember that help should only be for those who need it, anyone who has any income, wealth, or any family to support him must use up all those things before he comes to us. And if any poor man starts to gain any of these things then the village should no longer support him. Also, while we must offer them health care and an education while they are under our care we are under no such obligation to provide those things to a man who can take care of himself, which would be improper and wasteful. And it must be clear to everyone that should they no longer wish to avail themselves of our care then they must not be guaranteed any support in the future, for we cannot promise people a pension for life, that would only be a temptation for indolence and sloth."

The poor man felt very sad. This is not what he had wanted at all, he was quite good with his hands, he liked the open road and the smell of freshly cut grass. His new life was beginning to seem a very sorry one. But he could see no way out, the walls were too high and lent inwards so he could never climb out and the official way out would mean he might never return, that he would be allowed to starve on the streets or on the road to the next village, which he knew was a very long way from the modern village. His heart began to break.

Then one day he heard something, it was the rumble of a crowd talking outside the chimney. Then he heard something else, the sound of someone clambering up the side of the chimney. Over the top of the wall a small face appeared, the face of a small boy.

"Hello, down there!" he cried.

"Hello." replied the poor man, softly.

"What are you doing?" said the young boy.

"Oh, nothing... What are you doing?"

"Oh I'm here to listen to the debate. A good seat, eh? Want to join me?"

"No, the walls lean in. I can get no grip to climb. What are they debating?" said the poor man.

"They are debating the welfare system in our village. Some people say we give too much to the poor, they say that if we gave them less then they would be more motivated to get out and fend for

themselves. On the other hand some people think we should give the poor more food, that it is good to give and the rich have too much anyway.”

“Oh...” The poor man paused, glumly and then he asked, “Has no one suggested knocking down these walls?”

The present welfare system is an institution, and the crime of welfare is that it wastes so many people’s lives. Institutions, like the institutions that have incarcerated people with disabilities for much of the twentieth century, cannot be improved; they can either be maintained or shut down.

3. The damage done by welfare

My argument is that in the USA and the UK the present welfare system creates a complex series of traps; traps which damage people's lives. Not only do these traps reduce the individual's autonomy and ability to contribute, but they weaken the connections to family and to community.

The incentives trap

A classic and familiar trap of the welfare system is the one that is often known as *the poverty trap* (though as we will see there are many such poverty traps.) The trap works by taking away benefits at a rate that is close or equal to the rate at which new income is earned. Normally, once you start to earn more than a few dollars you suffer a marginal tax rate of close to 100%. Typically this rate is called the marginal loss of benefit rate, but in essence there is no difference to the psychological impact of a "loss of benefit rate" and a "tax rate" and if punitive rates of marginal taxation damage the incentive to work of the wealthy there is no reason to suppose that it won't have some similar effect on the poor.³

Of course, while many people can see the problem here, there is little sense of what would constitute a reasonable solution: for the way we *think* about the act of giving binds our imaginations. If we give somebody \$5,000 dollars a year and then allow them to earn whatever they can on top of this, minus a universal tax rate of 25%, how can this be fair when others must earn all their income and do not get a \$5,000 tax free bonus from the state? So the supposed gift comes with a crucial caveat, it is as if one were to hand over the money and say, "Here is \$5,000 dollars, we give it to you because you are in desperate need, but you do not deserve it and as soon as you have enough money you must return our gift." The gift is conditional on the individual's poverty.

The linkage trap

Linking separate welfare goods together creates another crucial trap. The USA's health system is an example of a most severe linkage trap; for being "on welfare" entitles you to free health care but coming off welfare risks the loss of this benefit. In the UK the same kind of linkage occurs between income and housing that makes many people believe that the risk of work is too great if it also means the loss of their state-paid rent.

The wealth trap

The third trap is the wealth trap, that is where an entitlement depends upon not having any wealth, be that property or savings. Of course the logic of welfare makes this quite inevitable - why should we give away income, health care or support to some one who has their own resources. So in order to get that help, especially any kind of long-term or expensive care it is necessary to reduce oneself to the necessary state of helplessness. But of course, once used up or passed away those resources can neither enrich one's own life nor act as a springboard to some new way of life.

The family trap

We also have family traps, ways of depriving the person in need of their family's support, for again we count the family as an asset and demand that the individual be asset-stripped before help can be given - for why should the state help if the family is there, wouldn't that undermine the family's responsibility? So individuals, who might in other circumstances have got married, will stay single to enhance their benefit entitlements; and families, who care for a disabled son or daughter or grandmother, are forced into crisis before they can get *any* help - they have to admit they cannot cope before they can get the help that would have allowed them to cope.

³ And there is plenty of evidence that punitive rates of taxation *do* damage the incentive to work, even for those with very high incomes.

The security trap

We also have security traps, ways of making sure people know how difficult it is to get any benefits, so that they learn that if they ever were to leave the system they should never feel sure that they are likely to quickly regain their entitlements. Again the desire to build a system which discourages people from entering it, at the same time becomes a system whose inhabitants are given less and less reason to leave it.

The power trap

Some people also fall victim to the power trap; the desire to get one's most basic needs met means that one has to get the approval of the social worker, the doctor, the teacher or the bureaucrat. Soon the individual's desires and dreams start to die as they see themselves dependent upon this uncontrollable other person. Soon they start to play along with the intoxicating game of professional power, the very power game that motivates some people to want to have power over others, until both sides have fallen into a stultified relationship of control and passivity. The power trap ultimately kills the drive to change and develop which must be at the heart of human life.

The stigma trap

A similar, but distinct, trap to the power trap, is the stigma trap. Where the power trap brings one into a disabling relationship with another person who has real or imaginary power over you, the trap of stigma is the trap created by the general public understanding of welfare. If welfare is seen as a system for *them*, the poor, the underprivileged, the weak, then those outside that system will be quick to identify the users of the system as *them* and ascribe those qualities to them.

Similarly, the person who is so identified has only two options, to either passively accept such a characterisation or to fight back. Unfortunately fighting-back does not have to mean joining society in the respectable world of work - it can just as easily mean fighting the society that seems to despise you, by engaging in anti-social or criminal activity. The stigma trap is reflected in the way we organise our institutions. From a distance there seems to be no sense in having a social security office and a tax office when both deal with exactly the same issues, it merely reinforces the sense that the social security office is for *them* - those who take - and the Inland Revenue office is for *us* - we who give.

The labour market trap

Questions of the labour market might not seem to enter into a discussion of the welfare system, but the labour market is the crucial bridge by which we leave the welfare system and so it is in fact part of that same system. The motives for price-fixing within the labour market (the minimum wage) seem benign - for it would seem to raise the standard of living of the less well off and in fact give the poor on welfare the hope of a reasonable standard of living. However for the poor a minimum wage does two things: first it reduces the supply of paying jobs and second it reduces the choice of the kind of work a person could do. Put the other way round if I approach the labour market but am told I cannot offer my services at a price below a certain amount then not only has my likelihood of finding work gone down, but also the type of work that I could find has reduced in range.⁴

The trust trap

A trap which extends far beyond the realm of those we normally consider welfare recipients is the trap created by building systems based on the assumption that those who are to receive these benefits are not to be trusted. When schools are provided for children, but no authority is given to

⁴ This is not to say that in the context of a system that already has a significant poverty trap the minimum wage won't be effective. Clearly raising the level of price of low paid work will enable some people to come off benefits when the advantages are greater.

the parent in the selection of a child's education, the parent's authority is undermined and the parent learns that it is not their responsibility to educate their own child. When services are provided on a "take it or leave it" basis the recipient's autonomy and self-belief are undermined. When money is given, but the individual is allowed no discretion in how to spend that money, there is no incentive for resourcefulness or efficiency. If you spend time in any human service or welfare institution, from our schools to our benefit offices you learn about the contempt for others which is generated by systems which only give on the presumption that the individual is not capable.

The complexity trap

Anyone familiar with the welfare systems in the UK and the USA will want to point to the many efforts made to reform the system precisely in the light of these kinds of criticism of the system. But, so often, these amendments to the system merely make matters worse: the reform is designed to improve the incentives in such a way that only a very small number of worthy candidates can pass the test and get the new benefit, credit, waiver or whatever. A few accrue some small benefit and most are left out in the cold - but worst of all the system makes itself one bit more labyrinthine with each reform, and many will simply learn to live with what that system gives rather than working out how to leave it.

When you set out the range of traps we create for the poor, the numbers of ways we encourage them to stay poor, then it is not surprising that millions of people stay caught in this system. What is surprising is that every day thousands of people actually get out. The question remains however, if the poor and the weak are always to be with us - and I fear that some wish they were not - does welfare always have to be with us too. I think there are ways of designing legal structures and providing services which escape the welfare traps and that these ways are neither expensive nor politically impossible, but they will present enormous challenges to our political leaders. But before political solutions can be achieved we need to put the problem of welfare in a new light, we need to work out how we can give without indignity and corruption, we need to rethink the meaning of social justice.

4. Key principles of social justice

The key to providing “non-welfare” structures of support is to find the key principles that can replace the faulty assumptions that have underwritten the present welfare system. I think there are some better principles, principles which are intuitively attractive, but which have been buried in the debris of recent political thinking.

Citizenship

There are two ways of giving somebody something: either giving somebody something they deserve or giving them something they do not deserve.⁵ And to give something to somebody who does not deserve it damages the giver and the recipient. That means that if we accept the need for a system of community support then we must found that system on the idea of equal citizenship, where each individual is an equal member of the community and where the support that is received is received as a right, and what is given is a duty. The only alternative is to found the system on the idea of patronage, where the natural inequality of man is used as the basis for the organisation of society and where the support that is given is seen as a “charitable” gift, and is not required by justice.

Now, while the world does generate real differences between individuals - some people *are* just more powerful than others - this does not mean that we have to treat each other in a spirit of inequality.⁶ But, while we do not want any one to go without the basic necessities of life: health, education, food, clothing, housing or any practical support that we need to get on with our lives, we give with a poor and grudging spirit: we give out of pity, we do not respect those to whom we give, and so we give in such a way that we do not allow them to escape their status as mere recipients. We fail to treat each other as citizens, not equal as individuals, but equal as members of a specific community.⁷

But to accept the principle that we must treat each other in a spirit of equality as citizens, as members of a community does not answer the more practical question of how a system of community supports should operate in the light of that spirit. We face a crisis of the imagination. We

⁵ See Simon Weil. Presents, given by family members or friends, may seem to exist in a moral space between these two points, however those presents are given in a loving context, which is a moral context which is already contained by the idea of desert. Presents which are not given in this context are bribes or other forms of corrupt giving.

⁶ Hannah Arendt wrote, “Equality of Condition, though it is certainly a basic requirement for justice, is nevertheless among the greatest and most uncertain ventures of modern mankind. The more equal conditions are, the less explanation there is for the differences that actually exist between people; and thus all the more unequal do individuals and groups become. This perplexing consequence came fully to light as soon as equality was no longer seen in terms of an omnipotent being like God or an unavoidable common destiny like death. Whenever equality becomes a mundane fact in itself, without any gauge by which it can be measured or explained, then there is one chance in a hundred that it will be recognized simply as the working principle of a political organization in which otherwise unequal people have equal rights; there are ninety-nine chances that it will be mistaken for an innate quality of every individual, who is “normal” if he is like everybody else and “abnormal” if he happens to be different. This perversion of equality from a political into a social concept is all the more dangerous when a society leaves but little space for special groups and individuals, for then the differences become all the more conspicuous.” (*Hannah Arendt, The Origins of Totalitarianism* p.54) Not only does she make the correct distinction between equality as a political principle and equality as a quality she is also very pessimistic about our ability to hold on to that distinction. Robert Nozick makes a similar point in *Anarchy, State and Utopia*, pp. 239-246 where he argues that if we remove dimensions of diversity we reduce the diversity of criteria by which we can achieve self-esteem.

⁷ I do not mean to imply here that the membership of a specific community is unproblematic or simple. Clearly we can belong to several communities: I am a citizen of the United Kingdom, presently residing in the USA, and I also share membership of a world community. The point is rather that it is through our real and practical membership of specific communities that we can be real “fellow citizens,” if some individuals seem to belong to conflicting communities or no community that raises a separate problem.

need to be able to imagine how a system of social supports can be constructed in a spirit of equality and justice and without charity or patronage.

Social justice

The true nature of social justice seems to have been a major topic of debate over the last 50 years. However much more energy has actually gone into a debate about means - the market versus state control - than has gone into really imagining what a socially just society would be like. The images that exist are either of some kind of equality, or greater degree of equality, on the one hand versus images of robust individualism and efficiency.

Over that time there has only really been one truly original contribution, which was made by John Rawls, who published *A Theory of Justice* in 1971.⁸ Rawls argued that Justice demands *first* that we create a regime of equal political rights - free speech, free elections, independent judicial system etc. - and second that we make our “social arrangements” more just. More specifically, social justice demanded that all inequalities in income be justified by their efficacy in raising the standard of living of the poorest. This principle of social justice was known as the maximin principle - maximise the minimum standard of living. In terms of contemporary orthodoxy what Rawls had done was to combine the Left’s concern for the poor with the Right’s argument that productivity demands a degree of inequality.

Philosophically Rawls’ work was highly influential and still dominates the landscape of political philosophy. It offered a non-socialist way of reinvigorating what is sometimes known as Left Liberalism and it evoked lively criticism from traditional Liberals, Conservatives and a rather new (and vague) species the communitarian.⁹ Politically, however, Rawls’ views have had next to no effect. Partially this was because his book is very light on practical ways of achieving his goals. Partially it was because, although very clever, his maximin principle is quite intangible: practically the principle is difficult to operationalise in a world already full of inequalities; and morally the principle is rather bloodless - it is very difficult to get worked up about when, in itself, the maximum minimum makes no moral distinction between a state where people live in abject poverty or one where the poorest enjoy all the pleasures of middle class life.

However the aspect of *A Theory of Justice* that I want to make use of here is the idea of a social contract as the means of determining what constitutes social justice.¹⁰ Rawls asks us to imagine a group of people coming together to forge the principles upon which their new community will be based, however he proposes that this contract be made “behind a veil of ignorance” - so that none of the people who are engaged in the job of constitution building know what their social situation will be when they take up their place in the community. Crudely, one might compare their situation to that of souls in heaven waiting to fill human bodies, but not knowing which bodies they would fill. Rawls argues that his hypothesis - a social contract forged behind a veil of ignorance - combines the objectivity required by fairness (that is, we cannot bend the contract to our advantage if we do not know who we will be) with the obligations implied by a freely entered into contract.

⁸ See John Rawls, *A Theory of Justice*, Cambridge, Harvard University Press, 1971.

⁹ When I use the term liberal I do so in the tradition of British political philosophy where a liberal is someone who believes in individual freedom and the efficacy of markets. This clearly has little connection to the American use of the term liberal.

¹⁰ To some extent the modern day Rawls seems to have backtracked from his original position and he now places more emphasis on the social contract as a pedagogic instrument for making his substantive point. However, whatever Rawls now thinks, I think there is something intuitively attractive and persuasive about his initial argument. Though as we shall see I make some different assumptions and use it to reach different conclusions.

He then goes on to argue that if you were in this situation you would be “risk-averse,” you would be most concerned about what would happen to you if you were to end up amongst the poorest; and therefore, when forging the social contract, you would try to maximise the standard of living of the poorest. I think the biggest problem with this account is not the dubious assumption about our attitude to risk in a situation of such radical uncertainty. The biggest problem is that the whole account assumes that our only concern will be “How big a piece of the cake can I get,” that is, his assumption that the value of life is proportional to how much one can consume.¹¹ So, before taking a view of what a fair distribution looks like we need to carefully consider what it is that we want social justice to achieve.

Human need and human growth

My basic assertion is that poverty or a situation of human need is not the same as a situation of relative inequality, instead poverty is a human situation where one is dominated by the need to attain certain human goods and to be freed from poverty is to be freed from fear. However, what precisely that appropriate level of security *is* is relative to a particular community, but not relative to how poor you *feel*. For it is quite possible to feel poor - and not be poor; to live in fear of not getting everything you need - and yet to already have what you need. The fact that there is no objective, or scientific, or democratic answer to what counts as “an adequate level” does not mean that the question of what is required is not something human beings cannot make reasonable judgements about. However it does mean that the question will never be closed, it will always be an issue open to public debate.¹²

If one, (like Rawls), makes the faulty assumptions that human life is all about consumption then one does not need a conception of poverty or human need, for all that is at stake is how much one can get.¹³ It is this belief that can make any inequality in wealth or income appear inequitable; for, if life is really only about having so much of x, then it will be a matter of the utmost importance that your neighbour has twice as much x as you do. But this belief confuses us. It does not distinguish the truly basic and materialistic quality of human need from the quality of life as a whole.

Consumption is not irrelevant to human life. We are not angels; and there are a number of discrete goods which are critical to human life: food & clothing, health care, housing, support, education and, possibly, communication and transport.¹⁴ But what is essential to the good life is to be able to freely flourish. This does not mean to climb to the ‘top’, nor does it mean to be the same as everyone else; rather it means that we must be able to endeavour to develop our own unique way forward, while confronting reality and the real constraints that the world puts in our way. Our personal growth consists of learning, giving, loving, and building; and the typical modes through which our growth is constituted in this society are ownership; contribution (paid or freely given); love, marriage and family; and learning.

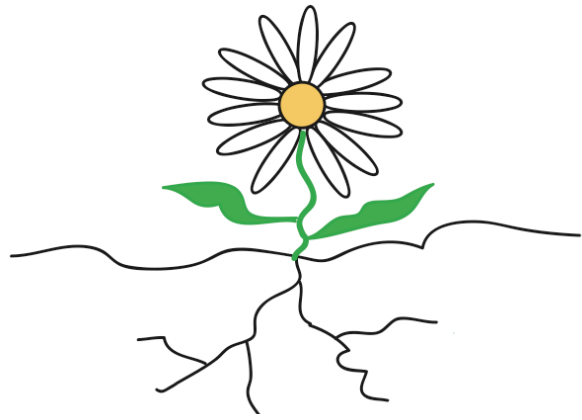
¹¹ I think Rawls’ assumption here shows how dominant a utilitarian view of things was for him, (as it is, in fact, for most people today) even when utilitarianism was the theory he was meant to be attacking. For although he said people should be treated as ends, people with their own lives to lead, he could only imagine the value of that life as being completely dependent upon the capacity to consume.

¹² Hopefully however this does not mean that these issues will be constantly debated.

¹³ On reflection it is not fair to level this criticism at Rawls. It is more a matter of how his theory has been used and abused by others.

¹⁴ Clearly, already, I am articulating my view of what counts as human need within British and American communities. The fact that a different list would be given by another person living in a different community does not make the concept of poverty *merely* relative. Each view is taken on an understanding of what each individual in that community needs in order to be able to “get on with life” - the fact that this is different in different places does not make poverty any less real for the individual in that specific community.

A metaphor for human life is a flower grown from seed. The seed starts below the surface of the earth, growing in the dark, sucking up nutrients and water. When the seedling breaks the surface it becomes subject to light, capable of fertility, beauty and growth. In the same way there are basic things we need, to be able to 'get ourselves going'; but the whole of life is not just a matter of sucking up those basic goods, at a certain point we begin to contribute to the world, adding our character to the world, building a home in the world, contributing by work or through voluntary action to the community and forging relationships of love, and perhaps bringing new life into the world.



In fact, if we listen to the voices of a group who have always been considered a classic case of the 'deserving poor', people with disabilities; what we hear them saying is not 'Take care of us!' instead it's, 'Let us live our lives!' 'Let us contribute, let us work!' 'Let us own our own homes!' 'Let us take control of the funding for our supports!' Consumption is not the dream; the dream is autonomy, control over one's own destiny, a valued and contributing role in community life, love and family.

Already this distinction between human need and human growth illuminates many of the problems in the welfare system. At present, when we meet those basic human needs, by giving certain goods to our fellow citizens we do so in ways which limit them, which reduce their opportunities to contribute, grow, love, learn and create a life for themselves. So far, of course, this is just an argument for tearing down the walls of welfare and doing nothing in its place; however this will not meet the needs of our time.

The ideal of independence and the idle poor

The ideal of independence, and the reality for a shrinking percentage of the population, is that their 'above the surface' endeavours - normally either working for money or owning certain resources - will give them the necessary basic goods that the individual also needs to live. And the typical cry of thinkers on the Right is that people must have every encouragement to work, that work is the way to independence, and if you are not capable of work then your family should take care of you.

While this is the ideal there is also common acknowledgement that many, many people will need help from outside the family. Having damned the welfare system the typical thinker on the Right is happy to run off their own list of those who will still need taking care of by the tax-payer. For instance the Republican satirist P. J. O'Rourke writes:

The other secret to balancing the budget is to remember that all tax revenue is the result of holding a gun to somebody's head. Not paying taxes is against the law. If you don't pay your taxes, you'll be fined. If you don't pay the fine you'll be jailed. If you try to escape from jail, you'll be shot. Thus, I - in my role as citizen and voter - am going to shoot you - in your role as taxpayer and ripe suck - if you do not pay your share of the national tab. Therefore, every time the government spends money on anything, you have to ask yourself, "Would I kill my kindly, grey haired mother for this?" In the case of defence spending, the argument is simple: "Come on Ma, everybody's in this together. If those Canadian hordes come down over the border, we'll all be dead meat. Pony up." In the case of helping cripples, orphans and blind people, the argument is almost as persuasive: "Mother, I know you don't know these people from Adam, but we've got five thousand years of Judeo-Christian-Muslim-Buddhist-Hindu-Confucian-animist-jungle-God morality going here.

Fork over the dough.” But day care doesn’t fly:” You’re paying the next-door neighbour’s baby-sitter, or its curtains for you, Mom.”

P. J. O’Rourke, Parliament of Whores, p. 100

But after cutting out all the groups who “deserve our charity” we will inevitably be left with the “Idle Poor,” and at this point we must return to our hypothetical social contract. So far the members of our contracting group are sitting in heaven with no idea where they are going. Let us imagine that they are told that they will be coming to live in either the UK or the US at the end of the twentieth century, but they still do not know which individuals they we will be in our world. How would they construct the principles of social justice?

I have argued that we should distinguish our basic human needs, and that argument implies that we would be eager to see a way of having all those basic human needs fulfilled, while at the same time giving each individual freedom and encouragement to grow, in whatever way was right for them. The simplest way to achieve both these objectives is for each member of the community to say, ‘Let us see if we cannot make sure everyone in this community gets their basic needs met, and after that let us not hinder each other with complex or discriminating rules. But let us be free to be whoever we want to be and do whatever we want to do.’ Put starkly might they not propose: Universal entitlements and flat taxes.

The immediate challenge within the contracting group would be, ‘But wouldn’t people exploit the generosity of this offer? What about some idle person who would take his benefits and then just sit around? We must find some way of solving this problem.’ But is there a solution whose costs don’t exceed the benefits of a universal system of community covenanting. The problem of the idle poor is fundamental here for many of the perversities of the present system have been created by the desire to root out the individual who *could* be taking care of themselves - but isn’t. Identifying and dealing with the idle poor goes something like this:

1. First, you must get people to prove they are poor enough to deserve public assistance - this has all the damaging asset-stripping qualities discussed above.
2. Second, because you believe some poor people do deserve public assistance you then have to get all the poor to try and prove that they are really a member of the deserving poor, by proving that they are in some way incapable of becoming independent - this requires the indignity of showing one’s own incapacity, with all the demeaning and corrupting side-effects that come with such a display.¹⁵
3. Third, you either create a job for someone - you, as it were, hold out a job to them and make them jump in (or else) or you put the onus on them - you tell them to get a job (or else).
4. And then finally we apply the “or else.” But what can you do to the individual who you have decided does not deserve to have his basic needs met: Kill them? Give them nothing, or less than the community deems necessary to live? Pay to put them in prison? Would it not be far easier to just say that everybody in our community deserves to get their basic needs met and leave it at that?

¹⁵ These tests of incapacity corrupt by asking people, who have every reason to seek both security and support, to lie - no one is “incapable” - we all have gifts and we are all able to contribute. However the price of our contributions in the market is not guaranteed to assure anyone of a decent life, just as that price in no way indicates the “value” of that contribution.

Often the debate over this matter becomes a debate over whether there are enough jobs anyway. Personally I feel that any minimum wage policy is likely to ensure a degree of unemployment, but even if we were to do away with the minimum wage there seems to be no logical reason in the world why the *price* of work for many would not be less than the *cost* of living. In such a situation, where we would all have every reason to work, would it not make sense for us to simply put aside an equal proportion of our earnings and ensure that everyone - no matter, how poor, incapable or idle - got the minimum required for a decent and dignified life.

Universal entitlements and flat taxes

My claim is that a just social system requires that as a community: we first guarantee that everyone receives resources sufficient for a decent life, that everyone has all their human needs met; but that after that point we are each given the freedom to live as best suits us, contributing to the community according to a set of public and equal rules.¹⁶ One of the perhaps unexpected corollaries of my argument is that social justice may also require flat taxes, taxes that ask us to contribute to each other's welfare at the same rate, not differently according to how poor or wealthy we are.¹⁷ In fact one of the ironies of the present system is that we save the highest marginal rates of taxation for the very poor and the very wealthy; this policy is neither fair nor sensible, the only likely explanation is that *both* Left and Right compete for the votes of the middle income earning group.¹⁸

The imperatives of social justice are not dissimilar to the imperatives of the judicial variety. The administration of social justice will require judgements by ordinary human beings about what is fair and reasonable - and those judgements will need to be connected to, but independent of, the political world. Judgements will be guided by precedence and common sense. There should be a presumption of 'innocence' or, in this case, honesty - but also there should be a system of punishments for anyone, tax evader or double-claimer, who abuses the system. A healthy system of social justice will have the smallest possible number of rules and the widest possible awareness of what those rules are.

Autonomy

Moreover, given what we have learned about the damaging effects and difficulties of the welfare system, there are some other general principles that we can apply. If our understanding of human life and the relationship between our human needs and human growth is correct then it is not enough to ensure that another person's needs are met, if the way that those needs are met, means that an individual's opportunities for growth are curtailed.

The present welfare system is untrusting. Not only is the system built on an assumption that the recipient does not deserve his benefits, it is also frightened to give any autonomy to that person: a

¹⁶ There is of course a key equivocation here which is that having one's needs met and having the resources to meet those needs may not necessarily be the same thing. The matter is resolved at a theoretical level by acknowledging that autonomy is a fundamental human need; however at a practical level this still may lead to certain trade-offs if a person's autonomy might seriously put at risk the likelihood of the person having their needs met.

¹⁷ The concept of a flat tax and basic minimum income is similar to the idea of the negative income tax and is described by Milton Friedman in *Free to Choose*, pp. 120-124. A negative income tax guarantees a certain minimum income by "paying" people a certain percentage of the difference between their income and their tax allowance when their allowance exceeds their income. It creates two rates: a positive and a negative rate and the absolute guaranteed minimum is then equal to the negative rate as a percentage of the relevant allowance. Although this is definitely a better arrangement than our present system is falls somewhat short of the ideal for social justice I have described.

¹⁸ The situation is complicated however by the fact that the obvious injustice of this arrangement, and the existence of pressure groups for the rich and the poor, leads to numerous loopholes, exceptions and waivers that further corrupt an already corrupt system.

fear that the gift will be abused or not used for the purpose intended. Unfortunately to remove an individual's autonomy is to remove their capacity to grow and learn; and to deny somebody their autonomy is to deny them their dignity.

To support an individual's autonomy means that, wherever possible, benefits should be provided in ways which maximise the individual's ability to choose how those benefits are "cashed-out." Put simply this means that cash is better than vouchers, but vouchers are better than services. Autonomy implies choice; and so, if the task of providing each other with a degree of security is combined with the need to promote autonomy, then there will always need to be room for risk and there will always need to be a degree of trust.

However there are differences in the degree of risk that we will want to take in fulfilling our obligations to different individuals, particularly if we start from where we are now. The problem with developing trust is that you need to take a risk in order to find out whether another person can be trusted. The best policy is one where the smallest risks are taken first: in that way the person letting go feels safer and the person taking on a new responsibility is not given too great a temptation to abuse their new found power.¹⁹ Trust is not a magic quality - it needs time and discretion to develop. Developing trust may also require an administrative system that treats individual cases differently, based on individual situations - though there is an obvious tension here between the ideal of universality and the ideal of individualisation.

Individual, family, civil society and the state

The other advantage of increasing an individual's autonomy and their opportunities for self-development is that inevitably leads to the development of stronger families and stronger communities. Human growth needs and looks out for opportunities to love. Human growth needs and looks out for opportunities to join with others in joint endeavours. Unfortunately the present welfare system not only stifles the drive to greater autonomy it makes it costly to enjoy its fruits.

The welfare system has in one sense always been individualistic, for it has to provide for the individual who has nothing, no family, nor membership of any of the organisations of civil society, the firm, the church, the club etc. However, in order to give away no more than the absolute minimum, the state also tends to count these potential supports against the individual: if you have a family they should be supporting you, if you are employed they should be providing you with health care etc. The unfortunate effect of this kind of charity is that it runs the risks of weakening the very structures upon which a healthy community is built, in fact it weakens the individual and the community by its very individualistic stance.

The solution to this problem is to abandon all the disincentives to community. When two people, who are both receiving minimum benefits, decide to get married - to pool their resources and pitch in together this should be a cause for community celebration and it should give us hope that as a couple they will be able to better support each other in their mutual growth. This should not be an opportunity for cutting their benefits/tax allowances.

If people join together in an enterprise, either for profit or not for profit, does it make sense to tax their membership through national insurance contributions or forcing the firm to take out medical insurance. The principle must surely be that the state is at least neutral to the development of these institutions. Whereas in fact, for all the talk about greater reliance on family, voluntary or corporate aid the state makes it more expensive to be in families or organisations.

¹⁹ Charles Handy explores this issue using the idea of the Chinese Contract: a contract which is not written down but built up through a slow and incremental process of risk-taking and mutual enrichment. See Charles Handy's *The Age of Paradox* (or, in the UK, *The Empty Raincoat*)

Community and local government

A symptom, and a cause, of the present welfare stupidity is the tendency to pass responsibility for providing welfare up to a higher level of governmental authority (or for it to be seized by that higher authority) either because of some supposed value in national standards or because the lower level of government is judged to be incapable of fulfilling its obligations. This has a wide number of damaging effects. Fundamentally it encourages the very irresponsibility that it is meant to overcome and by depriving local government of the opportunity to take responsibility for its own situation. In the minds of local officials and citizens a local problem has become a national problem, and they are absolved of responsibility.

It also leads to stupid and wasteful practice, when funding is passed to a higher level first it becomes subject to a whole series of pointless frictional costs and secondly it soon becomes attached to regulations which make the money much less effective at achieving its purpose than it would have been if local government had retained discretionary control over that funding. In particular the application of national standards is harmful when living standards and tax bases vary between locations. There is no reason why it is just to give somebody the same in one area as another when the costs of living vary in those areas - this supposed act of charity from rich areas to poor areas is an instance of the damaging kind of charity that we must get rid of: it keeps people poor. There is no State in the United States of America or local authority in the United Kingdom which cannot take care of its own, if it is allowed to keep hold of its own resources. The only time for aid from outside would be in situations of regional catastrophe, and that kind of need calls for some kind of 'insurance-type policy' - everybody puts a little in a general pot, and that money is only used in extreme circumstances.

The reason so many people fight a return to States' rights or local autonomy is because they have seen local governments abuse their responsibilities and so there is the same failure of trust as we have seen throughout the welfare system. The same logic applies to all the instances where people have abused the welfare system, and if you base a system on your belief that people are untrustworthy then you will undoubtedly be repaid with a lack of trust and abuse. Systems will need ways of dealing with those who abuse the trust that the system displays, but if that way becomes the way the system deals with *all* its members, with suspicion and with grudging gifts, then the whole system is perverted. Instead systems should handle abuse with firm and public justice, enacted occasionally but with certainty. If there is a need to vary the degree of discretion given to different authorities this can be achieved by individualised contracting.

In summary the modern problem of poverty is the problem of offering human beings, as their way out of the insecurities and hazards of life, securities that demean them and limit their opportunities to grow and contribute. The institution of welfare needs to be replaced by a new social contract in which every member of the community promises to provide to each of its members an equal right to the support necessary for each individual to lead their own life and a set of open and comprehensible social arrangements or laws which allow the maximum degree of personal autonomy and the development of family and civic life. The administration of social justice is best carried out by the most local jurisdiction possible.

5. A constitutional solution

The call for a return to localism, which this paper recommends, can also be seen, not as a demand that state, federal, national or supranational bodies have no role in welfare, but as a need for a new definition of what their role will be. I think that this is one of the reasons why a “constitutional approach” to the problem of welfare can offer some hope.

A constitution serves the central purpose of defining rules which are relatively untouchable, rules which stand some distance from the rough and tumble of political life. At the same time the constitution leaves open a space for what is discretionary, where laws and regulations or just plain freedom can operate. And I think that there is now a need to make the same distinction, to constitutionally lay down certain rights, and at the same time creating a space for freedom and experimentation.

For government in the United States this distinction could be of the utmost importance for it would allow the federal government and the federal judiciary to take up its primary role as defender of the constitution while allowing each State or local government the power to forge whatever more precise legislation it takes to be appropriate in their local area. Not only would the Federal government be empowered to defend the constitution if it is shown that it is breached, but it could also play a role in prompting learning, innovation and experimentation so that the constitution be better honoured.

One of the reasons for a political constitution is that it protects the engines of government from being seized by some power hungry group who will not let go of power. However in the field of welfare the threat is not that some group will capture the institutions of power but that they will distort the administration of welfare in such a way that it serves their interests. In both the UK and the USA the dynamics of democracy have created a situation where the median voter has been pandered to by both parties and the rules and regulations of welfare and taxation both subsidise the median voter's income.²⁰ What is needed is the discipline of some common community ground rules.

A constitution is also the legal expression of the social contract. And it is some form of social contract that must be at the heart of any just government. The following excerpt from the Declaration of Independence reiterates almost everything we have been saying with a startling clarity:

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness.

²⁰ Neither party would admit to this - or even recognise it - but both parties play the same game: the Left tries to prove to the median voter that their interests are the same as those of the poor, and so they would benefit from extra taxes on the rich and more money for welfare; the Right tries to prove the opposite, that the median voter is one of the rich, and therefore proposes tax cuts and harsher welfare rules. Over time it is the policies which attack the interests of the marginal groups - the poor and the rich - which become entrenched and the median voter is rewarded with subsidies to education, the arts, housing etc. which are designed so as not to appear as the blatant subsidies they are. Meanwhile the resulting jumble of taxes and subsidies not only cuts hardest on the poor and the rich but is so damaging to the overall economy that it does not even help the median voter.

The discussion above is really only a restatement of Jefferson's belief; we must make a commitment one to another, to secure the conditions by which man can *keep* his life, *enjoy* his liberty, and *pursue* his happiness - a social contract for social supports. And the process by which Jefferson and the founders of the Constitution of the United States used to found a "new order under heaven" offers us a template for the process we need to undertake here. First we need to identify the problems and basic moral principles that will inform our future arrangements [The Declaration of Independence]. Then we need to start to refine a set of constitutional principles [The Constitution and the Bill of Rights]. Then we can erect more precise legislation and we will need to weigh the different practical implications of any proposed legislation.

The Declaration of Independence and the Constitution and Bill of Rights were written by men and not by God; they were written in an active process of creative learning; and they were written, simply, in a way in which everyone could understand. There is no reason why their example should not inspire us to construct the principles of community support just as they were able to construct the principles of government. Sometimes the impact of a small group of people, who are prepared to think the impossible, can have dramatic consequences.

A Declaration of Interdependence

To begin the process I would propose the following formulae for debate:

This community believes that all its members should be assured the support that is necessary for their Life, Liberty and Pursuit of Happiness. It believes that it has the strength and resources to make certain guarantees to all its members and it expects all its members to contribute as they are best able. It can create arrangements which foster individual autonomy and improve the strength of the family and civic life, and these arrangements can be fair, open, comprehensible and under the control of the most local authorities.

A Bill of Social Rights

The following constitutional amendments are also proposed:²¹

1. Every individual will be assured the following basic goods that are considered necessary to a decent standard of living: a minimum income; health care; education to the age of eighteen; a home; any practical support they should need because of disability, frailty or ill health; mobility and communication.²²
2. The responsibility of the state, on behalf of the whole community, will be to ensure the basic security of each of that community's members is fulfilled in a way that maximises individual choice and control over those goods, without undue risk to the security of the individual and the public.

²¹ In fact the Universal Declaration of Human Rights already contains most of the following sentiments, see in particular: Article 16 on marriage, Article 17 on property, Article 19 on communication, Article 22 on social security, Article 23 on work, Article 25 on standard of living and childhood, Article 26 on education and freedom of choice in education, Article 29 on duties to the community and the free development of the personality. I am uncertain of the constitutional meaning of this Declaration for either the United States or the United Kingdom, nevertheless the Declaration clearly exemplifies the high degree of human consensus possible in these matters and the possibility of formulating reasonably specific commitments about them.

²² It would also be necessary to make a clearer statement of the needs of children here, including the fact that the family is the right and proper place for the development of the child.

3. All these basic goods be provided as universal entitlements and while they may be varied in proportion to differences in need that are natural to the individual - conditions of disability, frailty, or ill health - they will not be put at risk by any alterations in income, wealth, property, employment or family circumstance.
4. Systems of entitlement and taxation will not be prejudiced against families or other forms of human corporation and the system will place no extra costs on individuals who enter in to any such arrangements.
5. Any systems of taxation or contribution will be as simple and as comprehensible as possible and while they may tax in proportion to some variable, say sales, income, wealth or property, the relevant proportion will be constant for the whole community.²³

This list of general principles is clearly speculative at this stage, however there is no reason that, with further work, such a set of proposals could not become real constitutional rights. The role of the judiciary in interpreting the relevant social concepts will, of course, be new; but if one accepts that these ideas do have real meaning within the broad community there is no reason to believe that concrete and meaningful judgements cannot be made.

²³ An alternative formulation is offered by Milton Friedman in *Free to Choose*, p.307

6. Interpreting the constitution

The advantage of a constitutional approach is that one can distinguish between general principles and concrete or practical proposals to fulfil those general principles. This not only allows for greater sensitivity to local conditions and changes over time, but it also allows communities working within the same constitutional framework to try different approaches and learn from their successes and failures. The following brief discussions are given to display the kinds of choices that will still be open to different communities and to show that adopted general principles are just that, *general*, so while they may give enough guidance for a ruling that a particular arrangement fails to fulfil these constitutional guarantees they will not prescribe any particular solution for any particular community.

Benefits

While we may all be entitled to all the basic goods (a universal entitlement) that does not mean we should all get the same. Some needs are occasional or particular, (i.e. the need for disability supports or health care), some needs are universal, but only for a portion of life, (i.e. education) and some needs are universal and life-long, (i.e. food and shelter). Therefore certainly some situations are going to require discrimination about who gets support and how much support is given. Arguably, even the levels for food and shelter will need to distinguish between child entitlements and adult entitlements. The crucial question to answer here is do we want a rule-based or judgement-based system for determining entitlements. Or, to put that another way, do we want some very clear public criteria to be used or do we want funding to be based on the relationship between the recipient and the funder? I would presume that the smaller the community, the more people will want community supports to be handled in a flexible human way, using experience and common sense as the criteria of judgement.

Vouchers, cash and contracts

Clearly there are a number of ways in which a basic good can be delivered to an individual ranging from the direct provision of goods to cash, and somewhere in between is the voucher - a way of determining what is chosen by controlling the convertibility of the voucher to cash. If the aim is to maximise individual autonomy then cash is certainly the most freeing good, however communities are likely to want to assure themselves that the relevant needs are being met and that the cash is not being abused. The community may also want other social goods to be achieved by putting restrictions on how money is spent (for instance in promoting community investment or the principle of “least restrictive environment”). Another approach might be to contract with the individual so that the state’s obligation is fulfilled *through* the individual that the state is meant to be serving.²⁴

Taxation

As with benefits, there is no perfect system of taxation and there are a number of general variables that can be taxed: wealth, property, income, spending, inheritance. The argument here has been that whatever proportion of these is needed to fulfil the communities obligations should be applied universally. If 25% is needed everyone chips in 25%.²⁵ However I am uncertain whether there is any particular logic to how spending vs. saving should be taxed. Clearly if land is very unequally distributed then this is an argument for choosing to tax land or property. For land is a finite good,

²⁴ This was the model I developed for social care entitlements in England - which has become known as individual budgets and which are technically contracts or conditional resource entitlements (SD 2010).

²⁵ Normally this kind of system treats the minimum standard of living as the tax allowance, however - if one raised the standard of living everyone could contribute. While this might seem a little complex it would reinforce the spirit of equal community membership.

and unless you are prepared to actually redistribute it or put it into common ownership you must be prepared to tax it, and make the owners redistribute their earnings to those without land, (for in a sense they hold the land in covenant for us all). Moreover this argument doesn't mean taxation is better than other radically different forms of contribution - it would be perfectly within the spirit of the constitution if all the members of a community gave up goods in kind, or gave up their time to build a house for an individual.

Entitlement or tithe

Another balancing act that the state needs to make is between an approach which taxes first and then distributes those benefits and one which distributes benefits and then taxes. Clearly this can be put too sharply given our ability to make reasonable estimates of future need and future income, nevertheless different communities could approach this question in either manner and it makes a difference to public finances and the nature of the states responsibilities. The fundamental problem is that there are few natural prices and so, if the state says it will pay whatever it costs to meet certain needs, then there is no incentive for the agencies whose services are provided to control their own prices. If instead a cash-first approach is taken the state's responsibility becomes more complex but less open to abuse.²⁶

Families and corporations

One possible approach to the companies of family and civic life is to not tax them in any way, but merely assure that all company assets are distributed so that the company does not become a tax hideaway. Alternatively these companies are taxed on a basis that exactly mirrors the sum of the situations of the individuals within the company. So some people, children for instance, have their affairs linked to their parents. Either way the principle that this paper argues for is that there should be no double-counting. Either I am taxed or my company is taxed, but I am not taxed twice - thereby setting up a perverse disincentive for the use of companies.²⁷

Merit and paternalism

The general argument above has little to say about the question of taxes on special goods (e.g. pollution, drugs and tobacco etc.) These may well be reasonable policies when public safety is threatened but a direct ban on such activities would be counter-productive. However, at a more general level the argument does imply that the state must be careful about distributing benefits in a discriminating way. For instance: middle-class subsidies for the arts, state contributory pension schemes or unemployment insurance schemes; while all these may seem like nice benefits they all discriminate between different groups. What, for instance, is just about providing contributory pension rights over and above minimum income rights. Either the contributions get subsidised through the tax system, placing an extra unjust burden on others; or, the contributions could have produced more in a private personal pension, so the pensioner has been subsidising others at an unjust rate; or the contributions match what they would have achieved in a private scheme and so there was no reason for the state to engage in this activity. Certainly social justice cannot be used as

²⁶ At first this may seem the reverse of the moral priority discussed at length above, that we should first attend to the needs and then be free to grow as we are best able, however if one thinks about the community of bodiless souls it would make sense for them also to say, "Look, one of is going to be a doctor down there, now while we must all promise to contribute to each other's basic security that does not mean, if we have to call on doctors or other individuals to meet our basic needs that we can be held hostage to whatever price the doctor puts on his own service. Therefore we must ask the doctor to also play his part and to control his demands for funding." [In fact it was this approach which led to my development of the Resource Allocation System (SD 2010)].

²⁷ When I use the term company I use it as a catch-all for all possible entities of family and civic life in which people can join - including church, family, for profit companies, and not for profit companies etc. any entity through which we join with others for mutual enjoyment, enrichment or strengthening.

an argument for using the taxation system to carry out many of the tasks that the state currently does, and so a different criteria is needed to justify this kind of spending.

Policing and citizenship

There are many other issues that need to be tackled as well. There will need to be decisions about the precise roles of the higher authorities. There will need to be ways of assuring that people do not abuse their benefits by double or over-claiming. There will need to be ways of ascertaining which community an individual belongs to. None of these matters are simple and some may set new and different challenges to those faced by contemporary administrations.

If my uncertainty about how to go forward in each of these matters is not the result of some obtuseness then it seems that there will certainly be different ways of achieving a new social contract for welfare. However each community will be able to try out different kinds of solutions: different modes of taxation, different codes for civil society and the family, different definitions of basic human needs and different ways of guaranteeing to meet those needs - vouchers, cash or contracts; entitlements or tithes; by rules or by individual judgement. Perhaps only after decades of real experiment will we know if there can really be some common solutions. The following two sections are very schematic and should not be treated with the same seriousness as the arguments above, they are put down to prompt further criticism and thought.

7. A practical list to start with

The following is a polemical and personal list of practical measures that could be introduced in the spirit of the general argument above. It is designed to provoke debate and is not offered with the same seriousness as the general principles discussed above.

Changes at the federal level (USA) or national level (UK)

1. Transfer of responsibility and powers to tax to the States, or to smaller levels of local government
2. A constitutional guarantee on the basic human needs
3. Organisation of systems of monitoring and communication across the nation

Changes at the local level (State or local government)

1. A flat rate for income tax
2. A guaranteed universal minimum income for each individual
3. Removal of all benefit or tax allowance restrictions on married partners or family members
4. A flat and universal housing allowance, or voucher, instituted (convertible for rent, mortgages, or taxation on property)
5. The abandonment of all minimum wage controls
6. Universal health care guarantee
7. Introduction of education vouchers for all children with a supplement for children requiring special education supports
8. Control of funds for disability supports pooled and then contracted out so that individuals and families maximise their control over those resources
9. Higher education students borrow 100% of fees, no subsidies
10. The privatisation of all pensions and employment security systems

I look forward to any criticisms of this list. Clearly it mixes up the traditional Left and Right agendas.

8. Why we shouldn't try

There are always many reasons why we should not try something new and I have tried to articulate a few of the more obvious ones below. I look forward to receiving many more and I hope that I have the opportunity to do the necessary modelling to actually examine what the costs of a different system would be and how the burden of those costs would shift under these proposals.

The changes would cause too much political resistance

Clearly the kind of policies proposed here will upset a whole variety of different interest groups and there is something here to disturb every political viewpoint. However there is something here that should please most political perspectives also. In fact this is a perfect example of a systemic problem that is best tackled in a reasonably systemic fashion. Disentangling too many of the interlocked policies will lead to political stalemate, seeing them as an inevitable whole may just create the appropriate political momentum for a revolutionary change. I am uncertain how the political dynamics of the present party systems in the UK and the USA would allow such a radical shift in thinking, but I see no reason to believe such a change is impossible.

The economy would suffer

The kinds of change proposed here would clearly change the economy and society radically in a number of ways. Unemployment would disappear because the everyone could either price themselves into a job or they would not be seeking a job. Unemployment in the economic sense would also be reduced because everyone would be in a position to put their particular skills and talents to use in the economy. Specific burdens on the firm would be removed and so there would be no reason for any disinvestment from the economy, if anything the economy would attract more investment. However there would be other changes to the economy, put bluntly there would probably be more musicians, receiving even lower pay, and fewer accountants, receiving even more pay, for the fear of having no income probably distorts the economy and encourages people to enter the labour market looking for sure-fire, highly paid work rather than looking to find employment based upon their skills and interests. The economic benefits an approach like this would yield are comparable to the benefits a firm receives when it stops treating its employees as mere costs and begins to treat them as assets.

We can't afford it

When people say that we could not afford this kind of system they usually mean one of two things. Either they believe that so many people would stop working if their income was guaranteed that there would be an insufficient tax base, or they believe that the tax rate would have to go to a politically unfeasible height.²⁸ I find both propositions highly unlikely but I admit there is a need for further work here. One reason that makes me particularly hopeful here is that if one looks at the gross amount of money already set aside for welfare purposes and then imagines that money being put under the control of small communities and individuals the scope for greater efficiency is enormous. At the moment a large percentage of welfare funding is lost in frictional bureaucracy as the money is transferred up several layers of government and then passed back down again.

This list can surely be expanded, for it is always possible to imagine that any radical change will unleash unexpected or unfortunate circumstances. However as more and more people come to

²⁸ Losing the fear of not working clearly reduces the incentive to work, though clearly that fear is already dampened by the present inefficient welfare system. Also, if the supply of labour were to shrink somewhat because of this measure the price of labour would increase. Either way the positive incentive to work would be much greater with these proposals, and if 50% tax rates for those who already earn a lot act as a disincentive to work just imagine what a 25% tax rate would look like to someone on a minimum income. For those who think some firmer bridge is needed into work it would also be possible to make educational vouchers convertible for apprenticeships.

rely to some extent or another on the present system of public welfare the more it will become clear that the present system is enormously wasteful and damaging. In particular those who see themselves as defenders of the concept of a public responsibility to provide welfare, or a system of community supports, will have to confront the fact that the present system is most damaging to those it sets out to help. If no alternative to the present situation is offered, if an alternative agenda is not set out, then the field will be left open to those who say that nothing would be better than what we have now.

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Centre for Welfare Reform
The Quadrant, 99 Parkway Avenue
Parkway Business Park
Sheffield, S9 4WG

0114 251 0228

07729 7729 41

www.centreforwelfarereform.org
admin@centreforwelfarereform.org