

The Social Contract Revisited

Against Personal Responsibility for Welfare

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Executive Summary

- Sometimes people's misfortunes are the consequence of chance: bad luck pure and simple. Other times they are the natural consequence of choices those people have freely made. A popular position, both in political philosophy and popular political discourse, says that people should be responsible for their own welfare. They should make the right choices, insofar as it is within their own power to do so, and they should expect no assistance from anyone else, or the public at large, when they fail to do so.
 - This principle is embodied in welfare reforms across the United States, United Kingdom, and much of the Organisation for Economic Co-operation and Development (OECD) world, requiring welfare recipients to sign 'contracts', 'compacts', or 'activation agreements' with caseworkers and allowing recipients to be 'breached off' the welfare programmes for failure to live up to those commitments.
 - The implementation of any policy is prone to errors in both directions, and an inevitable tradeoff between them. Holding people 'personally responsible for their own welfare' in these ways typically errs far too often in denying benefits to people who have done nothing really wrong.
 - Even where people have done something that has contributed somewhat to their misfortune, what they did contributed only a little.
- Properly apportioned between choice and chance, only a small share of the responsibility for bad outcomes would typically be attributed to the person who suffers some misfortune. Making a person suffer all the consequences, when she was only partially to blame, is unjustly disproportionate.
- Instead of backward-looking blame-responsibility, public policy should be organized around forward-looking principles of task-responsibility. The issue should not be 'who caused the problem' but, rather, 'who is best able to get us out of the problem'.
 - Blame-responsibility was repudiated long ago in connection with worker's compensation. No-fault social insurance was substituted for fault-based systems of tort law for those purposes. Enquiries into personal responsibility should be likewise eschewed in social welfare policy. Ascribing fault and blame for someone's falling into poverty is harder, if anything, than ascribing fault and blame for someone's falling off a ladder.
 - In practice it is impossible to get the fine-grained personalized information that would be required to implement, without unacceptable levels of error, policies holding people personally responsible for their own welfare and denying public benefits to those whose plight is their own fault. Philosophers are wrong to recommend policies, impervious to the practical consequences of implementing them.

Against Personal Responsibility for Welfare

Things like who your parents were or where you were born are things that you could not have helped. They are 'arbitrary from a moral perspective'. Social policy should strive to erase inequalities owing to brute luck of that sort. But inequalities owing to things for which a person *is* responsible should be allowed to stand.¹ Or so say the 'luck egalitarians', whom I shall here be critiquing.

Philosophers deploy 'toy examples' as intuition pumps. Ronald Dworkin famously offered the example of Louis, who (we are asked to suppose) deliberately cultivated a taste for pre-phylloxera claret and plover's eggs. If the correct rule of distributive justice were 'equality of welfare', then Louis would be entitled to a larger share of social resources, because (given his expensive tastes) it costs more for him to achieve the same level of welfare as someone who gets the same pleasure out of a bottle of Tesco's finest.

But, Dworkin implores, surely that cannot be right. To be sure, had Louis been born with (or had he accidentally acquired) a digestive disorder such that he could only eat expensive foods, that would be a different matter. However, had he acquired his expensive tastes deliberately, particularly if he had done so specifically with a view to acquiring a larger share of social resources in consequence, then that is something for which he should be held responsible.

More generally, people who are worse off through the natural consequences of their own free choices should (it is said) have no claims on social assistance to ameliorate those outcomes. Inequalities that

result from chance should be socially expunged, but not ones that result from choice. A large academic literature has grown up refining and elaborating that as a philosophical position. And there have been plenty of politicians keen to act on it. Ronald Reagan, newly inaugurated as Dworkin wrote, had long been complaining in similar terms about 'welfare queens' who deliberately had illegitimate children to collect welfare checks. Margaret Thatcher, recently arrived in Downing Street, offered a parallel diagnosis of unemployment: by demanding outrageous terms and conditions of employment, unions had simply priced workers out of jobs.

Both politicians on the hard Right and philosophers on the soft Left thus seemed to be converging on the same proposition: individuals have primary responsibility for their own welfare, and insofar as they are responsible for their own suffering, then nothing ought socially be done to alleviate it. Such thoughts eventually crystallized into the Third Way 'new communitarianism' of Tony Blair and Bill Clinton, who were just as keen as had been their right-wing predecessors on instilling 'responsibility' in welfare recipients and cutting off their payments if they behaved irresponsibly. The centerpiece of the 1994 House Republicans' 'Contract with America' had been welfare reform to repeal Aid to Families with Dependent Children (AFDC) and replace it with Temporary Assistance to Needy Families, which lasts only two years. The House Republicans called this the 'Personal Responsibility Act'. With a few extra words added to the title, just such a bill was signed into law by President Clinton, saying:

A long time ago I concluded that the current welfare system undermines the basic values of work, responsibility and family, trapping

1. Rawls, J. (1971) *A Theory of Justice*. Cambridge MA: Harvard University Press, p. 74. Dworkin, R. M. (1981) 'What is Equality?', *Philosophy & Public Affairs*, 10: 185–246, 283–345.

*generation after generation in dependency and hurting the very people it was designed to help...*²

In contemporary welfare debates, 'individual responsibility' arises in two connections. One is in the critique of welfare dependency. People should be self-reliant and take responsibility for their own welfare, rather than relying on the state for constant support. That is the sense in which the 1996 US 'Personal Responsibility Act' encouraged personal responsibility: it cut off payment of Temporary Assistance to Needy Families after two years.

Careful examination of those arguments shows them basically to be in bad faith, however. That moral panic targeted not dependency *tout court*, but only certain sorts of dependency. It was indifferent to other cases of dependency (of nonemployed wives on rich husbands, for example). And it literally mandated dependence in other cases, as, for example, in Clinton's Executive Order shortly before Congress enacted the 1996 welfare reform requiring teenaged mothers in receipt of AFDC benefits to remain living in the parental home.

The rhetoric proceeds as if dependency is a character flaw. But depending on others for some things can actually be good (in loving family relationships for example); and in any case complete self-reliance is virtually impossible. The debate should be over which sorts of dependency to discourage and which to encourage. That debate is evaded, not joined, in contemporary campaigns demanding that people take 'personal responsibility' for their own welfare, to avoid 'dependency' *tout court* and to become 'self-reliant' *simpliciter*.³

The second point at which 'individual responsibility for welfare' figures in current welfare debates is in the luck-egalitarian way. Insofar as someone is herself responsible for the circumstances in which she finds herself, she has no legitimate claim (on this account) to public assistance to alleviate those circumstances. In the most extreme view (associated, unsurprisingly, with one of the leaders of the Chicago law-and-economics school) the poor who are poor in consequence of their own culpable actions should be seen as having 'forfeited' their claim to social assistance.⁴

In certain connections some such principle has been written into public policy from the start. Unemployment benefits, since their inception, have always been paid only to those who are involuntarily unemployed; someone who simply quit his job has never been entitled to claim unemployment benefits. Those keen on seeing more 'individual responsibility for welfare' would extend that principle well beyond unemployment benefits.

Both in the United States and indeed across the OECD, welfare reform led to recipients increasingly being required to sign 'contracts' or 'compacts' or 'activation agreements' promising to undertake a variety of labour-market-related activities in return for continued receipt of welfare payments.⁵ Those then served as responsibility triggers. Breaches of one's obligations under the terms of that agreement were treated as administratively conclusive evidence of irresponsibility sufficient to warrant withdrawal of welfare benefits. And at least in some countries, vast numbers of recipients

2. Clinton, B. (1996) 'Presidential News Conference: Clinton says welfare bill is a "real step forward"', *Congressional Quarterly Weekly Report*, Vol. 54 (# 31: Aug. 3): 2216-8.

3. Goodin, R. E. (1988) *Reasons for Welfare*. Princeton, NJ: Princeton University Press, ch. 12. Goodin, R. E. (1988) 'Social Welfare as a Collective Social Responsibility'. In: David Schmidtz and Robert E. Goodin, *Social Welfare and Individual Responsibility*. New York: Cambridge University Press, pp. 116-44.

4. Epstein, R. A. (1997) 'The Problem of Forfeiture in the Welfare State', *Social Philosophy & Policy*, 14: 256-84. Cf. Arneson, R. J. (1997) 'Egalitarianism and the Undeserving Poor', *Journal of Political Philosophy*, 5: 327-50.

5. As under the US Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the UK Welfare Reform and Pensions Act of 1999. See more generally Organisation for Economic Co-operation and Development (1997) *Making Work Pay: Taxation, Benefits, Employment and Unemployment*. Paris: OECD.

(in the United States and Australia for example a quarter or more) were 'breached off' welfare rolls in just this way.⁶

A cynic may say this is just a deft exercise in 'bureaucratic disentanglement'. If you want to reduce welfare caseloads and expenditures, then one sure-fire way to do so is to set up more and more elaborate hoops for claimants to jump through, knowing fully well that the more hoops there are the more likely clients are to miss one or another of them. Experience shows, for example, that if you merely require recipients to show up for an interview at the employment office, 5 to 10 per cent of them will fail to do so, giving you an excuse for denying them further unemployment benefits.⁷

One would like to think those sorts of rules catch those who really should be kicked off the programme: the work-shy and only the work-shy. But anyone who has worked in an employment office will know that as often as not people fail to turn up because they never got the message, or because their bus did not come, or because their kid was sick, or maybe just because they were disorganized and forgot. (After all, state employment services deal disproportionately with people who are not well organized and good at keeping track of bureaucratic paperwork: if they were really good at those things they would find jobs much more easily, perhaps even in the employment office.) Tellingly, fully a third of sanctions for 'breaches' in Australia are overturned on appeal.⁸

Statisticians talk of the inevitable trade-off between two types of error. Type I, in this context, is the error of paying benefits to someone who does not deserve them. Type II is the error of not paying

benefits to someone who does deserve them. Statisticians warn that decreasing the first type of error almost certainly involves increasing the second type. If we are keen to ensure that all those who deserve benefits should get them, we simply have to accept that some who do not deserve them will also receive them. Conversely, if we try to ensure that no undeserving person gets benefits, we will almost inevitably end up denying benefits to some people who are deserving of them.⁹

Statisticians also remind us how sensitive these effects are to the 'base rates' of 'true deservingness' in the population. The larger proportion of the population that is truly deserving of benefits, the larger the numbers of truly deserving who will be wrongly denied benefits by any policy designed to weed out the undeserving. In bad economic times, when a larger proportion of welfare claimants genuinely do deserve assistance, we should therefore ease restrictions to avoid an excess of Type II errors. But of course the political and bureaucratic incentives are exactly the opposite: to tighten restrictions, when caseloads and expenditures are ballooning.

Since the luck-egalitarian movement got going, philosophically, with a 'toy example' – Dworkin's example of Louis the claret-lover – let me introduce a toy example of my own to try to pump some intuitions back in the opposite direction. Take the case of the Reckless Driver.

Suppose a Reckless Driver's misdeeds on the road have caused a collision, in which both the Reckless Driver and the wholly Innocent Driver of the other car sustained injuries which, in both cases, would lead to permanent impairment of an identical sort if not treated promptly. Both drivers are taken to the same small nearby hospital, where the police officer informs the attending Accident and Emergency physician that the Reckless Driver was wholly responsible for the crash.

6. Grubb, D. (2000) 'Eligibility Criteria for Unemployment Benefits'. *OECD Economic Studies*, 31: 147-84, Table 2, p. 158.

7. Grubb (2000) 'Eligibility criteria for Unemployment Benefits'. US General Accounting Office (1997) *Welfare Reform: States' Early Experiences with Benefit Termination*. Washington, DC: GAO, p. 164.

8. Moses, J. and Sharples, I. (2000) 'Breaching – History, Trends and Issues'. Paper presented to 7th National Conference on Unemployment, University of Western Sydney, 30 Nov-1 Dec 2000, p. 9.

9. Goodin, R. E. (1985) 'Erring on the Side of Kindness in Social Welfare Policy', *Policy Sciences*, 18: 141-56.

What effect, if any, do we think that that information should have on the way the doctor treats the two patients? Well, if their injuries and prognoses were absolutely identical, and if there were only one available operating theatre, perhaps considerations of 'personal responsibility' might legitimately permit the physician to treat the Innocent Driver first. But just how strong ought this consideration be? Not very strong at all, I think most of us would want to say.

One way to think about this is to ask just how much more badly injured would the Reckless Driver have to be injured, in order for us to think he deserves to be treated ahead of the Innocent Driver. I think most people would say that if the Reckless Driver's injuries were much worse at all, then he should be treated first. Which is just to say that, where there are any medical grounds for choosing between them at all, whom to treat first should be decided on medical rather than moralizing grounds concerning responsibility for the crash.

The larger theoretical framework within which these cases should be set distinguishes between two kinds of responsibility: 'blame responsibility' and 'task responsibility'.¹⁰ Blame-responsibility is backward-looking. It asks, 'Who is responsible for bringing about this state of affairs?' On the basis of the answer to that question, it allocates blame and credit. Task-responsibility, in contrast, is forward-looking. It asks, 'Who is responsible for remedying this state of affairs?' There are many bases upon which we might ground our answer to that question. Blame-responsibility might be one. But another way we might ground our answer is to ask, 'Who is best able to remedy this state of affairs?'

The Reckless Driver is, *ex hypothesi*, blame-responsible for the accident. He could have avoided it, had he driven more carefully. But once

the accident has occurred, there is nothing he could then do to rectify the effects of the accident. He cannot (*ex hypothesi*) treat his own injuries or those of the Innocent Driver. Treating the victims of the crash is the task-responsibility of the attending physician, because (*ex hypothesi*) she and she alone can do that.

Of course there are incentive effects to be considered in all this. In his *Essay on the Principle of Population*, Malthus told us not to feed the starving children presently before us, to discourage the poor from having more children than they can feed in the future. The physician might let the Reckless Driver suffer for a little longer, thinking that by so doing she may teach him to drive more carefully in future.

I for one would want to see some strong empirical evidence that the incentives will actually have the desired effects, before inflicting those sorts of harms on people. If the people concerned really are constitutionally feckless, disorganized, or incapable of long-term planning, then the incentives wouldn't actually alter their behaviour and there would be no incentive-base for inflicting that harm. The incentive argument, remember, is a purely forward-looking argument: it is impervious to backward-looking considerations of blame-responsibility.

Of course, as a matter of 'efficiency' (getting most 'bang' for the treatment 'buck') wherever resources are scarce relative to demand we might decide to direct them away from the feckless and reckless. If the Reckless Driver and Innocent Driver both need a kidney transplant and there is only one kidney available, we might give it to the Innocent Driver if we know that she is a teetotaler whereas the Reckless Driver is an alcoholic who would almost certainly persist in drinking and damaging the new liver. Again, however, in that case we would be giving the kidney to the Innocent Driver not for backward-looking blame-responsibility reasons to do with her Innocence, but rather for forward-looking reasons to do with who is going to make the best use of the kidney.

10. Goodin, R. E. (1985) *Protecting the Vulnerable: A Re-Analysis of Our Social Responsibilities*. Chicago: University of Chicago Press, ch. 5. Goodin, R. E. (1998) 'Social Welfare as a Collective Social Responsibility' pp. 146–54.

The Reckless Driver case raises one further aspect of luck-egalitarianism that we should query, particularly in social welfare connections. *Ex hypothesi*, the Reckless Driver was merely reckless. He did something wrong in driving recklessly, to be sure. He is blameworthy for that; indeed, he is blame-responsible for the crash. But suppose his recklessness was slight and his injuries are severe, far disproportionate to the degree of his recklessness.

A hardline advocate of blame-responsibility might say that any degree of recklessness makes the Reckless Driver responsible for the accident and everything that flows from it. Something like that was the premise underlying the old rule of 'contributory negligence' in tort law: if the person who has been damaged has, through his negligence, made any contribution at all to bringing about that outcome, then he cannot claim damages against someone else who also contributed even vastly more to causing the outcome. But that clearly was an absurd rule that has now been widely repudiated in favour of a standard of 'comparative negligence', making the liability of each proportional to their causal contributions.¹¹

I presume that any remotely reasonable luck-egalitarian must do the same. I assume no sensible person would want to insist that any amount of blame-responsibility, however small, should be allowed to vindicate any suffering the blame-responsible person suffers, however great. Presumably there should be some proportionality built into luck-egalitarianism, capping the amount of hardship that should be allowed to persist in consequence of varying different degrees of blame-responsibility.

Assuming that luck-egalitarianism really says that hardship should be proportional to the extent of blame-responsibility, then even luck-egalitarians

(and clearly I am not one of them) should agree that most welfare claimants should get some considerable assistance from the state. They may typically have done a little something wrong; but their suffering, if left unrelieved, would be vastly disproportionate to any wrong that they have done or any blame-responsibility that they bear.¹²

Blame-responsibility, if properly proportional, wouldn't be an argument against social transfers altogether. It would at most be an argument against *fully* relieving the plight of the poor. Given the paltry benefit levels of the programmes we're talking about, I don't think anyone could seriously think we're at risk of overshooting that mark, once properly proportionalized.

Insisting that people should be responsible for their own welfare, and that if they are responsible in any way for their suffering then they should be left to suffer, amounts to harking back to the old rule of contributory negligence that (as I have said) tort law has long abandoned. But even to insist upon a principle akin to 'comparative negligence' – a principle that people should be left to suffer in proportion to their blame-responsibility for bringing their suffering about – is to neglect lessons that we have long ago learned in other policy contexts.

Remember where 'social insurance' came from: the palpable failure of fault-based principles of tort liability to relieve injured workers.¹³ So we set up compulsory schemes of workers' compensation based on insurance instead. We abandoned enquires into fault and blame. If the insured-against contingency occurs to you, you get compensation: end of story.¹⁴

11. Goodin, R. E. (1998) 'Social Welfare as a Collective Social Responsibility', pp. 158–61.

12. As Winston Churchill himself emphasized, speaking as Home Secretary in Commons debate on the National Insurance Act of 1911 (quoted in Goodin [1988] *Reasons for Welfare*, p. 295).

13. Families of workers killed in industrial accidents received on average only eight months' pay, and nothing at all in fully 40% of cases. Fishback, P. and Kantor, S. (2000) *A Prelude to the Welfare State: The Origins of Workers' Compensation*. Chicago: University of Chicago Press, p. 34.

14. Atiyah, P. S. (1980) *Accidents, Compensation & the Law*. 3rd edn. London: Weidenfeld & Nicholson, chs. 14–15.

Would anyone (except perhaps the Trial Lawyers' Association) seriously propose that we cancel social insurance for worker's compensation and adjudicate those claims through fault-based tort litigation once again? Does anyone seriously suppose that injured workers would be better served? Does anyone seriously suppose that it would cost employers less? Does anyone seriously suppose that justice would be better served, given the insurmountable difficulties of disentangling the multiple interacting causes of any given accident?

Assuming no one (except a trial lawyer) would seriously propose reinserting fault and blame into workplace injury compensation, why on earth are we thinking of doing just that when it comes to protecting people's social welfare more generally? Does anyone seriously suppose it is easier to ascribe fault and blame for falling into poverty than falling off a ladder? Do those who want to re-insinuate considerations of fault and blame into allocations of social assistance really think that either justice or efficiency would be better served by modelling benefits offices on tort courts? And if they do not propose those sorts of individualized assessments of moral desert of the sort that brought the Guardians of the Poor Law into such disrepute a century ago, how is justice going to be better served by batch processing whole categories of claimants on the basis of some assessment of average deservingness?

Certainly, some social assistance claimants are more responsible for their own plight than others, just as some injured workers are more responsible for their own injuries than others. If we had infallible and costless access to those facts, we might be tempted to make use of that information in deciding how much social assistance each of them deserves.

For my own part, I think we should resist that temptation on the principles grounds already discussed. But just think about the practicalities. When playing with toy examples in their thought-experiment labs, philosophers can just *stipulate* the crucial facts: that Louis is responsible for his taste for pre-phylloxera claret, for example. But the philosopher's thought-experiment lab is not the real world. In the real world we cannot just stipulate: we need to know. And those working in social benefit offices simply cannot know, sufficiently often with sufficient confidence, who is and who is not responsible to what degree for their own suffering for them to implement luck-egalitarian policies with the degree of precision that we ought rightly demand when it comes to depriving destitute people of their last source of support.

The facts of the matter matter, in the real world if not in the philosopher's thought-experiment lab. When social philosophers peddle principles that depend for their proper application on empirical facts that are inevitably inaccessible to those who have to apply them, they are in gross dereliction of their larger social duties.

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